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### Terror

#### Indefinite detention hurts the war on terror – impedes intelligence gathering, destroys credibility, and alienates key allies

Hathaway, et al, ’13 [Oona (Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School); Samuel Adelsberg (J.D. candidate at Yale Law School); Spencer Amdur (J.D. candidate at Yale Law School); Freya Pitts (J.D. candidate at Yale Law School); Philip Levitz (J.D. from Yale Law School); and Sirine Shebaya (J.D. from Yale Law School), “The Power To Detain: Detention of Terrorism Suspects After 9/11”, The Yale Journal of International Law, Vol. 38, 2013]

The least contested bases for detention authority in any context are postconviction criminal detention and pre-verdict detention for those who pose a risk of flight. It is often assumed that such criminal detention is ill-suited to terrorists. However, with very little fanfare, federal district court dockets have been flush with terrorism cases over the past decade. Strikingly, during the first two years of Barack Obama’s presidency, the annual number of terrorism prosecutions doubled, while the conviction rate for the nearly 500 cases has stayed constant at around 90 percent. 233 One reason for this increase in prosecutions is the recognition by both the Bush and Obama Administrations that trying suspected terrorists in criminal courts has certain strategic and moral advantages in the fight against terrorism. Predictability Post-conviction detention of terrorists after prosecution in federal court provides a level of predictability that is absent in the military commission system. Federal courts have years of experience trying and convicting dangerous criminals, including international terrorists, and the rules are well established and understood. The current military commission system, on the other hand, is an untested adjudicatory regime with no established jurisprudence to guide the parties and judges.234 As discussed above, conviction rates in terrorism trials have been close to 90% since 2001, despite a huge increase in the absolute number of such prosecutions. The military commissions, by contrast, have convicted three people since 2001, and three more have pled guilty.235 Several defendants had their charges dropped,236 and others have been charged but not tried.237 Their procedures have been challenged at every stage, and it is unclear what their final form will ultimately look like. The commissions’ track record is short, and in light of their mixed results thus far, their future performance is uncertain. Furthermore, those who have been convicted by the commissions have received extremely short sentences.238 By contrast, favorable sentencing guidelines in federal terrorism trials allow the government to incapacitate dangerous individuals for long periods of time, if not for the life of the defendant.239 While it is difficult to estimate the counterfactual results were the defendants in each case to have been tried in the other system, it is clear that the military commission system is highly unproven and unpredictable compared to the federal courts.240 2. Fairness and Legitimacy Federal courts are also fairer and more legitimate fora than military commissions. The procedural protections they offer are the source of their legitimacy, and they reduce the risk of error.241 At every turn, the military commissions’ deviations from established criminal procedure has been challenged—sometimes successfully.242 Even where commission procedures are constitutional, they are not widely accepted, and are a novel judicial framework.243 Federal criminal procedure, on the other hand, is as legitimate a criminal process as we have. Both acceptance and accuracy are important to the fight against terrorism. As several successful habeas corpus petitions have demonstrated, insufficient procedural protections create a real danger of erroneous imprisonment for extended periods.244 Meanwhile, local populations are more likely to cooperate in policing when they believe they have been treated fairly.245 The understanding that a more legitimate detention regime will be a more effective one is echoed in statements from within the Department of Defense and the White House.246 3. Strategic Advantages Furthermore, our allies in the fight against terrorism also recognize and respond to the difference in legitimacy and fairness between civilian and military courts. Increased international cooperation is another advantage of criminal prosecution. Many of our key allies have been unwilling to cooperate in cases involving law of war detention or prosecution but have cooperated in criminal law prosecution. In fact, many of our extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court.247 This issue has played out in practice several times. An al-Shabaab operative was recently extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court.248 Two similar cases arose in 2007,249 and several more are pending.250 The use of military commissions may similarly hinder other kinds of international prosecutorial cooperation, such as testimony- and evidence-sharing. Finally, the criminal justice system is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted.251 This greater variety of offenses—military commissions can only punish a narrow set of traditional offenses against the laws of war252 —offers prosecutors important flexibility. For instance, it might be very difficult to prove al Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior.253 The federal criminal system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are powerful incentives for defendants to cooperate, and often lead to valuable intelligence-gathering. The legitimacy and consistency of the federal courts, discussed above, also push defendants to cooperate, which in turn produces more intelligence over the course of prosecution.254

#### Indefinite detention creates recruitment propaganda and causes a resource trade off which shatters the ability to fight terrorism

Powell 8 (Catherine, Georgetown Law Visiting Professor for the 2012-13 academic year and teaches international law, constitutional law, and constitutional rights in comparative perspective. She has recently served in government on Secretary of State Hillary Clinton’s Policy Planning Staff and on the White House National Security Staff, where she was Director for Human Rights. “Scholars’ Statement of Principles for the New President on U.S. Detention Policy: An Agenda for Change\*” <http://www.law.yale.edu/documents/pdf/Alumni_Affairs/Scholars_Statement.pdf>)

Across the political spectrum, there is a growing consensus that the existing system of long term detention of terrorism suspects without trial through the network of facilities in Guantanamo and elsewhere is an unsustainable liability for the United States that must be changed. The current policies undermine the rule of law and our national security. The last seven years have seen a dangerous erosion of the rule of law in the United States through a disingenuous interpretation of the laws of war, the denial of ordinary legal process, the violation of the most basic rights, and the use of unreliable evidence (including secret and coerced evidence). The current detention policies also point to the inherent fallibility of “preventive” determinations that are based on assessment of future dangerousness (as opposed to past criminal conduct). Empirical studies demonstrate that “preventive” detention determinations that rely on assessment of future dangerousness generate unacceptably high levels of false positives (i.e., detention of innocent people).1 Indeed, while the Bush Administration once claimed the Guantanamo detainees were “the worst of the worst,” following minimal judicial intervention, it subsequently released more than 300 of them, as of the end of 2006.2 Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects.3 Despite dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantanamo or elsewhere, they would essentially bring the failed Guantanamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation. Such arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror” (rather than delegitimizing them as criminals in the ordinary criminal justice system).4 Moreover, the current system of long term (and, essentially, indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism. Reflecting what has now become a broad consensus around the need to use the full range of instruments of state power to combat terrorism, the bi-partisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.”5 Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming President should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.

#### Terrorist organizations are gaining strength now

Evans 13(Andrew, quoting: Derek Chollet, assistant secretary of Defense for International Security Affairs and Michael Sheehan, assistant secretary of Defense for Special Operations/Low Intensity Conflict and Interdependent Capabilities, “Al Qaeda growing threat in Middle East, Obama officials say”, http://freebeacon.com/the-tide-of-war-is-rising/, 4/10/13)

Defense and military officials testified that al Qaeda is gaining a foothold in several areas throughout the Middle East and Northern Africa in a hearing before a subcommittee of the Senate Armed Services Committee Tuesday afternoon. The terrorist organization is seeking to exploit the upheaval in the Middle East following uprisings over the past two years that overthrew many longstanding governments across the region, testified Derek Chollet, assistant secretary of Defense for International Security Affairs. Chollet also said the administration is worried about the possibility that al Qaeda could establish strongholds in multiple countries, including Syria and Mali. When pressed by Sen. John McCain (R., Ariz.), Michael Sheehan, assistant secretary of Defense for Special Operations/Low Intensity Conflict and Interdependent Capabilities, said al Qaeda affiliates are gaining strength in Syria. Sheehan and McCain differed in their respective assessments of al Qaeda’s capacity in Libya during an acrimonious exchange. Sheehan asserted al Qaeda has “failed to demonstrate strategic capability in those new areas” such as Libya that are outside of their traditional strongholds. “I just came from Libya, Mr. Sheehan,” McCain said. “I just came from there. That is patently false. That is a false statement.” Al Qaeda remains strong in the mountains between Afghanistan and Pakistan as well as in Yemen, Sheehan said. He argued that the military has had great success in targeting and eliminating the terrorist organization’s leadership. When asked by McCain, Sheehan refused to answer whether he would support arming the Syrian opposition, saying he would rather discuss that issue in the closed session that immediately followed the open hearing. “The American people should not know how the members of our Department of Defense feel about an issue of the slaughter of 70,000 or more people, millions of refugees?” McCain asked in response. Chollet testified that the U.S. government is supplying the Syrian opposition with “non-lethal” support. He also said al Qaeda is losing the “hearts and minds” of the Syrian people. Sen. Deb Fischer (R., Neb.) expressed concern that the American military is spread too thinly across the globe, a concern that Adm. William McRaven, commander of the U.S. Special Operations Command, rejected. “I’m not sure that I think we’re spread to thin,” McRaven said, noting that on any given day the United States has special operations forces in 70 to 90 countries. Sheehan said United Nations forces, which will likely replace the French forces currently in Mali, will not be able to take on the al Qaeda affiliate there and root it out. That will be a job for other, better equipped forces, like French forces with U.S. support, Sheehan said. McCain returned to the issue of America’s policy toward Syria at the end of the hearing. “The reality on the ground is that arms and people are flowing freely all across North Africa, and many of them are coming in to Syria,” he said. “The situation continues to become more radicalized in Syria as 80,000 more people have been massacred while we sit by and watch and figure out reasons why we can’t intervene,” McCain said.

#### Terrorism goes nuclear---high risk of theft and attacks escalate

Dvorkin 12 (Vladimir Z., Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html)

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Nuclear terrorism causes extinction

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand – Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects”, Studies in Conflict & Terrorism, 33(7), July)

*A Catalytic Response: Dragging in the Major Nuclear Powers*

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today's and tomorrow's terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,[40](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0040) and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”[41](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0041) Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington's relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington's early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country's armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents' … long-standing interest in all things nuclear.”[42](http://www.informaworld.com.proxy-remote.galib.uga.edu/smpp/section?content=a923238837&fulltext=713240928#EN0042) American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide.

#### Only by ending indefinite detention, thus increasing US legitimacy and winning hearts and minds, can we win the war on terror

Spaulding 9 (Suzanne E., counsel of record, AMICI CURIAE OF FORMER NATIONAL SECURITY OFFICIALS AND COUNTERTERRORISM EXPERTS IN SUPPORT OF PETITIONER, http://www.cnss.org/data/files/DetentionDue\_Process/Enemy\_Combatants/AlMarri\_v\_Spagone\_Amicus\_Brief\_1.28.09.pdf)

Imprisonment without trial of individuals seized inside the United States promotes the false narrative of a United States engaged in a war on Islam and Muslims, which the terrorists exploit for recruitment. Seizing individuals off the streets of America, declaring them enemy combatants, and asserting the right to keep them locked up indefinitely, with no formal charges or trial, is so far outside the traditions of fundamental fairness on which this Nation was founded that it perpetuates the perception generated by al Qaeda that we have abandoned our commitment to the rule of law. We recognize that the security threat springs from the terrorists: U.S. policies and actions in no way justify the conduct of the terrorists. But the perception that the United States is failing to act in accordance with its fundamental values feeds the terrorist narrative, and thus undermines our efforts to confront the terrorist threat.12 The significance of this dynamic is now broadly understood. As Retired General Wesley Clark said in an article about this very case: [Treating al-Marri as an enemy combatant] endangers our political traditions and our commitment to liberty, and further damages America’s legitimacy in the eyes of others. . . . We train our soldiers to respect the line between combatant and civilian. Our political leaders must also respect this distinction, lest we unwittingly endanger the values for which we are fighting, and further compromise our efforts to strengthen our security. Wesley K. Clark & Kal Raustiala, Why Terrorists Aren’t Soldiers, N.Y.Times, Aug. 8, 2007, at A19. Jeffrey H. Smith, former CIA General Counsel, testified before the Senate Armed Services Committee in 2007: “In our efforts to get tough with the terrorists we have strayed from some of our fundamental principles and undermined 60 years of American leadership in the law of war. In six short years, our disregard for the rule of law has undermined our standing in the world and, with it, our ability to achieve our objectives in the broader war.” Meeting to Receive Testimony on Legal Issues Regarding Individuals Detained by the Department of Defense as Unlawful Enemy Combatants: Hearing Before the S. Comm. on Armed Services, 110th Cong. 3 (Apr. 26, 2007) (statement of Jeffrey H. Smith, Senior Partner, Arnold & Porter LLP), available at http://armedservices.senate.gov/statemnt/2007/April/Smith%2004- 26-07.pdf. One reason the United States does not face the level of homegrown terrorism threat that Europe has experienced is that immigrants are better integrated into American society. See James Fallows, Declaring Victory, The Atlantic, Sept. 2006, at 60 (“Something about the Arab and Muslim immigrants who have come to America, or about their absorption here, has made them basically similar to other well-assimilated American ethnic groups – and basically different from the estranged Muslim underclass of much of Europe.”). Working with these Muslim communities in the United States, and building trust, is one of the most promising avenues for deterring young people from extremism. See Muslim Public Affairs Council, The Impact of 9/11 on Muslim American Young People 1 (June 2007) (“The more narrow the orbit of acceptance is toward young Muslims who are traversing the various stages of adolescence toward becoming young professionals, the more likely we will begin to see serious cases of radicalization that can evolve into trends.”), available at <http://www.mpac.org/publications/youth-> paper/MPAC-Special-Report--Muslim-Youth.pdf.13 See also Stephen Magagnini, Local FBI chief rebuilds trust with Muslim leaders, Sacramento Bee, Dec. 1, 2008, available at http://www.sacbee.com/101/story/1438316.html. Policies that drive a wedge between these communities and the government or the rest of society frustrate efforts aimed at increasing trust and understanding and, instead, increase a sense of alienation. In 2008, the Department of Homeland Security issued a memorandum that reflects how seriously those with responsibility for protecting the territory and people of the United States take the battle for hearts and minds. It concludes that “Bin Laden and his followers will succeed if they convince large numbers of people that America and the West are at war with Islam and that a ‘clash of civilizations’ is inherent.” Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 7 (Jan. 2008). The DHS memorandum mphasized the importance of conveying the message that “Muslims have been, and will continue to be part of the fabric of our country. . . . We must emphasize that Muslims are not ‘outsiders’ looking in, but are an integral part of America and the West.” Id. at 8. This essential message is dramatically undermined by seizing and indefinitely detaining Muslims inside the United States on the basis of an executive branch allegation that they are enemy combatants. While this policy may not expressly target Muslims, it has been applied only against Muslims, as have nearly all of the harsh policies adopted after 9/11.14 This fuels the terrorist narrative of a war on Islam. The DHS memorandum clearly explains the danger inherent in inadvertently reinforcing al Qaeda’s propaganda. “Bin Laden’s narrative presumes a war against Islam and rampant mistreatment of Muslims by the American and other Western governments. Extremist recruiters argue that Muslims should segregate from the larger society; moreover, their recruitment pitch depends on isolation.” Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 8 (Jan. 2008). The terrorist seeks to undercut an individual’s sense of identity as a Muslim citizen of a state that values fair treatment and protects fundamental human rights. Policies that appear to accord Muslim suspects less than full equality under the law reinforce this dangerous and misleading message. See Islamic Extremism in Europe: Hearing Before the Subcomm. on European Affairs of the S. Foreign Relations Comm., 109th Cong. 7 (Apr. 5, 2006) (statement of Daniel Fried, Assistant Secretary of State for European Affairs), available at http://foreign.senate.gov/testimony/2006/FriedTestimony060405.pdf (“[W]e must also intensify our efforts to counter the extremist ideas that drive Islamic terrorism. . . . It . . . requires us to demonstrate through our own nation’s experience that Muslims can be patriotic, democratic, and religious at the same time.”). Senior Counterterrorism Analyst Gina Bennett, until recently the Deputy National Intelligence Officer for Transnational Threats, first highlighted the national security risk of a double standard in an intelligence assessment written back in 1993, which also provided the first serious warning about Usama Bin Laden. That assessment, titled “The Wandering Mujahidin: Armed and Dangerous,” concludes: “The growing perception by Muslims that the U.S. follows a double standard with regard to Islamic issues – particularly in Iraq, Bosnia, Algeria, and the Israelioccupied territories – heightens the possibility that Americans will become the targets of radical Muslims’ wrath. Afghan war veterans, scattered through the world, could surprise the U.S. with violence in unexpected locales.” Gina Bennett, The Wandering Mujahidin: Armed and Dangerous, Weekend Edition (U.S. Dep’t of State, Bureau of Intelligence and Research), Aug. 21-22, 1993, at 5, available at http://www.nationalsecuritymom.com/3/WanderingM ujahidin.pdf. The foresight of this analysis was tragically proven on September 11, 2001. The danger to Americans of sending a message that the United States has a double standard for Muslims can no longer be viewed as hypothetical. Nor is the impact of such messages considered hypothetical by those serving in Iraq and Afghanistan. As former Navy General Counsel Alberto Mora has testified, “there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantánamo.” Hearing on the Treatment of Detainees in U.S. Custody Before the S. Comm. on Armed Services, 110th Cong. 5 (June 17, 2008) (statement of Alberta Mora, General Counsel, Dep’t of the Navy), available at http://armedservices.senate.gov/statemnt/2008/June/Mora%2006- 17-08.pdf. Again, harsh policies and actions that were directed only against Muslims fueled recruitment efforts, with direct and deadly consequences. b. Military detention of Mr. al-Marri feeds the false narrative that the terrorists are holy warriors. By treating a terrorism suspect apprehended within the United States as an “enemy combatant,” rather than as a criminal suspect, we grant the suspect the very status a terrorist seeks, a status widely honored by those to whom terrorists propound their narrative. See Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 9 (Jan. 2008) (“Words matter. The terminology the [United States] uses should convey the magnitude of the threat we face, but also avoid inflating the religious bases and glamorous appeal of the extremists’ ideology. Instead, [United States’] terminology should depict the terrorists as the dangerous cult leaders they are. They have no honor, they have no dignity, and they offer no answers. While acknowledging that they have the capacity to destroy, we should constantly emphasize that they cannot build societies, and do not provide solutions to the problems people across the globe face.”). The dilemma we create for ourselves takes on particular force where, as here, military imprisonment is indefinite.15 As a military captive, the terrorism suspect is the continuing object of our own military force, and by imposing that force for an indefinite period of time, we continue to validate the terrorist narrative of the warrior and martyr. The prisoner may be regularly, if not constantly, in the public’s mind, always available as a source of inspiration. For example, a relatively insignificant Sudanese cameraman named Sami al Hajj became famous around the world by the mere fact of his long impris-onment at Guantanamo Bay as an enemy combatant. His captivity was regularly reported by al Jazeera and other Arabic news outlets, and closely followed by the more than a billion people reached by those outlets. See, e.g., Profile: Sami al-Hajj, Al Jazeera, May 2, 2008, available at http://english.aljazeera.net/news/americas/2008/05/200 861505753353325.html; Sami al-Hajj Hits Out at U.S. Captors, Al Jazeera, May 31, 2008, available at http://english.aljazeera.net/news/africa/2008/05/20086 150155542220.html. In contrast, treating the terrorism suspect seized in the United States as a criminal suspect pursuant to statutes that proscribe engagement in terrorist activity focuses the narrative on the alleged terrorist activity, rather than his status as “warrior,” thereby deconstructing the terrorist narrative. The heroism of armed conflict against the enemy becomes the cowardice of anonymous violence against innocent victims. The aspiring member of a great army, when isolated to his crime, becomes a small-minded individual. About a warrior held in a military prison an extravagant mythology may be erected; but the fellow in the dock of a public trial, forced to witness the deliberate presentation of evidence of his cowardice becomes pathetic. His narrative loses the power to inspire. Like Ramzi Yousef, Fawaz Yunis, and many others convicted of terrorist acts in U.S. courts, he may soon be forgotten. Thus, the Director of National Intelligence’s National Counterterrorism Center has urged intelligence professionals to Never use the terms “jihadist” or “mujahideen” in conversation to describe the terrorists. A mu-ahed, a holy warrior, is a positive characterization in the context of a just war. . . . Calling our enemies jihadists and their movement a global jihad unintentionally legitimizes their actions. Counterterrorism Communications Center, National Counterterrorism Center, Office of the Director of National Intelligence, Words that Work and Words that Don’t: A Guide for Counterterrorism Communication, March 14, 2008, at 2; see also Memorandum from the U.S. Dep’t of Homeland Security, Terminology to Define the Terrorists: Recommendations from American Muslims 3 (Jan. 2008) (“The consensus is that we must carefully avoid giving bin Laden and other al-Qaeda leaders the legitimacy they crave, but do not possess, by characterizing them as religious figures, or in terms that may make them seem to be noble in the eyes of some.”). General Clark has also made this point: By treating such terrorists as combatants . . . we accord them a mark of respect and dignify their acts. And we undercut our own efforts against them in the process. . . . If we are to defeat terrorists across the globe, we must do everything possible to deny legitimacy to their aims and means, and gain legitimacy for ourselves. . . . . [T]he more appropriate designation for terrorists is not “unlawful combatant” but the one long used by the United States: “criminal.” Wesley K. Clark & Kal Raustiala, Why Terrorists Aren’t Soldiers, N.Y.Times, Aug. 8, 2007, at A19. In sum, the government’s argument that national security concerns justify and require the indefinite emilitary imprisonment of Mr. al-Marri as an enemy combatant is precisely backwards. Using the paradigm of the “war on terror” and the label “enemy combatant” to justify the indefinite military detention of individuals seized inside the United States does not preserve our national security; it threatens it. Unwavering Commitment To America’s Fundamental Values Makes Our Nation Strong And Is Essential To Protect The Nation Against The Terrorist Threat. Discrediting the terrorist narrative and offering a positive alternative – i.e., a narrative of equality, justice, and commitment to the rule of law – is critical to effective counterterrorism strategy. The national security benefits of adhering to our fundamental principles are broadly understood. See Office of the Executive, National Strategy for Combating Terrorism, 2 (Feb. 2003) (The Bush Administration declared, in the 2003 National Strategy for Combating Terrorism, “We will use the power of our values to shape a free and more prosperous world. We will employ the legitimacy of our government and our cause to craft strong and agile partnerships.”); Michael German, Squaring the Error, in Law vs. War: Competing Approaches to Fighting Terrorism 11, 15-16 (Strategic Studies Institute, U.S. Army War College, 2005) (“This is a battle for legitimacy, and as such, it is one that we should easily win. As an open and free democracy regulated by the rule of law, we offer a future of peace and prosperity that the jihadist movement does not. . . . Respect for the rule of law, international conventions, and treaty obligations will not make us weaker, it will engender international cooperation and good will that make it impossible for extremist movements to prosper.”), available at http://www.strategicstudiesinstitute.army.mil/pubs/di splay.cfm?pubID=613; Dr. Kenneth Payne, Waging Communication War, Parameters: U.S. Army War College Quarterly, Summer 2008, at 37, 45 (“[E]ffective communication rests on credibility; communications that are not believed are simply hot air.”). Ultimately, the most credible voices revealing the emptiness of the terrorist narrative will be Muslim voices. However, these voices are more likely to be heard if American policies do not hand a megaphone to al Qaeda and their ilk. The reality of a United States that is willing to fairly prosecute the terrorism suspect in a public trial will diminish and discredit the terrorists’ lies and strengthen the credibility of the counter-narrative. This is how violent extremism will ultimately be defeated. In the words of President Obama, “We know that to be truly secure, we must adhere to our values as vigilantly as we protect our safety – with no exceptions.” President-Elect Barack Obama, Remarks at Announcement of Intelligence Team (Jan. 9, 2009). CONCLUSION The decision in this case will reinforce one of two narratives – our own or the terrorist’s – and thereby either aid or encumber the Nation’s ongoing counterterrorism efforts. The Court should reverse.

### New

#### US efforts to push Judicial Reforms in Venezuela though the Organization of American States hampered by hypocritical indefinite detention policy

Bosworth 13 (James, Former Associate for Communications at The Inter-American Dialogue and Director of Research at The Rendon Group, Consultant at the Woodrow Wilson International Center for Scholars, “Protecting the IACHR, now make it stronger,” 3-25-13, <http://www.bloggingsbyboz.com/2013/03/protecting-iachr-now-make-it-stronger.html>)

Last Friday, the OAS voted to reform the Inter-American Commission on Human Rights (IACHR). Most importantly, the organization managed to push back against a set of cynical and harmful proposals by four countries - Bolivia, Ecuador, Nicaragua and Venezuela - that would have weakened the organization and reduced its funding sources. Those four countries ended up isolated from the other 30 voting members of the OAS who remained committed to strengthening the Inter-American human rights system. Sources: AQ, Pan-American Post, IPS, Ecuador wanted the system to be funded only by countries that have signed the San Jose Pact and wanted all the rapporteurs funded equally. This would have eliminated most of the funding for the IACHR coming from the US, Canada and Europe without guarantees of pledges to replace that money. It also would have weakened the Special Rapporteur on Freedom of Expression, a particularly thorn in the side for Ecuador's censorship-loving president. Of course, the ALBA criticisms aren't actually about funding. The ALBA countries tried to weaken the IACHR because they are annoyed that any independent outside organizations criticizes their abuses of human rights and free speech. So, good on the rest of the Americas including the US, Brazil and Mexico for working to stop those proposals from being implemented. All three of those countries have all recently faced tough criticisms from the IACHR, making it notable that they still defended the commission at this session. From the speech of Deputy Secretary Burns: This is why we actively respond to the Commission even as it raises challenging issues for us – from the death penalty and the human rights of migrants and incarcerated children, to the status of detainees at Guantanamo Bay. And this is why we continue to collaborate with the Commission – including its recent on-site visit to immigrant detention facilities in the United States. We do this not because we always see eye to eye with the Commission. We do it because we are secure in our commitment to democratic principles and in our conviction that we are accountable to our citizens for the protection of their human rights. We do it because we believe that no government should place itself beyond international scrutiny when it comes to the protection of basic human rights and civil liberties. Strong words that I absolutely agree with. However.... On 12 March the US formally answered questions to the IACHR about the detainees held at Guantanamo Bay. At that time, the US lawyer did not provide any timeline for closing the detention center and refused to admit anyone is being held in "indefinite detention," though the fact they are held without trial and without a potential release date seems to be the definition of that term. Though the US defended the conditions of the prison, as far as I can tell, no representative from the IACHR has been allowed to visit. On the issue of immigrant detentions, here is the IACHR in July 2009 based on its visits to detention centers (longer report released in 2011): Finally, the Rapporteurship was distressed at the use of solitary confinement to ostensibly provide personal protection for vulnerable immigrant detainees, including homosexuals, transgender detainees, detainees with mental illnesses, and other minority populations. The use of solitary confinement as a solution to safeguard threatened populations effectively punishes the victims. The Rapporteurship urges the U.S. Government to establish alternatives to protect vulnerable populations in detention and to provide the mentally-ill with appropriate treatment in a proper environment. Here is the NYT yesterday: On any given day, about 300 immigrants are held in solitary confinement at the 50 largest detention facilities that make up the sprawling patchwork of holding centers nationwide overseen by Immigration and Customs Enforcement officials, according to new federal data. Nearly half are isolated for 15 days or more, the point at which psychiatric experts say they are at risk for severe mental harm, with about 35 detainees kept for more than 75 days. Four years after the IACHR visited the immigrant detention facilities and spoke out against the practice of solitary confinement, the article in the NYT from 2013 reads just like the IACHR report from 2009. Nothing has been done to respond to those criticisms. The US gets credit for fighting back against the ALBA countries' push to silence the IACHR. The commission provides a needed voice for the hemisphere's human rights. Over the past month, with the purpose of protecting and strengthening human rights in the hemisphere, I've heard US officials praise Brazil, Mexico and Uruguay for listening and acting on the recommendations of the IACHR. The sad truth is that the US praised those other countries because the US hasn't acted on many of the important criticisms that it has received from the IACHR. It's part of the credibility gap that the US faces in this hemisphere. Last week, the Obama administration played a vital role in protecting human rights in the hemisphere by leading the effort at the OAS to maintain a strong IACHR. We need to remember that nothing the US says diplomatically at the OAS will be as powerful as the US ability to lead by example. If the US really wants stronger human rights protections in this hemisphere, that effort starts at home. The issues raised by Deputy Secretary Burns in his OAS speech - Guantanamo and immigrant detention conditions - would be great places to start.

#### Specifically true for a lack US Judicial Independence – sends a signal of appropriate balancing

Yamamato 13 (Eric K., law professor at the University of Hawai'i William S. Richardson School of Law, BA University of Hawaiʻi at Mānoa 1975, JD UC Berkeley School of Law 1978, Race, Rights and Reparation: Law and the Japanese American Internment, 2013, p. 411-412)

For all these reasons, Justice Jackson’s warning still resonates loudly today. How will the judiciary prevent false executive claims of national security necessity from becoming a “loaded weapon” aimed at the essence of American democracy— the balance of national security and civil liberties? Rasul confirmed the salience of judicial oversight of executive national security policies. Yet the Rasul majority failed to articulate the appropriate level of judicial review of executive national security actions that curtail fundamental liberties. Deferential judicial review effectively affords the President a blank check. Unyielding scrutiny, however, may unduly constrain the executive. Ordinary judicial review doctrine embraces deferential review for most government actions, giving the President wide leeway to act in the best interest of the country. That doctrine also mandates heightened scrutiny where government action restricts fundamental liberties. It is still an open question whether the national security setting alters this paradigm of judicial review. Varying approaches persist. Some judges and scholars, including former Chief Justice William Rehnquist, argued that the judiciary should play a muted role in reviewing military necessity restrictions of civil liberties during military conflict: An entirely separate and important philosophical question is whether occasional presidential excesses and judicial restraint in wartime are desirable or undesirable. . . . [T]here is every reason to believe that the historic trend against the least justified of the curtailments of civil liberty in wartime will continue in the future. It is neither desirable nor remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime. But it is both desirable and likely that more careful attention will be paid by the courts to the basis for the government’s claims of necessity as a basis for curtailing civil liberty. The laws will thus not be silent in time of war, but they will speak with a somewhat different voice.1210 By adopting this posture of sharply limited judicial review or almost total judicial deference to executive actions, courts would have a straightforward task. They would simply align with the executive whenever it invokes national security, even when fundamental liberties are significantly restricted. For others, the highly deferential approach conflicts with constitutional mandates. The judiciary’s purpose is to serve as a constitutional check on the two political branches of government, particularly where fundamental liberties are at stake.1211 Without close judicial scrutiny, no governmental body exists to assure executive and legislative accountability under law. The consequences of this were seen in the wartime internment cases. A watchful care approach would call for the judiciary to apply a heightened standard of review to executive restrictions of fundamental liberties even during times of war or national security crises, accounting for the government’s security concerns in the court’s analysis of the government’s asserted compelling interest.1212 During the Civil War, the U.S. Supreme Court barred President Lincoln from suspending the writ of habeas corpus if the civilian courts were open and functioning. The Court ruled that the safeguards of liberty [should receive the] watchful care of those [e]ntrusted with the guardianship of the Constitution and laws [namely, the judiciary].1213 This heightened scrutiny, or watchful care, approach calls for careful judicial assessment of the government’s proffered security justification for the restrictions. Under this approach, [e]xcept as to actions under civilly-declared martial law . . . a heightened standard of review [should] be applied to evaluate government restrictions of constitutionally-protected liberties ostensibly justified by military necessity or national security. At the same time, the watchful care approach affords the government needed protection for sensitive information or policies. In particular, a heightened standard of review confirms the appropriate competency of federal courts to adjudicate disputes at the intersection of civil liberties and national security. It announces a confidence that courts possess existing tools for ensuring strict confidentiality where warranted. Secrecy has its proper place. But the internment illustrates that the executive branch historically has invoked confidentiality to evade accountability.1214 How will American courts respond today and in the future? Some predict that “blind acceptance by the courts of the government’s insistence on the need for secrecy . . . [will] impermissibly compromise the independence of the judiciary and open the door to possible abuse.”1215 Yet, in hearing habeas corpus challenges after Rasul and Boumediene, the federal courts have more consistently scrutinized the government’s justification for indefinite detention, upholding 16 detentions and invalidating 37 others.1216 In his final pronouncement, Fred Korematsu urged that through public and judicial vigilance “the internment can remain a lighthouse that helps . . . navigate the rocky shores triangulated by freedom, equality, and security.”121

#### Now is the key time – Judicial independence reforms must come quickly before Maduro consolidates power, the OAS is the best forum

The Economist 13 (“Latin America’s Venezuela problem: Ostrich diplomacy, Venezuela’s neighbours studiously ignore the crisis unfolding next door,” 6-8-13, <http://www.economist.com/news/americas/21579067-venezuelas-neighbours-studiously-ignore-crisis-unfolding-next-door-ostrich-diplomacy/>)

FOR Latin American presidents of all political persuasions, a knock on the door from Henrique Capriles is a far from welcome sound these days. Not that the leader of Venezuela’s opposition is a particularly boring or obnoxious guest, despite the strenuous efforts of President Nicolás Maduro to portray him as a “murderous fascist”. It’s just that having Mr Capriles round for a cup of tea can get you into all sorts of trouble, as Colombia’s Juan Manuel Santos found out to his cost. On May 29th a shirtsleeved Mr Santos held a private meeting of about an hour with Mr Capriles, which provoked a barrage of invective from the Venezuelan government. The Colombian president had “put a bomb under” relations between the two countries, said Diosdado Cabello, the speaker of Venezuela’s National Assembly. Venezuela would have to “review” its support for Colombia’s peace talks with the leftist FARC guerrillas, added Elías Jaua, the foreign minister. To top things off, Mr Maduro said certain Colombian institutions “at the highest level” were plotting with the Venezuelan opposition to inject him with a poison that would lead to a slow death. Mr Santos said this was “crazy”. His foreign minister declined to engage in microphone diplomacy. Colombia and Venezuela, whose governments are poles apart ideologically, have enjoyed a friendship of convenience in recent years after a very rocky decade. The reason for all the huffing and puffing is that Mr Capriles, who came within an ace of winning a snap presidential election on April 14th, has challenged the result in the supreme court and is seeking to persuade the region’s governments of his case. Mr Maduro is the chosen successor of Hugo Chávez, who died of cancer in March, five months after being re-elected. He heads a weak administration beset by political and economic problems and desperate to hang on to the international support that Chávez built up over more than a decade of oil diplomacy. With the Chávez charisma gone, the new president’s legitimacy in doubt and the money running out, bluster is one of the few resources not in short supply. This week was to have been Peru’s turn to receive a visit from Mr Capriles. But such was the panic in Ollanta Humala’s government at having to decide whether to receive him that the trip was postponed. Peru currently chairs the South American Union (Unasur), one of several regional bodies failing to deal with the Venezuelan crisis. Unasur held an emergency meeting on the eve of Mr Maduro’s inauguration to insist on an audit of the election result. But although the opposition says the partial audit now under way is insufficient, Unasur has failed to pursue the case. Peru’s foreign minister stood down—officially for health reasons—shortly after he had the effrontery to say publicly that a fresh Unasur summit on the subject was being mooted. Most Latin American and Caribbean governments are either ideologically close to the chavista regime, dependent on its oil-fuelled largesse, or simply disinclined to incur its wrath. The Organisation of American States (OAS), whose annual assembly began on June 4th in Guatemala, is bound by treaty to monitor its members’ democratic credentials. But the OAS’s Democratic Charter, launched in 2001, has so far been used only to protect presidents (including Chávez) and to bludgeon puny countries such as Honduras and Paraguay. Brazil, which has the muscle to take on a country the size of Venezuela, seems more concerned with protecting its businesses, which are making billions from trade with its northern neighbour. Ahead of the OAS meeting its secretary-general, José Miguel Insulza, said the “atmosphere” was not conducive to a discussion of the Venezuelan crisis—a diplomatic way of saying no one was prepared to pick up the hot potato. Mr Insulza himself has in the past admitted that Venezuela is in breach of the Democratic Charter. Among other things, it requires an independent judiciary and guarantees recourse to the inter-American human-rights system. Venezuela has announced that it will abandon the system later this year. The ostrich approach may not work for ever. For one thing, the Venezuelan opposition’s campaign across the region is putting presidents under pressure from their parliaments and civic groups to support democracy. Second, Venezuela’s political fragility and Mr Maduro’s weakness threaten instability which the region may be unable to ignore. Shutting the door in Mr Capriles’ face could prove a short-sighted policy, as well as a shameful one.

#### Judicial independence in Venezuela is crucial to democracy and stability

Provea 13 (Venezuelan Program of Education and Action on Human Rights, “The political use of the Venezuelan judicial system,” Venezuela: International Bulletin on Human Rights Issue No. 5, August 13, <http://www.derechos.org.ve/pw/wp-content/uploads/boletin_05_eng.pdf>)

“In recent years, the Commission has heard of cases in which members of the judiciary have expressly stated their support for the executive, showing the lack of independence of this institution. The Commission has also observed how certain failures caused by the lack of independence of the judiciary is exacerbated in cases of high political significance, and consequently affects society’s confidence in justice.” Four years later the situation is even more worrying. The judiciary and the Public Prosecutor are political instruments of the executive branch to criminalize social protest and to persecute dissident voices. As it has been indicated by several Venezuelan human rights organizations in a statement of July 26 there is “a deep concern over the progressive weakening of judicial guarantees in Venezuela and prosecution as a method to criminalize those with critical positions and to discard them.” The use of justice, to face social protest, led by the working men and women of the country, is expressed in the opening of lawsuits against student leaders, community, indigenous and unions and even, in some cases, by applying military justice. The most emblematic case is the trial of the unionist Rubén González after the Criminal Chamber of the Supreme Court set aside the judgment against him, which was deliberately biased in favor of the government, (that verdict sentencing him to seven years in prison). The Criminal Chamber overturned the judgement after unions announced the call for a strike in response to the decision. In its judgment the Criminal Chamber said: “[the judgement] injured the constitutional rights of the defense, due process and hence to effective judicial protection as provided in Articles 26 and 49.1 of the Constitution of the Bolivarian Republic of Venezuela, what ultimately denied the exercise of procedural defenses that our legal system provides in a criminal trial” This biased and unconstitutional conduct of a criminal court The political use of the Venezuelan judicial system has been repeated in trials of other social leaders, some of whom have more than six years on probation. But there are two major elements in the manipulation of the justice system. One of them is a priori defense of senior government officials from the high courts to the claims brought by individuals for violations of their rights. It is even exclude senior officials of their constitutional obligations, through sentences being handed down by the Constitutional Court, which imposed same criteria to other courts. Although the Constitution provides that any public official should give timely and adequate response to the requests made by any person, but when the request is made to the President of the Republic, the Constitutional Court stated that: “In this regard, it is noted that the multiple functions assigned to the President and the scale of these, prevents suchpublic officer to be given equal treatment as any other official who did not answer, -within the time periods-to requests that have been made.” A study conducted by PROVEA on the behavior of the Supreme Court of Justice to complaints against senior government officials, determined that only 7.14% of decisions are in favor of the petitioners, but when it came to action against the National Assembly, the General Prosecutor or against the President of the Republic, the petitioners did not receive positive responses in any case. The other outstanding feature is the use of Justice to prosecute political dissidents. An emblematic case is the open trial against General Francisco Vicente Uson Ramirez, who in a television program gave his opinion about alleged human rights violations in a particular fact. The many irregularities in the judicial process, generated his case had to be presented at the Inter-American system for the protection of human rights, which concluded in a judgment handed down by the Inter-American Court of Human Rights on November 20, 2009. Conclusion issued by the IACHR in its Report on Democracy and Human Rights in Venezuela, is fully in effect: “The lack of independence and autonomy of the judiciary from political power is one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. According to the Commission, is the lack of independence that has allowed the possibility of using the punitive power of the State to criminalize human rights defenders in Venezuela, prosecute peaceful social protest and prosecute political dissidents.”

#### Venezuelan Stability is crucial to oil investment, stops Russian Arctic development, jumpstarts the US Economy and paves the way for US Middle East oil independence, and lowers global oil prices

**Weafer 13** (Chris Weafer is chief strategist at Sberbank Investment Research, BBC Monitoring Former Soviet Union – Political, “No business as usual for Russia in Venezuela – paper,” 3-12-13, Supplied by BBC Worldwide Monitoring)

Despite assurances from government officials in Caracas that it will be business as usual after the death of Venezuelan President Hugo Chavez last week, his passing will almost certainly lead to the start of political and social changes in that country. The only question is the **time frame**. Chavez's death and the emergence of a new presidential administration will surely have a significant impact on the global oil industry and price of oil, although perhaps on an even longer timeline. According to the BP Energy Review, Venezuela sits on the world's largest exploitable reserves of oil. Chavez's policies have led not only to no significant exploitation of those reserves but have actually directly led to a cut in the country's average daily oil output by one-third in the 14 years he served as president. In 1999, the country produced an average of 3.5 million barrels per day, while the current average output has dropped to 2.5 million barrels. With the right investments, the country may easily support average daily oil output of 5 million barrels and probably higher, according to industry estimates. There can be little doubt that as of last week, Venezuela has become the **most important target location** for foreign oil majors, especially **US companies**. Russian oil majors still have a small advantage, and senior executives from state-owned Rosneft and Gazprom will be eager to ensure good relations with the next administration. But they must know that there is now a limited window to convert promised cooperation with the Venezuelan state-owned oil company, PDVSA, into actual projects. Oil executives from Houston will soon be descending on Venezuela with lucrative alternatives, and **PDVSA**, in dire need of capital investment, **will** surely **be listening to** their **offers**. For Russia, that means three risks. First, Gazprom and Rosneft will have more competition for joint-venture deals in that country. Second, Venezuela is an **easier alternative** to the hostile and unpredictable **Russian Arctic** for US oil companies, which may make it harder for Moscow to attract joint-venture deals. Finally, the prospect of more oil coming out of Venezuela adds to the growth projections for shale oil as a significant longer-term threat to the price of oil, and therefore, to the Russian economy. None of this will be lost on the Kremlin. It means that there will have to be greater urgency to convert promised deals into real projects in Venezuela. At the same time, the Kremlin will want to conclude more joint ventures to **exploit the Arctic**. It also means that the clock counting down to lower oil revenues is now ticking, increasing the need for more urgent progress in economic reforms. The Venezuelan constitution mandates that a new election must take place within 30 days. As it stands today, the current vice president, Nicolas Maduro, is expected to be elected to replace Chavez. Maduro said he intends to stick with the economic and political policies and ideologies of his former boss, but since Maduro is no Chavez, this will be virtually impossible to achieve. Chavez was a hugely charismatic, larger-than-life leader who managed to maintain unity of purpose among the many vested interests in the country. At the same time, he stayed popular with the people even as the economy slid further into trouble. With oil averaging over 110 dollars per barrel last year, the Venezuelan state budget ran a deficit of close to 20 per cent of gross domestic product. Now that Chavez is gone, the soon-to-be-elected president Maduro will come under **increasing pressure** to take actions to start improving the economy. No different from President Vladimir Putin's situation when he took over an ailing economy in Russia in 2000, **the only place** that the new Venezuelan president can get revenue is from **the oil sector**. But after Chavez practically destroyed PDVSA when he fired 20,000 skilled engineers and other workers in 2002, PDVSA will need a huge boost to capital spending and joint-venture partnerships. Although politically risky, Maduro may have no other choice than to ask ExxonMobil and Chevron, two of the US majors that had their local projects nationalized by Chavez, to come back. Venezuela is certainly an attractive option for the world's big oil majors. Recoverable reserves are now put at just under 300 billion barrels, compared to about 265 billion in Saudi Arabia and less than 100 billion in Russia. Most of Venezuelan oil is heavy and more expensive to refine, but it lies only a few hundred meters below the Orinoco Belt. That makes it a lot more attractive than, for example, speculatively drilling in the hostile Russian Arctic while dodging icebergs. The Orinoco Belt is an extremely important natural environment, and the inevitable objections from domestic, regional and international environmentalists will slow any development. But as has happened in similar situations elsewhere, the quest for the prize will almost certainly prevail. Venezuela needs the money. Venezuela has also very likely moved to near the top of the US government's list of geopolitical priorities. The US is set on a course to become **energy independent**, and the International Energy Agency calculates this may take two to three decades based on current trends and with optimistic assumptions for US shale oil production. Such assumptions have always been speculative when it comes to the oil industry. But a more achievable target for the US is to become **regionally oil independent** -that is, to only source its oil requirements domestically and from Canada, Mexico and now perhaps from **Venezuela**. That would allow the US to become completely independent of Middle East oil within 10 years or so. A change in Venezuela's political and economic priorities would also weaken the Cuban economy since Chavez supplied Cuba with almost free oil. That would hasten the inevitable regime change there as well, an extra bonus for Washington. But while such an outcome would be **very favourable for the US economy**, it would **accelerate the game change** already started in the global oil industry with the rapid growth in **shale oil volumes**. No matter how you work the assumptions, the world is heading for a lot more oil supply over the balance of this decade. New major oil production will come from North America, Iraq and the Caspian Sea, where Kazakhstan's giant Kashagan field starts to produce from this year, almost certainly from Venezuela if a new administration takes concrete steps to increase foreign investment and production in the oil sector. This may be the real reason Russian officials shed a few tears at Chavez's funeral on Friday.

**Economic decline causes global war**

**Royal 10** (Jedediah, Director of Cooperative Threat Reduction – U.S. Department of Defense, “Economic Integration, Economic Signaling and the Problem of Economic Crises”, Economics of War and Peace: Economic, Legal and Political Perspectives, Ed. Goldsmith and Brauer, p. 213-215)

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Feaver, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland's (1996, 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases**,** as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularlyduring periods of economic downturn. They write: The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other. (Blomberg & Hess, 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate externalmilitary conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995). and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in theuse of force. In summary, recent economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflictat systemic, dyadic and national levels.5 This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

**Russian energy development in the Arctic causes escalating military competition**

**Talmadge 12** (Eric – AP, Huffington Post, “Arctic Climate Change Opening Region To New Military Activity’, 4/16, http://www.huffingtonpost.com/2012/04/16/arctic-climate-change-military-activity\_n\_1427565.html)

To the world's military leaders, the debate over climate change is long over. **They are preparing for a new kind of Cold War in the Arctic**, anticipating that rising temperatures there will open up a treasure trove of resources, long-dreamed-of sea lanes and **a slew of potential conflicts**. By Arctic standards, **the region is already buzzing with military activity**, and experts believe that **will increase significantly** in the years ahead. Last month, Norway wrapped up one of the largest Arctic maneuvers ever — Exercise Cold Response — with 16,300 troops from 14 countries training on the ice for everything from high intensity warfare to terror threats. Attesting to the harsh conditions, five Norwegian troops were killed when their C-130 Hercules aircraft crashed near the summit of Kebnekaise, Sweden's highest mountain. The U.S., Canada and Denmark held major exercises two months ago, and in an unprecedented move, the military chiefs of the eight main Arctic powers — Canada, the U.S., Russia, Iceland, Denmark, Sweden, Norway and Finland — gathered at a Canadian military base last week to specifically discuss regional security issues. None of this means a shooting war is likely at the North Pole any time soon. But as the number of workers and ships increases in the High North to exploit oil and gas reserves, **so will the need for policing, border patrols and** — if push comes to shove — **military muscle to enforce rival claims**. The U.S. Geological Survey estimates that 13 percent of the world's undiscovered oil and **30 percent of its untapped natural gas is in the Arctic**. Shipping lanes could be regularly open across the Arctic by 2030 as rising temperatures continue to melt the sea ice, according to a National Research Council analysis commissioned by the U.S. Navy last year. What countries should do about climate change remains a heated political debate. But that has not stopped north-looking militaries from moving ahead with strategies that assume current trends will continue. Russia, Canada and the United States have the biggest stakes in the Arctic. With its military budget stretched thin by Iraq, Afghanistan and more pressing issues elsewhere, the United States has been something of a reluctant northern power, though its nuclear-powered submarine fleet, which can navigate for months underwater and below the ice cap, remains second to none. Russia — one-third of which lies within the Arctic Circle — **has been the most aggressive in establishing itself as the emerging region's superpower**. Rob Huebert, an associate political science professor at the University of Calgary in Canada, said Russia has recovered enough from its economic troubles of the 1990s to significantly rebuild its Arctic military capabilities, which were a key to the overall Cold War strategy of the Soviet Union, and has increased its bomber patrols and submarine activity. He said that has in turn led other Arctic countries — Norway, Denmark and Canada — to resume regional military exercises that they had abandoned or cut back on after the Soviet collapse. Even non-Arctic nations such as France have expressed interest in deploying their militaries to the Arctic. "We have an entire ocean region that had previously been closed to the world now opening up," Huebert said. "There are numerous factors now coming together that are mutually reinforcing themselves, causing a buildup of military capabilities in the region. **This is only going to increase as time goes on**." Noting that the Arctic is warming twice as fast as the rest of the globe, the U.S. Navy in 2009 announced a beefed-up Arctic Roadmap by its own task force on climate change that called for a three-stage strategy to increase readiness, build cooperative relations with Arctic nations and identify areas of potential conflict. "**We want to maintain our edge up there**," said Cmdr. Ian Johnson, the captain of the USS Connecticut, which is one of the U.S. Navy's most Arctic-capable nuclear submarines and was deployed to the North Pole last year. "Our interest in **the Arctic** has never really waned. It **remains very important**." **But the U.S. remains ill-equipped for large-scale Arctic missions**, according to a simulation conducted by the U.S. Naval War College. A summary released last month found the Navy is "inadequately prepared to conduct sustained maritime operations in the Arctic" because it **lacks ships** able to operate in or near Arctic ice, **support facilities and adequate communications**. "The findings indicate the Navy is entering a new realm in the Arctic," said Walter Berbrick, a War College professor who participated in the simulation. "Instead of other nations relying on the U.S. Navy for capabilities and resources, sustained operations in the Arctic region will require the Navy to rely on other nations for capabilities and resources." He added that although the U.S. nuclear submarine fleet is a major asset, the Navy has severe gaps elsewhere — **it doesn't have any icebreakers**, for example. The only one in operation belongs to the Coast Guard. **The U.S. is currently mulling whether to add more icebreakers**.

**De-escalation is key to prevent Arctic conflicts from going nuclear – draws in major powers**

**Wallace and Staples 10** (Michael Wallace and Steven Staples. \*Professor Emeritus at the University of British Columbia and President of the Rideau Institute in Ottawa “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue,”http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” 55 Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. 56 In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, **and foresaw greater capabilities to protect U.S. borders in the Arctic**. 57 The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. 58 Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. 59 The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. 609 Ridding the Arctic of Nuclear Weapons: A Task Long Overdue Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, **deep concerns are being expressed over the fact that two nuclear weapon states** – the United States and the Russian Federation, which **together own 95 per cent of the nuclear weapons in the world** **– converge on the Arctic and have competing claims**. These claims, together **with those of other allied NATO countries** – Canada, Denmark, Iceland, and Norway – could, **if unresolved**, **lead to conflict escalating into the threat or use of nuclear weapons**.” 61 Many will no doubt argue that this is excessively alarmist, but **no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly**. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.” 62

**Extinction – it’s categorically different from all other impacts**

**Bostrom 2** (Nick, PhD Philosophy – Oxford University, “Existential Risks: Analyzing Human Extinction Scenarios”, Journal of Evolution and Technology, Vol. 9, March, http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why **it is useful to distinguish them from other risks**. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a **whole – even the worst of these catastrophes are** **mere ripples** **on the surface of the great sea of life**. They haven’t significantly affected the total amount of human suffering or happiness **or determined the long-term fate of our species**. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[[2]](http://www.nickbostrom.com/existential/risks.html#_ftn2) At any given time we must use our best current subjective estimate of what the objective risk factors are.[[3]](http://www.nickbostrom.com/existential/risks.html#_ftn3) **A much greater existential risk** **emerged with the build-up of nuclear arsenals in the US and** the **USSR**. **An all-out nuclear war was a possibility with both a substantial probability and with consequences that might** have been persistent enough to **qualify as global and terminal**. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it **might annihilate our species** or permanently destroy human civilization.[[4]](http://www.nickbostrom.com/existential/risks.html#_ftn4)  Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that **a smaller nuclear exchange**, between India and Pakistan for instance, **is not an existential risk, since it would not destroy** or thwart **humankind’s potential permanently**. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

**Middle East oil dependence erodes US Hegemony**

**Miller 12** [Paul, assistant professor of international-security studies at the National Defense University, “Fading Arab Oil Empire”, 6/28/12, <http://nationalinterest.org/article/the-fading-arab-oil-empire-7072?page=1>]

SINCE 1945, the United States has rightly sought to prevent any single power from dominating the Middle East’s oil supplies. An oil hegemon, whether Soviet, Baathist, Nasserite, Iranian or Islamist, would have had the capacity to blackmail the United States and the world with economic warfare. To that end, the United States supported anticommunist monarchies and autocracies in Saudi Arabia, Kuwait and Bahrain, among others, during the Cold War. It has armed Saudi Arabia with a staggering $81.6 billion of arms sales since 1950, almost a fifth of all U.S. weapons shipments. It supported Iraq against Iran in the 1980s before fighting Iraq to defend Kuwait and Saudi Arabia in 1990–1991. After the 2001 terrorist attacks, it further bolstered ties in the region, adding Kuwait, Bahrain and Morocco to its collection of major non-NATO allies, which includes Egypt, Israel and Jordan. In 2003, it invaded and occupied Iraq over fears, later proven overblown, that Iraq’s WMD proliferation might give Saddam Hussein or allied terrorists unacceptable leverage in the region. The U.S. military’s Central Command, formed in 1983, has a forward headquarters in Qatar, and the U.S. Navy’s Fifth Fleet is based in Bahrain. This military infrastructure guarantees a long-term U.S. military presence in the region. Those policies were largely sensible efforts to maintain the security of world energy supplies. However, they make less sense in light of the brewing realities in the world oil market. These developments—the world’s increasing energy efficiency and the Middle East’s loss of its comparative advantage in oil production—will take time to play out fully. But they have been under way for several decades already. In two decades or so, the global oil market and the Middle East’s geopolitical influence will be dramatically different from what they are today. The Middle East will remain an important player, but it will no longer be able to act as the “central bank of oil,” as the princes of Saudi Arabia style their kingdom. Moreover, it will forever lose the ability to credibly threaten to wield oil as a weapon. The sword of Damocles that has implicitly hovered over the West since the 1970s will be gone. That means the central goal of U.S. foreign policy in the Middle East will essentially be achieved: no power will be able to threaten the United States with unacceptable leverage over the American economy. That is because oil itself will be less important, and the world oil market will be more diffuse and diverse. The importance of this development cannot be overstated. It is a tectonic shift in the geopolitical balance of power, a strategically pivotal development only slightly less momentous than the fall of the Soviet Union. It is the slow-motion collapse of the Middle Eastern oil empire. In turn, the United States can and should begin to **adapt its foreign policy** to reflect these realities. It can look with more complacency on the rise and fall of particular regimes across the Middle East and North Africa. The Arab Spring, even if it brings to power moderate Islamist governments, is unlikely to threaten American interests. Washington also can play a less active part in conflicts between states, reverting to a role more like its indirect support for Iraq against Iran and less like its direct involvement in the 1991 and 2003 Iraq wars. Further, it can speak out more freely against tyranny and human-rights abuses, especially in Saudi Arabia, one of the most oppressive countries on earth. It can reclaim its position as the advocate of global liberalism, undoing the damage to the U.S. brand done by its close association with Middle Eastern dictators. THE UNITED States has additional interests in the Middle East, but they are outweighed by those in other parts of the world. For example, the region is a hotbed of terrorism and may become a major locus of WMD proliferation. But South Asia hosts terrorist groups, including Al Qaeda, that threaten the United States more directly. Further, South Asia is home to two declared nuclear powers. Thus, South Asia—not the Middle East—should be the focus of U.S. counterterrorism and counterproliferation efforts in coming decades. Additionally, the Middle East has two of the world’s most important choke points for ocean-going trade: the Suez Canal and the Strait of Hormuz. But governments in the region, heavily reliant on exports, have strong interests in keeping trade routes open. Despite Iranian leaders’ recent threats, no government is likely to cut off its own economic lifeline voluntarily. Meanwhile, the Malacca Strait in East Asia will remain important for a diverse array of ocean-going trade for the foreseeable future. Finally, the United States rightly is committed to Israel’s security. If Iran succeeds in building a nuclear weapon, Israel could face a potential existential threat—the same threat fellow U.S. allies in East Asia, including South Korea, Taiwan and Japan, have been facing from North Korea since 2006. Once again, U.S. interests in the Middle East are no more, and probably less, important than U.S. interests in other regions. The changing realities of the world energy market do not mean the United States can or should ignore the Middle East. Certainly, Israel’s security and Iran’s behavior will keep the region a focus for policy makers’ attention. But, placed in a global perspective, the United States has more or **deeper interests at stake in other regions** of the world—especially Europe and Asia—than in the Middle East. Budget cuts are concentrating minds inside the Beltway with newfound discipline. And a new presidential term begins next January, either with President Obama or Mitt Romney taking over. This confluence of events gives American policy makers a powerful opportunity to reassess U.S. grand strategy, along with its attendant military-deployment and force structure. As they do so, they should recognize the emerging realities in the Middle East. Our rationale for guaranteeing the region’s stability in exchange for cheap oil is fading, and that mission quickly is becoming more trouble than it is worth.

**US Hegemony prevents global nuclear conflicts**

**Kagan 7 Senior associate at the Carnegie Endowment for International Peace** [Robert Kagan (Senior transatlantic fellow at the German Marshall Fund), “End of Dreams, Return of History,” Policy Review, August & September 2007, pg. http://www.hoover.org/publications/policyreview/8552512.html]

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these **rivalries from intensifying** — its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess **nuclear weapons**. That could make wars between them less likely, or it could simply make them more catastrophic. It is easy but also dangerous to underestimate the role the United States plays in providing a measure of stability in the world even as it also disrupts stability. For instance, the United States is the dominant naval power everywhere, such that other nations cannot compete with it even in their home waters. They either happily or grudgingly allow the United States Navy to be the guarantor of international waterways and trade routes, of international access to markets and raw materials such as oil. Even when the United States engages in a war, it is able to play its role as guardian of the waterways. In a more genuinely multipolar world, however, it would not. Nations would compete for naval dominance at least in their own regions and possibly beyond. Conflict between nations would involve struggles on the oceans as well as on land. Armed embargos, of the kind used in World War I and other major conflicts, would disrupt trade flows in a way that is now impossible. Such order as exists in the world rests not merely on the goodwill of peoples but on a foundation provided by American power. Even the European Union, that great geopolitical miracle, owes its founding to American power, for without it the European nations after World War ii would never have felt secure enough to reintegrate Germany. Most Europeans recoil at the thought, but even today Europe’s stability depends on the guarantee, however distant and one hopes unnecessary, that the United States could step in to check any dangerous development on the continent. In a genuinely multipolar world, that would not be possible without renewing the danger of world war. People who believe greater equality among nations would be preferable to the present American predominance often succumb to a basic logical fallacy. They believe the order the world enjoys today exists independently of American power. They imagine that in a world where American power was diminished, the aspects of international order that they like would remain in place. But that’s not the way it works. International order does not rest on ideas and institutions. It is shaped by configurations of power. The international order we know today reflects the distribution of power in the world since World War II, and especially since the end of the Cold War. A different configuration of power, a multipolar world in which the poles were Russia, China, the United States, India, and Europe, would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that would have a hand in shaping it. Would that international order be an improvement? Perhaps for Beijing and Moscow it would. But it is doubtful that it would suit the tastes of enlightenment liberals in the United States and Europe. The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world’s great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between **China and Taiwan** and draw in both the United States and Japan. War could erupt between **Russia and Georgia**, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between **India and Pakistan** remains possible, as does conflict between **Iran and Israel** or other Middle Eastern states. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China ’s neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan. In Europe, too, the departure of the United States from the scene — even if it remained the world’s most powerful nation — could be destabilizing. It could tempt Russia to an even more overbearing and potentially forceful approach to unruly nations on its periphery. Although some realist theorists seem to imagine that the disappearance of the Soviet Union put an end to the possibility of confrontation between Russia and the West, and therefore to the need for a permanent American role in Europe, history suggests that conflicts in Europe involving Russia are possible even without Soviet communism. If the United States withdrew from Europe — if it adopted what some call a strategy of “offshore balancing” — this could in time increase the likelihood of conflict involving Russia and its near neighbors, which could in turn draw the United States back in under unfavorable circumstances. It is also optimistic to imagine that a retrenchment of the American position in the Middle East and the assumption of a more passive, “offshore” role would lead to greater stability there. The vital interest the United States has in access to oil and the role it plays in keeping access open to other nations in Europe and Asia make it unlikely that American leaders could or would stand back and hope for the best while the powers in the region battle it out. Nor would a more “even-handed” policy toward Israel, which some see as the magic key to unlocking peace, stability, and comity in the Middle East, obviate the need to come to Israel ’s aid if its security became threatened. That commitment, paired with the American commitment to protect strategic oil supplies for most of the world, practically ensures a heavy American military presence in the region, both on the seas and on the ground. The subtraction of American power from any region would not end conflict but would simply change the equation. In the Middle East, competition for influence among powers both inside and outside the region has raged for at least two centuries. The rise of Islamic fundamentalism doesn’t change this. It only adds a new and more threatening dimension to the competition, which neither a sudden end to the conflict between Israel and the Palestinians nor an immediate American withdrawal from Iraq would change. **The alternative to American predominance** in the region **is not balance and peace**. It is further competition. The region and the states within it remain relatively weak. A diminution of American influence would not be followed by a diminution of other external influences. One could expect deeper involvement by both China and Russia, if only to secure their interests. 18 And one could also expect the more powerful states of the region, particularly Iran, to expand and fill the vacuum. It is doubtful that any American administration would voluntarily take actions that could shift the balance of power in the Middle East further toward Russia, China, or Iran. The world hasn ’t changed that much. An American withdrawal from Iraq will not return things to “normal” or to a new kind of stability in the region. It will produce a new instability, one likely to draw the United States back in again. The alternative to American regional predominance in the Middle East and elsewhere is not a new regional stability. In an era of burgeoning nationalism, the future is likely to be one of intensified competition among nations and nationalist movements. Difficult as it may be to extend American predominance into the future, no one should imagine that a reduction of American power or a retraction of American influence and global involvement will provide an easier path.

**High Oil Prices devastate China’s export potential**

**Gangnes 11** (Byron S. Gangnes Department of Economics, University of Hawaii at Manoa, Honolulu, Hawaii, USA and Yokohama National University, Yokohama, Japan Alyson C. Ma School of Business Administration, University of San Diego, San Diego, California, USA, and Ari Van Assche Department of International Business, HEC Montre´al, Montre´al, Canada and LICOS Centre of Institutions and Economic Performance, Katholieke Universiteit Leuven, Leuven, Belgium, “China’s exports in a world of increasing oil prices,” Multinational Business Review19.2, 2011, 133-151)

In the six years leading up to the global recession of 2009-2010, oil prices rose dramatically, from an annual average of roughly US$26 a barrel in 2002 to nearly US$100 a barrel in 2008. In the summer of 2008, prices brieﬂy spiked to nearly US$150 per barrel before receding as the recession deepened. As oil prices surged upward in 2008, business analysts became increasingly worried about the impact of rising oil prices on trade. Rubin and Tal (2008) of CIBC World Markets wrote a thought-provoking article that rising oil prices will lead to signiﬁcant hikes in international **transportation costs** and therefore to a **major slowdown** in the **growth of world trade** – reversing globalization. They reported that hand in hand with the oil price hikes, the cost to ship a standard 40-foot container from Shanghai to the US Eastern seaboard rose from US$3,000 in 2000 to US$8,000 in 2008. At such transport prices, they argued, companies have started to rethink the establishment of far-ﬂung global supply networks, by seeking supplies from domestic and regional markets closer to home. Following on the heels of Rubin and Tal (2008), Jen and Bindelli (2008) of Morgan Stanley Research predicted that East Asia’s and especially **China’s export model** would be **particularly affected** by rising oil prices. This is because trade within East Asia is much more vertically specialized than for other regions. Many of the ﬁnished goods that China exports to America and Europe are made from components imported from Taiwan, Japan and South Korea. Since these regional production networks require components to be shipped multiple times, affordable transport costs are an essential ingredient for their maintenance.

**Chinese exports key to their economy**

**Prasad 8- Tolani Senior Professor of Trade Policy, Cornell University, United States (Eswar S. PRASAD, May 28th 2008, Is the Chinese growth miracle built to last?, http://www.sciencedirect.com/science/article/pii/S1043951X08000321#)**

Since the early 1990s, China has integrated into world trade at an astounding pace. **Chinese exports** more than **quintupled** between 1992 and 2007, growing faster than the national economy. The functioning of China's economy has been radically transformed, moving from an isolated position with exports of less than 10% of GDP in 1980 to a highly-integrated economy, with an **export ratio of more than 37%** in 2007. This process has been accompanied by a no less impressive diversiﬁcation of China's trade, as its manufactured exports pervaded **all sectors of world trade**, from low-technology textiles to high-tech electronics and computers. A number of aspects of this trade integration have however puzzled economists. One is the rapid upgrading of China's exports: economists (and world consumers) have noticed the impressively broad range of China's export products since the mid-nineties, and in particular, the ability of Chinese producers to export capital- and skill-intensive products, high-technology products, and in general products that are usually considered as belonging to the area of specialization of more developed countries. Rodrik (2006) notes that China is an outlier regarding the overall sophistication of its exports: according to the sophistication index of Hausmann et al. (2007), which estimates the average “income level of a country's exports”, China's export bundle is similar to that of a country with a level of income per-capita three times larger than China. Using an alternative indicator, Schott (2008) also ﬁnds that China's export bundle is increasingly overlapping with that of the world's most-developed economies, and that this overlap cannot be entirely explained by factor endowments.

**Impact is CCP Collapse and Great Power War**

**Kane 1** [Thomas Kane, PhD in Security Studies from the University of Hull & Lawrence Serewicz, Autumn, <http://www.carlisle.army.mil/usawc/Parameters/01autumn/Kane.htm>]

Despite China's problems with its food supply, the Chinese do not appear to be in danger of widespread starvation. Nevertheless, one cannot rule out the prospect entirely, especially if the earth's climate actually is getting warmer. The consequences of general famine in a country with over a billion people clearly would be catastrophic. The effects of oil shortages and industrial stagnation would be less lurid, but economic collapse would **endanger China's political stability** whether that collapse came with a bang or a whimper. PRC society has become dangerously fractured. As the coastal cities grow richer and more cosmopolitan while the rural inland provinces grow poorer, the political interests of the two regions become ever less compatible. Increasing the prospects for division yet further, Deng Xiaoping's administrative reforms have strengthened regional potentates at the expense of central authority. As Kent Calder observes, In part, this change [erosion of power at the center] is a conscious devolution, initiated by Deng Xiaoping in 1991 to outflank conservative opponents of economic reforms in Beijing nomenclature. But devolution has fed on itself, spurred by the natural desire of local authorities in the affluent and increasingly powerful coastal provinces to appropriate more and more of the fruits of growth to themselves alone.[ 49] Other social and economic developments deepen the rifts in Chinese society. The one-child policy, for instance, is disrupting traditional family life, with unknowable consequences for Chinese mores and social cohesion.[ 50] As families resort to abortion or infanticide to ensure that their one child is a son, the population may come to include an unprecedented preponderance of young, single men. If common gender prejudices have any basis in fact, these males are unlikely to be a source of social stability. Under these circumstances, China is vulnerable to unrest of many kinds. Unemployment or severe hardship, not to mention actual starvation, could easily trigger popular uprisings. Provincial leaders might be tempted to secede, perhaps openly or perhaps by quietly ceasing to obey Beijing's directives. China's leaders, in turn, might adopt drastic measures to forestall such developments. If faced with internal strife, supporters of China's existing regime may return to a more overt form of communist dictatorship. The PRC has, after all, oscillated between experimentation and orthodoxy continually throughout its existence. Spectacular examples include Mao's Hundred Flowers campaign and the return to conventional Marxism-Leninism after the leftist experiments of the Cultural Revolution, but the process continued throughout the 1980s, when the Chinese referred to it as the "fang-shou cycle." (Fang means to loosen one's grip; shou means to tighten it.)[ 51] If order broke down, the Chinese would not be the only people to suffer. Civil unrest in the PRC would **disrupt trade relationships**, send **refugees** flowing across borders, and force outside powers to **consider intervention**

. If different countries chose to intervene on different sides, China's struggle could lead to **major war**. In a less apocalyptic but still grim scenario, China's government might try to ward off its demise by attacking adjacent countries.

# 2AC

## T

### GSPEC 2AC

#### Cross-x checks – they couldve asked grounds – the plan is also INCREDIBLY specific to this – we uphold a decision

#### Counter-interpretation –

#### Judicial restriction means to reduce the scope of

Newman 8 (Pauline, Judge @ UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 545 F.3d 943; 2008 U.S. App. LEXIS 22479; 88 U.S.P.Q.2D (BNA) 1385; 2008-2 U.S. Tax Cas. (CCH) P50,621, IN RE BERNARD L. BILSKI and RAND A. WARSAW, lexis)

Id. at 315 (quoting U.S. Const., art. I, §8). The Court referred to the use of "any" in Section 101 ("Whoever invents or discovers any new and useful process . . . or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title"), and reiterated that the statutory language shows that Congress "plainly contemplated that the patent laws would be given wide scope." Id. at 308. The Court referred to the legislative intent to include within the scope of Section 101 "anything under the sun that is made by man," id. at 309 (citing S. Rep. 82-1979, at 5; H.R. Rep. 82-1923, at 6 (1952)), and stated that the unforeseeable future should not be inhibited by judicial restriction of the "broad general language" of Section 101: A rule that unanticipated inventions are without protection would conflict with the core concept of the patent law that anticipation undermines patentability. Mr. Justice Douglas reminded that the [\*981] inventions most benefiting mankind are those that push back the frontiers of chemistry, physics, and the like. Congress employed broad general language in [\*\*103] drafting §101 precisely because such inventions are often unforeseeable.

#### Aff is an example of a judicial restriction – we resitrict presidential war powers over detention policy – no reason we have to cite grounds

#### Infinitely regressive – there is no resolutional basis – it only says judicial restriction – no reason we have to specify – that’s unpredictable

#### No ground loss – structural disads linked to restrictions or plan topic area provide ground

#### Not a voting issue – if they win this it just means we should be forced to specify.

#### A2: No Solvency

#### Doesn’t implicate solvency – plan solvency is based on review occurring, this still happens

## Terror

### 2AC Drone Shift

#### non-unique, - decreasing detainees now

Brookings 8 (Benjamin Wittes and Zaahira Wyne with Erin Miller, Julia Pilcer, and Georgina Druce, December 16, 2008, “The Current Detainee Population of Guantánamo: An Empirical Study” http://www.brookings.edu/~/media/research/files/reports/2008/12/16%20detainees%20wittes/1216\_detainees\_wittes)

As of December 16, 2008, the detention facility at Guantánamo Bay, Cuba held 248 detainees. This figure represents only a fraction of the 779 who have passed through the facility since it opened in 2002. Of the 558 detainees who remained at the base long enough to go through the CSRT process, 330 have been transferred or released. Over that same time period, 20 additional detainees have arrived at Guantánamo. Fourteen of these came in September 2006, when the CIA transferred the so-called high-value detainees, whom it had previously held for interrogation in its secret detention program overseas; six additional detainees arrived between March 2007 and March 2008.21 Our calculations concerning the current population have a small but real margin of error, described below in our discussion of sources and methods.

#### Previous rulings non-unique

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

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

#### Strikes now

McClatchy 13 (May 23, Lesley Clark and Jonathan S. Landay | McClatchy Washington Bureau

“Obama speech suggests possible expansion of drone killings”

www.mcclatchydc.com/2013/05/23/192081/obama-promises-anew-to-transfer.html#storylink=cpy)

But Obama’s speech appeared to expand those who are targeted in drone strikes and other undisclosed “lethal actions” in apparent anticipation of an overhaul of the 2001 congressional resolution authorizing the use of force against al Qaida and allied groups that supported the 9/11 attacks on the United States. In every previous speech, interview and congressional testimony, Obama and his top aides have said that drone strikes are restricted to killing confirmed “senior operational leaders of al Qaida and associated forces” plotting imminent violent attacks against the United States. But Obama dropped that wording Thursday, making no reference at all to senior operational leaders. While saying that the United States is at war with al Qaida and its associated forces, he used a variety of descriptions of potential targets, from “those who want to kill us” and “terrorists who pose a continuing and imminent threat” to “all potential terrorist targets.” The previous wording also was absent from a fact sheet distributed by the White House. Targeted killings outside of “areas of active hostilities,” it said, could be used against “a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.” The preconditions for targeted killings set out by Obama and the fact sheet appear to correspond to the findings of a McClatchy review published in April of U.S. intelligence reports that showed the CIA killed hundreds of lower-level suspected Afghan, Pakistani and unidentified “other” militants in scores of drone attacks in Pakistan’s tribal are during the height of the operations in 2010-11. Nearly 4,000 people are estimated to have died in U.S. drone strikes since 2004, the vast majority if them conducted by the CIA in Pakistan’s tribal area bordering Afghanistan. The fact sheet also said that those who can be killed must pose a “continuing and imminent threat” to “U.S. persons,” setting no geographic limits. Previous administration statements have referred to imminent threats to the United States – the homeland or its interests. “They appear to be broadening the potential target set,” said Christopher Swift, an international legal expert who teaches national security studies at Georgetown University and closely follows the targeted killing issue.

### A2: Threat Low/Your Cards Say Syria

#### The threat of terrorism is high now

Kean and Hamilton 13 (September 9, Former New Jersey governor Tom Kean and Indiana congressman Lee Hamilton, now co-chairs of the Bipartisan Policy Center's Homeland Security Project, served as chairman and vice chairman of the 9/11 Commission “Terror threat far different from 2001” <http://www.usatoday.com/story/opinion/2013/09/09/tom-kean-and-lee-hamilton-on-terror-anniversary/2762527/>)

Twelve years ago this week the Islamist terrorist group al-Qaeda launched four coordinated attacks on our country. We still mourn the 2,977 innocent victims killed that fateful morning when our nation was shaken to its very core. Today, the threat of terrorism is dramatically different from 2001. The leadership of al-Qaeda in Pakistan and Afghanistan has been decimated by drone strikes. Affiliates in Yemen and Somalia have also suffered significant losses as a result of counterterrorism operations. The threat, however, is evolving, as outlined in a report, "Jihadist Terrorism: A Threat Assessment," which we are releasing Monday through a project at the Bipartisan Policy Center, which we co-chair. Al-Qaeda and sympathetic groups are situated in many more countries, maintaining a presence in 16 theaters of operation, including Iraq, North Africa, Mauritania, Mali, Nigeria, Niger and Syria. Until now, the threat from these lethal offshoots against the United States has been confined to attacks against U.S. diplomatic outposts and Western economic interests abroad. The slaying of U.S. officials in Benghazi, Libya, one year ago and the attack on a gas facility in Algeria earlier this year, are two notable examples. But it is important to understand that no al-Qaeda threat has ever remained purely localized, as shown by the recent al-Qaeda in the Arabian Peninsula threat in late July that led to the closure of 22 U.S. diplomatic facilities in 17 countries in the Middle East, Africa and South Asia. Instability in the Middle East is reaching explosive levels. The civil war in Syria may provide al-Qaeda with an opportunity to regroup, train and plan operations. Foreign fighters hardened in that conflict could eventually destabilize the region or band together to plot attacks against the West. In Egypt, the military overthrow of the Mohamed Morsi government and recent mass killing of Islamist protestors will inflame and possibly radicalize Islamists, turning them toward al-Qaeda's rejection of democracy. It is not a stretch to think that some of their animosity may be directed at the U.S. for its decades-long support of the Egyptian military. Here at home, the threat has shifted to individuals who are radicalized over the Internet, often inspired by al-Qaeda's jihadist message. While these lone wolves might not be able to kill in mass numbers, the Boston Marathon bombings and the Fort Hood slayings show that alienated persons influenced partially by online messaging can cause great damage. While the core of al-Qaeda is reeling from 12 years of relentless pressure, its ideology is still winning new converts even on our soil. The future face of terrorism is decentralized and more diffuse, creating a challenge for law enforcement because it can surface anywhere, often without warning.

## Venezuela

### A2: No Modeling

#### This isn’t a modeling argument - [Liptak’s not an answer]- our internal link is US pushing reform through the Organization of American states – it’s not about *modeling* its about how Venezuela is ignoring US pressure for reform specifically because of gitmo abuses – that’s Bosworth

#### You can cross-apply no modeling to the courts disad – it takes out their internal link

### A2: Democracy

#### Judicial review is key to global democratic transitions

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

Many of the newly independent governments that have proliferated over the past five decades have adopted these ideals. They have emerged from a variety of less-than-free contexts, including the end of European colonial rule in the 1950's and 1960's, the end of the Cold War and the breakup of the former Soviet Union in the late 1980's and 1990's, the disintegration of Yugoslavia, and the continuing turmoil in parts of Africa, Latin America and southern Asia. Some countries have successfully transitioned to stable and democratic forms of government that protect individual freedoms and human rights by means of judicial review by a strong and independent judiciary. Others have suffered the rise of tyrannical and oppressive rulers who consolidated their hold on power in part by diminishing or abolishing the role of the judiciary. And still others hang in the balance, struggling against the onslaught of tyrants to establish stable, democratic governments. In their attempts to shed their tyrannical pasts and to ensure the protection of individual rights, emerging democracies have consistently looked to the United States and its Constitution in fashioning frameworks that safeguard the independence of their judiciaries . See Ran Hirschl, The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions, 25 Law & Soc. Inquiry 91, 92 (2000) (stating that of the “[m]any countries . . . [that] have engaged in fundamental constitutional reform over the past three decades,” nearly all adopted “a bill of rights and establishe[d] some form of active judicial review”). Establishing judicial review by a strong and independent judiciary is a critical step in stabilizing and protecting these new democracies. See Christopher M. Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 605-06 (1996) (describing the judicial branch as having "a uniquely important role" in transitional countries, not only to "mediate conflicts between political actors but also [to] prevent the arbitrary exercise of government power; see also Daniel C. Prefontaine and Joanne Lee, The Rule of Law and the Independence of the Judiciary, International Centre for Criminal Law Reform and Criminal Justice Policy (1998) ("There is increasing acknowledgment that an independent judiciary is the key to upholding the rule of law in a free society . . . . Most countries in transition from dictatorships and/or statist economies recognize the need to create a more stable system of governance, based on the rule of law."), available at http://www.icclr.law.ubc.ca/Publications/Reports/RuleofLaw. pdf (last visited Jan. 8, 2004). Although the precise form of government differs among countries, “they ultimately constitute variations within, not from, the American model of constitutionalism . . . [a] specific set of fundamental rights and liberties has the status of supreme law, is entrenched against amendment or repeal . . . and is enforced by an independent court . . . .” Stephen Gardbaum, The New Commonwealth Model of Constitutionalism, 49 Am. J. Comp. L. 707, 718 (2001). This phenomenon became most notable worldwide after World War II when certain countries, such as Germany, Italy, and Japan, embraced independent judiciaries following their bitter experiences under totalitarian regimes. See id. at 714- 15; see also United States v. Then, 56 F.3d 464, 469 (2d Cir. 1995) (Calabresi, J., concurring) (“Since World War II, many countries have adopted forms of judicial review, which — though different from ours in many particulars — unmistakably draw their origin and inspiration from American constitutional theory and practice. See generally Mauro Cappelletti, The Judicial Process in Comparative Perspective (Oxford: Clarendon Press, 1989).”). It is a trend that continues to this day. It bears mention that the United States has consistently affirmed and encouraged the establishment of independent judiciaries in emerging democracies. In September 2000, President Clinton observed that "[w]ithout the rule of law, elections simply offer a choice of dictators. . . . America's experience should be put to use to advance the rule of law, where democracy's roots are looking for room and strength to grow." Remarks at Georgetown University Law School, 36 Weekly Comp. Pres. Doc. 2218 (September 26, 2000), available at http://clinton6.nara.gov/2000/09/2000-09-26- remarks-by-president-at-georgetown-international-lawcenter. html. The United States acts on these principles in part through the assistance it provides to developing nations. For example, the United States requires that any country seeking assistance through the Millenium Challenge Account, a development assistance program instituted in 2002, must demonstrate, among other criteria, an "adherence to the rule of law." The White House noted that the rule of law is one of the "essential conditions for successful development" of these countries. See http://www.whitehouse.gov/infocus/developingnations (last visited Jan. 8, 2004).12

#### US detention policy is key

CJA 4 The Center for Justice and Accountability, Amici Curiae in support of petitioners in Al Odah et al. v USA, "Brief of the Center for Justice and Accountability, the International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," 3-10, Lexis

While much of the world is moving to adopt the institutions necessary to secure individual rights, many still regularly abuse these rights. One of the hallmarks of tyranny is the lack of a strong and independent judiciary. Not surprisingly, where countries make the sad transition to tyranny, one of the first victims is the judiciary. Many of the rulers that go down that road justify their actions on the basis of national security and the fight against terrorism, and, disturbingly, many claim to be modeling their actions on the United States. Again, a few examples illustrate this trend. In Peru, one of former President Alberto Fujimori’s first acts in seizing control was to assume direct executive control of the judiciary, claiming that it was justified by the threat of domestic terrorism. He then imprisoned thousands, refusing the right of the judiciary to intervene. International Commission of Jurists, Attacks on Justice 2000-Peru, August 13, 2001, available at ttp://www.icj.org/news.php3?id\_article=2587&lang=en (last visited Jan. 8, 2004). In Zimbabwe, President Mugabe’s rise to dictatorship has been punctuated by threats of violence to and the co-opting of the judiciary. He now enjoys virtually total control over Zimbabweans' individual rights and the entire political system. R.W. Johnson, Mugabe’s Agents in Plot to Kill Opposition Chief, Sunday Times (London), June 10, 2001; International Commission of Jurists, Attacks on Justice 2002— Zimbabwe, August 27, 2002, available at http://www.icj.org/news.php3?id\_article=2695〈=en (last visited Jan. 8, 2004). While Peru and Zimbabwe represent an extreme, the independence of the judiciary is under assault in less brazen ways in a variety of countries today. A highly troubling aspect of this trend is the fact that in many of these instances those perpetuating the assaults on the judiciary have pointed to the United States’ model to justify their actions. Indeed, many have specifically referenced the United States’ actions in detaining persons in Guantánamo Bay. For example, Rais Yatim, Malaysia's "de facto law minister" explicitly relied on the detentions at Guantánamo to justify Malaysia's detention of more than 70 suspected Islamic militants for over two years. Rais stated that Malyasia's detentions were "just like the process in Guantánamo," adding, "I put the equation with Guantánamo just to make it graphic to you that this is not simply a Malaysian style of doing things." Sean Yoong, "Malaysia Slams Criticism of Security Law Allowing Detention Without Trial," Associated Press, September 9, 2003 (available from Westlaw at 9/9/03 APWIRES 09 :34:00). Similarly, when responding to a United States Government human rights report that listed rights violations in Namibia, Namibia's Information Permanent Secretary Mocks Shivute cited the Guantánamo Bay detentions, claiming that "the US government was the worst human rights violator in the world." BBC Monitoring, March 8, 2002, available at 2002 WL 15938703. Nor is this disturbing trend limited to these specific examples. At a recent conference held at the Carter Center in Atlanta, President Carter, specifically citing the Guantánamo Bay detentions, noted that the erosion of civil liberties in the United States has "given a blank check to nations who are inclined to violate human rights already." Doug Gross, "Carter: U.S. human rights missteps embolden foreign dictators," Associated Press Newswires, November 12, 2003 (available from Westlaw at 11/12/03 APWIRES 00:30:26). At the same conference, Professor Saad Ibrahim of the American University in Cairo (who was jailed for seven years after exposing fraud in the Egyptian election process) said, "Every dictator in the world is using what the United States has done under the Patriot Act . . . to justify their past violations of human rights and to declare a license to continue to violate human rights." Id. Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International Herald Tribune on September 15, 2003 that "[t]he insistence by the Bush administration on keeping Taliban and Al Quaeda captives in indefinite detention in Guantánamo Bay, Cuba, instead of in jails in the United States — and the White House's preference for military tribunals over regular courts — helps create a free license for tyranny in Africa. It helps justify Egypt's move to detain human rights campaigners as threats to national security and does the same for similar measures by the governments of Ivory Coast, Cameroon and Burkina Faso." Available at http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat e=20030121123259. In our uni-polar world, the United States obviously sets an important example on these issues. As reflected in the foundational documents of the United Nations and many other such agreements, the international community has consistently affirmed the value of an independent judiciary to the defense of universally recognized human rights. In the crucible of actual practice within nations, many have looked to the United States model when developing independent judiciaries with the ability to check executive power in the defense of individual rights. Yet others have justified abuses by reference to the conduct of the United States. Far more influential than the words of Montesquieu and Madison are the actions of the United States. This case starkly presents the question of which model this Court will set for the world.

### China

**High Oil Prices kill Chinese economy – leads to T-Bill Sell-off**

**Rubin 12** [Jeff Rubin, Former Chief Economist, CIBC World Market, “The End of Growth”, 5/2/12, <http://www.huffingtonpost.com/jeffrey-rubin/the-end-of-growth_b_1471216.html>]

Just as people require food, economies require energy. The relationship is straightforward: economic growth is a function of energy consumption. With national economies around the world once again forced to pay more than $100 for every barrel of oil consumed, a critical question must be asked -- what happens when the world's most important source of energy becomes unaffordable? A glance at the latest GDP numbers is already telling us the answer. **Economic growth has downshifted** into a much lower gear nearly everywhere you look. Europe is struggling to keep its head above water, North America is stagnating and even the hard-charging economies of the BRIC nations are starting to groan under the weight of high energy prices. When the price of oil goes up, something has to give. Right now, the European Monetary Union looks to be the most imminent casualty. How much longer will Greece slavishly heed the demands of its creditors and impose punishing austerity measures with the only result being the continuing implosion of its economy? Will Spain be able to tighten its belt any further when a quarter of its labor force is already unemployed? The answers seem obvious. Without economic growth, neither country can service its debt. And growth just isn't in the cards. The ground beneath the European Monetary Union has never been shakier. And as the Euro trembles, the stage is being set for a return of the drachma, escudo, peseta, Irish pound, and lira. When we look across the Pacific we see that even **China and India**, the global economy's principal **engines of growth**, can't escape the toll exacted by high energy prices. When policy makers in Beijing tried to sustain double-digit economic growth, food and energy inflation quickly slammed on the brakes. The economies of China and India will soon struggle to grow at half the torrid pace of recent years. When that happens, the rest of the world will need to pay attention. In a world where **distance costs money**, China will increasingly look to its own 1.3 billion consumers to drive economic growth. If China decides to focus on tapping the potential of its huge domestic market, rather than supplying cheap goods to faraway Walmarts, the economic balance of power will tilt decidedly eastward. What happens if the People's Bank of China then decides that buying U.S. treasuries is no longer a necessity? U.S. taxpayers, for one, don't want to find out. They'll be left footing the bill for Washington's budget deficit -- currently at $1.25 trillion.

## Off

### Condo

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions

#### B – creates time and strat skews by making the neg a moving target

#### no cost options in the 1nc make the 2ac impossible- one unconditional advocacy solves your offense – it’s key to allowing us to make real world strategic calculations

### Executive CP – 2AC

#### Perm – do both

#### Court action is key –

#### Interrogation techniques benefit from judicial oversight – it’s a strategic benefit to the war on terror – that’s Hathaway

#### AND *Judicial* restrictions are key to effective counterterrorism

Guiora 11 (Amos, Prof of Law @ Univ. of Utah, "Indeﬁnite Detention of Megaterrorists: A Road We Must Not Travel," April, http://johnjayresearch.org/cje/files/2012/10/GUIORA-out.pdf)

Offering modifications or alternatives, such as indefinite detention, to¶ replace existing legal structures\*in¶ whole or in part\*raises a fundamental question: have sufficient controls been created? Although creating¶ alternatives, even if justifiable, is¶ risky, any expansion of executive¶

power\*the net result of Scheid’s¶ proposal\*must be tempered by¶ both independent judicial review¶ and robust congressional oversight.¶ Restraining the executive branch is¶ essential, especially when alternatives are created.¶ When Scheid asked if I would¶ consider commenting on his paper¶ (before I had a chance to read it) I instinctively agreed. My reasons were¶ simple. I first met Scheid when he¶ graciously attended a public lecture I¶ gave at the William Mitchell Law¶ School (hosted by my good friend¶ and colleague, John Radson). His questions were particularly engaging and¶ our subsequent communications\*including Scheid’s insightful and critical¶ blog postings in response to my¶ writings\*have invariably been interesting and thought-provoking.¶ When Scheid explained the article’s thesis I was intrigued, largely¶ because of my own efforts to grapple¶ with how to create alternative legal¶ infrastructures relevant to the post 9/¶ 11 world. As a consistent advocate¶ for the creation of a National Security¶ Court,1¶ I have probed the limits of¶ many of the issues Scheid addresses.¶ Friends and colleagues have criticized various aspects of my proposal;¶ similarly, members of the U.S. Senate¶ Judiciary Committee were skeptical¶ of my proposal when I testified¶ before the committee.¶ Precisely for the above reasons, I¶ feel well suited to respond to Scheid’s¶ proposal. Perhaps I have an insider’s¶ perspective of proposing an alternative and then responding to the inevitable criticism. Experience has¶ taught me that any alternative that¶ involves an expansion of executive¶ powers is only as good as the limits¶ it also imposes.¶ Scheid’s proposal does not conjure up images of President Bush’s¶ ‘‘by all means necessary’’ approach¶ to counterterrorism because it wisely¶ includes independent judicial review¶ in accordance with constitutional¶ principles of checks and balances¶ and separation of powers. The key¶ question, however, is: ‘‘how much¶ judicial review’’? Not enough to ensure effective external restraints on¶ the executive. Although Scheid¶ clearly incorporates some control¶ measures, the overall sense is of¶ insufficient restraint.¶ To push the issue: we must ask¶ whether there are controls, whether¶ they are sufficiently defined, and¶ whether they can be implemented.¶ Simply put, suggesting an alternative¶ alone is not sufficient, particularly¶ when its intended purpose is to¶ create an infrastructure specifically¶ designed to limit rights rather than¶ protect them.

#### only court action solves the independent judiciary advantage – turns the counterplan – deference sets a model which causes global instability – that’s Mirow and CJA – and indefinite detention policy is uniquely important – that’s McCormack

#### Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### The executive has openly defended a right to indefinite detention *without judicial review* – review is critical to check dictatorialexecutive power – that’s Martin

#### 6. Perm do the CP – it’s an example of the president complying with judicial oversight

#### 7. Counterplan is a voter

#### A) Topic education – shifts the focus of the debate from whether the president should have the authority and to whether the president should be the person to stop it – causes stale debate about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### C) Object fiat – fiats the object of the resolution which makes clash impossible- no way to have a stable source of aff offense

#### D) multiplanks make the counterplan uniquely abusive – don’t let them kick an individual plank make them defend the entirety

#### 9. Perm do the counterplan then the plan – shields the link to the net benefit because it looks like the court enforcing the XO

### Legitimacy DA – 2AC

#### 1. Legitimacy low – DOMA

Sanchez 13

[Elizabeth, Charisma News, Supreme Court Loses Legitimacy, Authority With Gay Rights Ruling, 6/28/13, <http://www.charismanews.com/politics/40067-supreme-court-loses-legitimacy-authority-with-gay-rights-ruling>]

The 5-4 opinion by the Supreme Court on the Federal Defense of Marriage Act (DOMA) raises serious questions about the legitimacy of the Court’s authority. History has proven that the Supreme Court does not always issue legitimate opinions. In Dred Scott v. Sandford, 60 U.S. 393 (1857), Chief Justice Roger Taney wrote for the majority that while some states had granted citizenship to blacks, the U.S. Constitution did not recognize citizenship of blacks. Taney wrote that blacks were “regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights that the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his own benefit.” Thus, according to the Supreme Court, Scott had no standing to file the suit. As might be expected, this decision created further rift between the North and the South in the days leading up to the Civil War. The Fourteenth Amendment later put the nail in the coffin of the Dred Scott decision. This decision was thus made illegitimate and is repudiated today. In Buck v. Bell, 274 U.S. 200 (1927), Justice Oliver Wendell Holmes, writing for the Court, described Charlottesville, Va., native Carrie Buck, whom he described as an “imbecile,” as the “probable potential parent of socially inadequate offspring, likewise afflicted,” and he went on to say that “her welfare and that of society will be promoted by her sterilization.” His infamous words still cause one to shudder when he wrote, “Three generations of imbeciles are enough.” The Buck v. Bell case approved forced sterilization to prevent “feebleminded and socially inadequate” people from having children. This horrible decision set the stage for more than 60,000 sterilizations in the United States and was cited favorably at the Nuremberg trials in defense of Nazi sterilization experiments. Incredibly, this decision has never been overturned. Even so, this decision was illegitimate and is repudiated today. In Korematsu v. U.S., 324 U.S. 885 (1945), the Supreme Court upheld Executive Order 9066, which ordered Japanese Americans to be herded into internment camps during World War II. Citizenship had no value to the Japanese. All persons of Japanese descent were placed in custody, despite the constitutional guarantee of the Fifth Amendment. This decision, too, is illegitimate. Justice O’Connor, writing in Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833, 864-869 (1992), candidly acknowledged, “As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands. ... “The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.” “The 5-4 decision by the Supreme Court in the Federal Defense of Marriage Act case has caused millions of Americans to lose confidence in the Court,” says Mat Staver, founder and chairman of Liberty Counsel. “The decision is as far removed from the Constitution and the Court’s prior precedent as the east is from the west. Led by Justice Kennedy, the majority of the justices have cut the tether that once connected them to the Constitution. "This decision does not even pretend to be governed by the Constitution or Court precedent. Although the Court used the words 'equal protection,' the Court never engaged in an equal protection analysis. Not once did the Court identify the right sought by the petitioners. "Not once did the Court ask whether the claimed right was protected, either by an enumerated provision of the Constitution or deeply rooted in history and necessary to ordered liberty. Not once did the Court seek to determine the level of judicial scrutiny the case should receive. In short, the opinion represents the personal views of five Justices and it finds no support in the Constitution or reason. As history has shown us, such decisions delegitimize the Court. "On top of this flawed opinion, the majority demeaned the Court and weakened its authority by labeling as hateful those who believe that marriage is the union of one man and one woman. Marriage pre-dates religion and all civil authorities. It is ontologically a union of a man and a woman and is part of the natural created order. Such irresponsible language by the Court undermines its legitimacy in the eyes of the people. The Court does not have unlimited authority. This decision presumed too much of the people’s blind acceptance of its authority. Just like a corporate act cannot be ultra vires (beyond its authority), the people may determine that this decision is beyond the authority of this Court. If that happens, the Court will lose its authority,” concludes Staver.

#### 3. Increased docket gives the court political cover – solves the link

Owens 12

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

Finally, a depleted docket could lead the public to believe that the Court does not work sufficiently hard or is not sufficiently fair, and thereby diminish the Court’s legitimacy. The number and type of cases the Court decides can shape the public’s perception of the Court.202 As Justice Brennan put it: “The choice of issues for decision largely determines the image that the American people have of their Supreme Court.”203 When the Court fails to hear a case, it may change how Americans view the judiciary. In other words, what cases the Court decides to hear—and not hear—is important in terms of perception and, ultimately, legitimacy. What is more, a smaller docket amplifies the effects of its decisions. This is important because unpopular decisions by the Court can “**erode the institution’s political capital**.”204 One may question—as James Gibson, Gregory Caldeira, and Lestor Spence have questioned205—the risk of such erosion considering the Court enjoys “widespread approval” and strong legitimacy among the public.206 Although Gibson and his colleagues argue that individual rulings are unlikely to deplete the Court’s “reservoir of good will,”207 they acknowledge that “sustained policy disagreement can undermine legitimacy.”208 That is, if the Court continually issues decisions that conflict with Americans’ policy preferences, the Court’s legitimacy may falter. Thus, the number of cases the Court hears each Term could influence Americans’ currently strong commitment to the Supreme Court:209 as the number of cases decided shrinks, the Court’s diachronic margin for error diminishes. If one holds the number of “erroneous” decisions constant but allows the denominator—the size of the Court’s docket—to decrease, the relative effects of the erroneous decisions become more pronounced. Because the Court hears fewer cases, decisions that clash with public opinion can harm the Court’s legitimacy to a greater degree than when it hears a larger number of cases. In other words, to maintain legitimacy, the Court’s decisions must clash with the public view less often than when it hears a greater number of cases.

#### 5. Non unique and no link- legitimacy low because of political questions in the squo

Rosen 12

[Jeffery, legal affairs editor of The New Republic., The Supreme Court Has a Legitimacy Crisis, But Not For the Reason You Think, 6/11/12, <http://www.newrepublic.com/article/politics/103987/the-supreme-court-has-legitimacy-crisis-not-the-reason-you-think>]

But a new study by Nathaniel Persily of Columbia Law School and Stephen Ansolabehere of Harvard suggests that the relationship between the Court’s declining approval ratings and increased perceptions of the Court’s partisanship may be more complicated than the New York Times and the Chief Justice suggest. According to the study, **Americans already judge the Court according to political criteria**: They generally support the Court when they think they would have ruled the same way as the justices in particular cases, or when they perceive the Court overall to be ruling in ways that correlate with their partisan views. If this finding is correct, the most straightforward way for the Court to maintain its high approval ratings is to hand down decisions that majorities of the public agree with. And, like its predecessors, the Roberts Court has, in fact, managed to mirror the views of national majorities more often than not. In a 2009 survey, Persily and Ansolabehere found that the public strongly supported many of the Supreme Court’s recent high-profile decisions, including conservative rulings recognizing gun rights and upholding bans on partial birth abortions, as well as liberal rulings upholding the regulation of global warming and striking down a Texas law banning sex between gay men. But if the public agrees with most of the Court's decisions, why is it more unpopular than ever? Part of the answer has to do with the fact that there are a handful of high profile decisions on which the Court is out of step with public opinion, including the Kelo decision allowing a local government to seize a house under eminent domain and the Boumediene case extending habeas corpus to accused enemy combatants abroad, and recent First Amendment decisions protecting unpopular speakers, such as funeral protesters, manufacturers of violent video games, and corporations (in the Citizens United case.) All of these decisions were unpopular with strong majorities of the public. But Persily and Ansolabehere also found that even decisions that closely divide the public can lead to a decrease in the Court’s approval rating over time, by increasing the perception among half the public that the Court is out of step with its partisan preferences. Bush v. Gore is perhaps the clearest example. In the short term, the Court’s overall approval ratings didn’t suffer: Republicans liked the decision, while Democrats didn’t, and the two effects canceled each other out. But Persily and his colleagues found that ten years later, Bush v. Gore continues to define the Court for many citizens, destroying confidence in the Court among Democrats while reinvigorating it among Republicans. Since an important component of the Court’s overall approval rating is whether Americans perceive themselves to be in partisan agreement with the Court as an institution, Bush v. Gore has led to a statistically significant decline in approval among Democrats as a whole. At the beginning of his tenure, Chief Justice Roberts said he wanted to avoid 5-4 decisions because if people perceived the Court as a partisan institution, they would lose confidence in the institution more generally. But Persily and Ansolabehere’s study suggests a more complicated reality: Americans support the Court when they perceive themselves to be in partisan agreement with it, and they lose confidence when they perceive the justices to be moving in a different partisan direction than their own. The study found that most Americans either don’t know or guessed wrong about which party’s presidents appointed the majority of justices: only a third knew that a majority of justices were appointed by Republican presidents. And the study also found that Republicans who can correctly identify the fact that Republican presidents appointed a majority of justices tend to support the Court, while Democrats who can correctly identify the fact that Democrats appointed a minority of justices express less support.

#### **Zero risk of public backlash, even if they hate the substance of the decision – the court is too legit to quit**

Young ’12 (Ernest A., Alston & Bird Professor, Duke Law School, POPULAR CONSTITUTIONALISM AND THE UNDERENFORCEMENT PROBLEM: THE CASE OF THE NATIONAL HEALTHCARE LAW, 75 Law & Contemp. Prob. 157, ln)

There is a second aspect to the story, however. That aspect focuses on public perceptions of the status and role of the courts - particularly the U.S. Supreme Court. Public opinion evolves not only with respect to matters of policy - for example, the appropriate level of government regulation and social provision - but also with respect to the role of judicial review itself. Because doctrinal underenforcement consists in the courts' willingness to defer constitutional judgments to other actors, broad trends in public opinion influence not only the weight that the courts give to other political institutions but also the confidence with which the courts approach their own tasks. Although the Supreme Court started out in a precarious institutional position with uncertain popular legitimacy, over time it has solidified its role and achieved an impressive level of "diffuse support" - that is, support that does not depend on public agreement with the merits of particular decisions. n19 To the extent that judicial review seems accepted, respected, even desired, we can expect the Court to defer less to Congress, the President, or state institutions on particular issues.

### Deference DA

#### Syria non-uniques the DA

Beecher 13 (9/3, William, Pulitzer Prize-winning former Washington correspondent for the Boston Globe, WSJ, NYT. Served as an Assistant Secretary of Defense, “Obama, the Cowardly Lion”, http://www.worldpolicy.org/blog/2013/09/03/obama-cowardly-lion)

It’s one thing to be a reluctant warrior. Given President Obama’s natural instincts and the American public’s war-weariness, that’s understandable under the circumstances. But, after checking with Congressional leadership in both parties, and being told there may well not be sufficient support for military action against the Syrian government’s horrific use of nerve gas, and then going ahead and daring Congress to take the Commander-in-Chief’s war powers out of his hands, that’s not leadership. That’s sophistry. President Barack Obama, in withholding military action at the eleventh hour and shocking his own closest aides in the process, is risking telling the American body politic and an amazed world of friend and foe, that he does not have the inner strength to be a leader in crisis. He gives a new meaning to the expression “red line.” If you dare cross it, who knows what might befall you? If anything. Putting aside the reaction at home for the moment, how do you think the ayatollahs in Iran will react to his repeated threats not to allow Tehran to possess nuclear weapons? How will Vladimir Putin react to the warnings that Obama will make Russia pay a price for harboring Edward Snowden and not cooperating in US efforts in Syria and Iran? How will the leaders of France, who deployed warships alongside those of the U.S. navy offshore Syria, react to the appearance that Obama has lost his courage? In point of fact, it was shaping up as merely a military slap on Bashar Assad’s wrist – in the President’s words, “a shot across the bow” not aimed at weakening his hold on power. How will Israeli planners, who wanted to believe that Obama was not bluffing when he warned Iran that “all options” are on the table if it proceeds to build nuclear weapons, react? Will the Israelis, who have existential worries, decide to go it alone—and soon? Is this how the Leader of the Free World exercises his leadership? Or, is this the personification of the cowardly lion in the Wizard of Oz?

#### Court expertise is sufficient—their link is blown out of proportion [highlight this less]

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

A common justification for deference is that the President possesses superior competence due to expertise, information gathering, and political savvy in foreign affairs. These conclusions flow from the realist tenet that the external context is fundamentally distinct from the domestic context. The domestic realm is hierarchical and legal; the outside world is anarchical and political. The international realm is thus far more complex and fluid than the domestic realm. The executive is a political branch, popularly-elected and far more attuned to politics than are the courts. n258 Judges are, for the most part, generalists who possess no special expertise in foreign affairs. n259 Courts can only receive the information presented to them and cannot look beyond the record. n260 The President has a vast foreign relations bureaucracy to obtain and process information from around the world. Executive agencies such as the State Department and the military better understand the nature of foreign countries - their institutions and culture - and can predict responses in ways that courts cannot. n261 In the context of the political question doctrine, this rationale often appears when courts conclude that an issue lacks "judicially discoverable and manageable standards." n262 A stronger, related rationale is that the political branches are better suited for tracking dynamic and evolving norms in the anarchic international environment. n263 The meaning of international law changes over time and nations do not agree today on its meaning. Moreover, the relationships among nations in many instances will be governed by informal norms that do not correspond to international law. n264 In addition, many foreign affairs provisions in the Constitution had fixed meanings under international law in the Eighteenth Century - what it meant, for example, to "declare war" or to issue "letters of marquee and [\*129] reprisal" - but subsequent practice has substantially altered their meaning or rendered them irrelevant. n265 Courts are not adept at tracking these shifts. As many critics have observed, the "lack of judicially-manageable standards" argument is weak. Courts create rules to govern disputes regarding vague constitutional provisions such as the Due Process Clause. n266 Furthermore, if courts were to adjudicate foreign affairs disputes more often, they would have the opportunity to create clearer standards, making them more manageable. n267 Thus the lack-of-standards argument does not alone explain why foreign affairs should be off-limits. The argument regarding courts' limited access to information and lack of expertise seem persuasive at first, but it loses its force upon deeper inspection. For instance, expertise is also a rationale for Chevron deference in the domestic context. n268 Generalist judges handle cases involving highly complex and obscure non-foreign affairs issues while giving appropriate deference to interpretations of agencies charged with administering statutory schemes. n269 What makes foreign affairs issues so different that they justify even greater deference? n270 Perhaps foreign affairs issues are just an order of magnitude more complex than even the most complex domestic issues. However, this line of thinking very quickly leads to boundary problems. Economic globalization, rapid global information flow, and increased transborder movement have "radically increased the number of cases that directly implicate foreign relations" and have made foreign parties and conduct, as well as international law questions, increasingly [\*130] common in U.S. litigation. n271 If courts were to cabin off all matters touching on foreign relations as beyond their expertise, it would result in an ever-increasing abdication of their role. The political norm-tracking argument reveals the second major problem with using anarchy as a basis for special deference: it fails to account for the degree of deference that should be afforded to the President. Under the anarchy-based argument, the meaning of treaties and other concepts in foreign affairs depend entirely on politics and power dynamics, which the President is especially competent (and the courts especially incompetent) in tracking. If this is so, the courts must give total deference to the executive branch. If one does not wish to take the position that the courts should butt out altogether in foreign affairs, there must be other reasons for the courts' involvement. Even proponents of special deference generally acknowledge that some of the courts' strengths lie in protecting individual rights and "democracy-forcing." n272 But what is the correct balance to strike between competing functional goals of the separation of powers?

#### Unitary executive weakens the presidency

John W. Dean 9, former Counsel to the President, Chief Minority Counsel to the Judiciary Committee of the United States House of Representatives, the Associate Director of a law reform commission, and Associate Deputy Attorney General of the United States, graduate fellowship from American University to study government and the presidency, before entering Georgetown University Law Center, 1/9/09, <http://writ.news.findlaw.com/dean/20090109.html>

During the past eight years, President Bush has asserted presidential power in a singular fashion, drawing on the concept of a “unitary executive” who has unquestioned authority in times of war and is not beholden to international laws or treaties. This unusually broad interpretation of the Constitution provided the rationale for actions after the Sept. 11 terrorist attacks, including the establishment of military tribunals to try enemy combatants, the authorization of warrantless electronic surveillance of Americans and the assertion that the president may use any interrogation technique he deems necessary to protect national security. There is a widespread perception that Bush’s actions have collectively strengthened the presidency and fundamentally altered the balance of power between the executive and legislative branches. Bush, in many ways, embodies the concept of an “imperial presidency” as sketched by historian Arthur M. Schlesinger Jr. in the 1970s to describe chief executives who push their power to the absolute limit. But many experts believe Bush’s assertions of power have left the presidency fundamentally weaker, both for legal and political reasons. His boldest step, the order to convene military tribunals, was declared unconstitutional by the Supreme Court in 2006. The warrantless surveillance program triggered a host of as-yet-unresolved legal challenges and antagonized Congress, making it unlikely that Obama, for pragmatic reasons, would risk a similarly daring policy without sensitivity to legal precedents or clear-cut authorization by the legislative branch. In general, the experts predict, Obama will derive more clout and influence by dialing back Bush’s conception of executive power and taking a more circumscribed view of the presidency. Bush’s actions “made the institution of the presidency more suspect in the eyes of Congress,” said Stephen J. Wayne, a presidential scholar at Georgetown University. “I think it’s generated a lot of resentment that will result in Congress demanding more collaboration from the president. Obama knows how the Senate works and understands the needs of members. His thinking is based on bringing groups together and unity, and that means give and take, not just pronouncing.”

**Oversight stops arbitrariness, not flex**

Stephen **Holmes 9**, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Concerted efforts to shirk and deflect responsibility, moreover, provide an illuminating context in which to reconsider Vice President Dick Cheney's mantra, "The risks of inaction are far greater than the risk of action." n41 The risks of inaction, in Cheney's worldview, are the risks of being "**strangled by law**," n42 in Jack Goldsmith's phrase, of being hamstrung by due process of law and constitutional checks and balances. Cheney's warnings about the hazards of failing to act, therefore, suggest that the metaphor of a tradeoff between liberty and security is not as anti-dogmatic and anti-hysterical as one might have initially thought. Behind the associated images of balances and scales, we find in fact that a spurious urgency is being invoked to justify a psychological or ideological unwillingness to submit proposed policies to a nonpartisan and professionally conducted **c**ost-**b**enefit **a**nalysis. This is the ultimate paradox of the anti-liberal approach to national security. The misleading hypothesis of a tradeoff between liberty and security has been used, surreptitiously, to prevent the application of cost-benefit thinking to alternative proposals for managing [\*321] the risk of terrorism, including nuclear terrorism.¶ Cheney's maxim about the risks of inaction escapes being false only by being meaningless. Given the scarcity of resources, **every action is** an **inaction**; heightening security in one respect opens up security vulnerabilities along other dimensions. For example, assigning the majority of the CIA's Arabic speakers to Iraq means withdrawing them from other missions; if the attention of high-level officials is devoted to one problem, it will not be devoted to another.¶ And here is another familiar example. American intelligence agencies reportedly hesitate to hire native Farsi-or Pashto-or Arabic-speaking agents because the best-qualified candidates have relatives in Muslim countries, where reliable background checks are difficult to carry out. n43 This is a serious problem because only CIA and FBI agents fluent in these languages are capable of recruiting and handling informants. n44 This example, too, illustrates that the **real tradeoffs** in the **war on terror** do not involve a sacrifice of liberty for security, but rather a willingness to increase one risk in order to reduce another risk. In this case, American intelligence has to run the risk of hiring compromised personnel n45 in order to reduce the risk of failing to understand the enemy. The tradeoffs necessary in the war on terror, as I have been arguing, almost always involve this sort of gamble. The question is: who has the right to choose the set of security risks that we, as a country, would be better off running?¶ Policymakers misunderstand worst-case reasoning when they use it to hide from themselves and others the opportunity costs of their risky choices. The commission of this elementary fallacy by Vice President Cheney and other architects of the U.S. response to 9/11 has been extensively documented by Ron Suskind. n46 Allocating national-security resources without paying attention to opportunity costs is equivalent to spending binges under soft budget constraints, an arrangement notorious for its unwelcome consequences. One cannot reasonably multiply "the magnitude of possible harm from an attack" (for example, a nuclear sneak attack by al Qaeda using WMD supplied by Saddam Hussein) by the low "probability of such an attack" n47 and then conclude that one must act immediately to preempt that remote threat without [\*322] first scanning the horizon and inquiring about other low-probability catastrophic events that are equally likely to occur. One cannot say that a one-percent possibility of a terrifying Saddam-Osama WMD handoff justifies placing seventy percent of our national-security assets in Iraq. But this seems to be how the Bush administration actually "reasoned," perhaps because of its go-it-alone fantasies, as if scarce resources were not a problem. Or, perhaps those responsible for national security during the Bush years succumbed to commission bias, namely, the overpowering feeling, in the wake of a devastating attack, that inaction is intolerable. This uncontrollable urge to act is often experienced in emergencies, namely, in situations where decision makers need to do something but do not know what to do.¶ Among President Bush's many unfortunate bequests to President Obama is the desperate "readiness" problem that afflicts the American military, overstretched in Iraq and Afghanistan and therefore unprepared to meet a third crisis elsewhere in the world. This problem was a direct result of the Bush administration's **failure to take** scarcity of resources and **op**portunity **costs into account**. What **secret and unaccountable exec**utive **action made possible**, it turns out, was **not flex**ible adaptation to the demands of the situation but rather profligacy, **arbitrariness** and a **failure to set priorities** in a semi-rational way. Defenders of the half-truth that the capacity to adapt is increased when rules are bent or broken seem to have a **weak grasp of the** elementary **distinction between flex**ibility **and arbitrariness**.¶ The Founders, by contrast, understood quite well the difference between the flexible and the arbitrary. The ground **rules** for decision making that they built into the American constitutional structure were meant to maximize the first while minimizing the second. From their perspective, therefore, the question "Can there be too much power to fight terrorism?" is poorly formulated. The right question to ask is: can there be too much **arbitrary exec**utive **action** in the United States' armed struggle with al Qaeda, potentially **wasting** scarce **resources** that could be more usefully deployed in another way? And the answer to this second question is **obviously "yes."**

### 2AC – Debt Ceiling

#### We access the economy better – Africa is key because of resources

#### Won’t pass

Sherman and Bresnahan 9/18/13 (Jake and John, Politico, "Shutdown sparring a warm-up for debt fight," http://dyn.politico.com/printstory.cfm?uuid=73BF536B-7628-4040-BF19-E247BD75BDC9)

Asked to explain how the debt ceiling will get resolved, House Republican aides say that Obama’s refusal to negotiate on the debt ceiling is “untenable.”¶ They might be right. Senate Democratic leadership isn’t even sure Obama’s position that there must be a clean debt ceiling bill can pass Reid’s chamber.¶ “I am hopeful that our Republican colleagues who have stepped up to the plate in the past, mainstream Republican colleagues, will realize this is playing with fire,” Sen. Chuck Schumer (D-N.Y.) said Wednesday when asked about the prospect of passing a clean debt ceiling. “But you can never underestimate the power of the hard right in the Republican Party these days.”¶ The Republican plan on the debt ceiling is skewed so far to the right that it’s likely to get little — if any — Democratic support. Boehner and his top lieutenants will have to come up with 217 GOP votes for their opening offer.¶ The plan appears designed for that. Just look at the conservative favorites in the mix for a debt ceiling package: construction of the Keystone XL pipeline, where Obama has demonstrated over the past few years he won’t get pushed around; tax reform, where Republicans refuse to increase revenue and Democrats refuse revenue neutrality; and a one-year delay of Obamacare, which the White House has flatly rejected.¶ If Boehner fails to get to 217 on what GOP aides call his “kitchen sink approach” to the debt ceiling hike, he will have to start over and seek Democratic backing. If successful, the battle shifts across the Capitol.¶ At that point, Reid and Senate Democratic leaders would face a difficult choice: Do they ignore the House GOP bill and raise the specter of catastrophic default on the $16.7 trillion U.S. debt? Or do they try to amend the bill, which means dealing with another round of votes on Obamacare and fiscal reform. Top Senate Democrats say they haven’t yet made up their minds about how to handle that.¶ And like the CR, Reid will need some Republicans to get any debt ceiling bill out of the Senate in the face of a likely Republican filibuster.¶ “I think it’s 50-50 on a government shutdown, but I can see a path how we avoid it,” said a senior Democratic aide. “It’s worse, maybe way worse, on the debt ceiling. And I don’t see any path there right now.”

#### Economic decline doesn’t cause war

Tir 10 [Jaroslav Tir - Ph.D. in Political Science, University of Illinois at Urbana-Champaign and is an Associate Professor in the Department of International Affairs at the University of Georgia, “Territorial Diversion: Diversionary Theory of War and Territorial Conflict”, The Journal of Politics, 2010, Volume 72: 413-425)]

Empirical support for the economic growth rate is much weaker. The finding that poor economic performance is associated with a higher likelihood of territorial conflict initiation is significant only in Models 3–4.14 The weak results are not altogether surprising given the findings from prior literature. In accordance with the insignificant relationships of Models 1–2 and 5–6, Ostrom and Job (1986), for example, note that the likelihood that a U.S. President will use force is uncertain, as the bad economy might create incentives both to divert the public’s attention with a foreign adventure and to focus on solving the economic problem, thus reducing the inclination to act abroad. Similarly, Fordham (1998a, 1998b), DeRouen (1995), and Gowa (1998) find no relation between a poor economy and U.S. use of force. Furthermore, Leeds and Davis (1997) conclude that the conflict-initiating behavior of 18 industrialized democracies is unrelated to economic conditions as do Pickering and Kisangani (2005) and Russett and Oneal (2001) in global studies. In contrast and more in line with my findings of a significant relationship (in Models 3–4), Hess and Orphanides (1995), for example, argue that economic recessions are linked with forceful action by an incumbent U.S. president. Furthermore, Fordham’s (2002) revision of Gowa’s (1998) analysis shows some effect of a bad economy and DeRouen and Peake (2002) report that U.S. use of force diverts the public’s attention from a poor economy. Among cross-national studies, Oneal and Russett (1997) report that slow growth increases the incidence of militarized disputes, as does Russett (1990)—but only for the United States; slow growth does not affect the behavior of other countries. Kisangani and Pickering (2007) report some significant associations, but they are sensitive to model specification, while Tir and Jasinski (2008) find a clearer link between economic underperformance and increased attacks on domestic ethnic minorities. While none of these works has focused on territorial diversions, my own inconsistent findings for economic growth fit well with the mixed results reported in the literature.15 Hypothesis 1 thus receives strong support via the unpopularity variable but only weak support via the economic growth variable. These results suggest that embattled leaders are much more likely to respond with territorial diversions to direct signs of their unpopularity (e.g., strikes, protests, riots) than to general background conditions such as economic malaise. Presumably, protesters can be distracted via territorial diversions while fixing the economy would take a more concerted and prolonged policy effort. Bad economic conditions seem to motivate only the most serious, fatal territorial confrontations. This implies that leaders may be reserving the most high-profile and risky diversions for the times when they are the most desperate, that is when their power is threatened both by signs of discontent with their rule and by more systemic problems plaguing the country (i.e., an underperforming economy).

#### Case outweighs –

#### You’ve read the link the wrong way – Obama wouldn’t get any blame for the plan – the court would rule against Obama in a case so congress would know he was against it

#### Courts shield

Whittington 5 (Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592)

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.

[CONTINUES]

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Plan’s announced in June

Ward 10 (Jake, “Bilski Decision Tomorrow (Thursday, June 17th)? Maybe?”, Anticipate This! (Patent and Trademark Law Blog), 6-17, http://anticipatethis.wordpress.com/2010/06/16/bilski-decision-tomorrow-thursday-june-17th-maybe/)

In mid-May until the end of June, the Supreme Court of the United States (SCOTUS) releases orders and opinions.  SCOTUS has yet to issue a number of decisions this term, however, and it is rapidly moving toward summer recess.  Most notable from a patent law perspective is that the decision in [Bilski v. Kappos](http://anticipatethis.wordpress.com/?s=bilski), which was argued in November 2009, has yet to be decided.

#### No link – Obama isn’t going to push actions that *limit* his powers

#### McConnell primary challenge will prevent a deal

Stephanie Kirchgaessner 9/20, Financial Times, “Challenge to McConnell stymies deal on budget,” http://www.ft.com/cms/s/0/d2bb4f8c-21fd-11e3-9b55-00144feab7de.html#axzz2fUCcoopO

More significantly for the US economy and global markets, Mr McConnell’s political problems will make it more difficult for the White House to reach a deal to extend the nation’s debt limit. If no deal is reached by mid to late-October, it could lead to the first US debt default.¶ The high stakes were made clear on Friday when the Republican majority in the House of Representatives passed 230-189 a spending bill that would keep the government running until mid-December with one caveat: it would defund portions of the health reform law known as “Obamacare”.¶ The vote creates an impasse with no clear sign of a resolution given Democratic opposition to the defunding effort. Without a deal, the government will shut down on October 1.¶ The House proposal will be taken up next week by Democrats in the Senate, who are expected to send it back to the lower chamber after stripping out the defunding language. What happens next is unknown, and the uncertainty bodes badly for a separate fight over the debt ceiling increase. Conservative Republicans have said they will pass an increase only if it contains a one-year delay in a key provision of Obamacare. President Barack Obama has said he will not negotiate over the debt ceiling.¶ It is just the kind of quagmire that Mr McConnell has helped to defuse in the past.¶ The senator has never been an ally of Mr Obama. But his ultimately pragmatic nature, which reflects nearly three decades in the upper chamber of Congress, has made him an invaluable negotiating partner over the years.¶ It was Mr McConnell who clinched the deal with vice-president Joe Biden at the end of 2012 to avert the “fiscal cliff”. A year earlier, he was the senator who proposed the use of an arcane procedural mechanism to increase the debt ceiling without forcing Republicans to vote for it.¶ However, even as the lawmaker has touted his role in those deals and emphasised the important concessions he won on taxes and spending limits, he is nevertheless seen by conservative activists as a sellout.¶ “There is a conflict between his rhetoric and reality. He wants people to re-elect him because he has this power and the title, but he is not using it in a way that benefits them. These deals are very unpopular,” said Matt Hoskins, executive director of the Senate Conservatives Fund.¶ Now that the Kentucky lawmaker is engaged in a primary race against the largely unknown Matt Bevin – in which any co-operation with the White House will count against him among voters – it has put him “on the bench” for this round of fiscal fight.¶ “There was always a sense with McConnell of averting disaster. But you know now his focus is in Kentucky, not necessarily in pulling the Congress back from the brink the way he has in the last two big fights,” said Chris Krueger, an analyst at Guggenheim Securities.¶ Jennifer Duffy, of the Cook Political Report, added: “While McConnell may be inclined to be a dealmaker, I think getting a challenge from the right doessn’t give him a lot of incentive to be the dealmaker.”

#### No link – the plan is a form of stealth overruling that avoids public scrutiny

Friedman 10 (Barry, Prof of Law @ NYU, "The Wages of Stealth Overruling (With Particular

Attention to Miranda v. Arizona), http://georgetownlawjournal.org/files/pdf/99-1/Friedman.pdf)

There is one quite persuasive—perhaps even obvious—explanation that remains for why Justices engage in stealth overruling: avoiding the publicity¶ attendant explicit overruling.185Although public opinion is not often given as a¶ basis for the Court’s decisions, it has played a role with regard to stare decisis.¶ As we have seen, part of the concern about overruling in constitutional cases is¶ the way the public will perceive the decision, especially if it appears fueled by¶ little else but a membership change on the Court.186 This point was poignantly¶ made in Planned Parenthood of Southeastern Pennsylvania v. Casey.¶ 187 The¶ joint opinion of Justices Kennedy, O’Connor, and Souter dwelt in somewhat¶ agonized terms with the crisis of legitimacy the Court would experience if it¶ overruled Roe; they concluded that a “terrible price would be paid for overruling.”188 Although the analysis was somewhat muddled, the conclusion was¶ almost certainly correct. Casey was a case of extremely high salience, and the¶ Justices had seen ample evidence of the uproar that would attend a decision to¶ overrule Roe v. Wade.¶ 185. See Peters,supra note 8, at 1090 (noting public scrutiny provides an “incentive for the Court to¶ overrule precedents it believes to be wrong without being seen to do so”).¶ 186. See supra note 142 and accompanying text.¶ 187. 505 U.S. 833 (1992).¶ 188. Id. at 864; see also Moragne v. States Marine Lines, Inc., 398 U.S. 375, 403 (1970) (favoring¶ respect for precedent given “the necessity of maintaining public faith in the judiciary as a source of¶ impersonal and reasoned judgments”).

#### Multiple controversial decisions coming now - docket proves

Wakefield 9/16/13 (Mike, "Supreme Court Preview: Three Cases to Watch Next Term," http://redalertpolitics.com/2013/09/16/supreme-court-preview-three-cases-to-watch-next-term/)

The Supreme Court’s upcoming term will not feature the same blockbuster, hyper-political issues like same-sex marriage or the Voting Rights Act, but Americans should be aware of several important cases on the docket for oral arguments beginning in October. Here are three cases particularly likely to make news and have significant political implications.¶ 1) National Labor Relations Board v. Canning¶ The Supreme Court is set to rule on the constitutionality of President Barack Obama’s controversial recess appointments to the National Labor Relations Board without Senate confirmation. To date, three federal appellate courts have already held that Obama’s appointments were unconstitutional.¶ You may recall that President Obama’s questionable NLRB appointments were part of his administration’s “We can’t wait” call-to-action back in 2011, in which Obama announced that he intended to do as much as possible without Congress’s approval using executive orders or other means. The Supreme Court is likely to hand Obama an embarrassing rebuke for his impatience, potentially invalidating every action undertaken by the NLRB during the time it had unconfirmed members.¶ 2) Schuette v. Coalition to Defend Affirmative Action¶ Schuette is another college affirmative action case, but with a bizarre twist — the Court is being asked to decide whether the Constitution sometimes might actually require racial discrimination. We previously reported this case as the “worst case of the year.”¶ The case was raised in response to a successful Michigan initiative amending the state’s constitution to prohibit the use of preferential treatment in college admissions and public hiring. The Sixth Circuit Court of Appeals ruled that under the circumstances, the state constitutional amendment requiring equal treatment was prohibited by the U.S. Constitution.¶ Presumably recalling the text of the Fourteenth Amendment, which requires “equal protection under the law,” a dissenting judge on the Sixth Circuit concluded that “a State does not deny equal treatment by mandating it.” Expect the Supreme Court, which in the past has been blunt in its denunciations of truly discriminatory “anti-discrimination” policies, to wholeheartedly agree.¶ 3) McCutcheon v. Federal Election Commission¶ In this campaign finance case, an Alabama resident and the Republican National Committee have asked the Court to strike down the current aggregated political contribution limits as unconstitutional under the First Amendment’s protection of political speech.¶ Currently, individuals may contribute no more than $2,600 per election to a candidate and no more than $32,400 per year to a national political committee like the RNC. However, individuals are also limited by aggregate contribution limits. For example, no individual may donate more than $48,600 to candidates or more than $74,600 to anything else during a two-year election period. That means someone can give the maximum legal contribution of $2,600 to 18 different candidates but not to 19 or more. The Justices may now overturn that somewhat arbitrary limit.¶ Last time the Court issued a significant campaign finance decision, liberals howled about the “end of democracy,” and President Obama took the unprecedented step of publicly scolding the Justices, right to their faces, at his nationally televised State of the Union address. Be on the look out for similarly dramatic hyperbole in the lead up to the decision.

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### He won’t spend PC – Obama pledged he wouldn’t negotiate.

#### Fights now already effect markets – means it’s non-unique

#### Tea Party will hold debt ceiling hostage inevitably – enough to trigger the impact

#### Failure to raise the debt ceiling won't destroy the economy

Boring 9/19/13 (Perianne, Economics Contributor @ Forbes, "Don't Believe The Hysterics, The Federal Government Will NOT Shut Down If The Debt Ceiling Isn't Raised," http://www.forbes.com/sites/perianneboring/2013/09/19/dont-believe-the-hysterics-the-federal-government-will-not-shut-down-if-the-debt-ceiling-isnt-raised/)

Congress is debating a debt ceiling agreement, and they are playing with the public’s emotions by threatening a government shutdown if lawmakers don’t make moves. But the notion that we have to raise the debt limit or face economic catastrophe is simply not true. In this instance, the Treasury would be faced with the challenge of prioritizing payments. We could still pay the debt, but perhaps less essential programs would be defunded. The Treasury’s extraordinary measures that put the retirement accounts of our servicemen and women in jeopardy show just how stubborn the government is at cleaning out their closets.

# 1AR

### Case Turns DA

#### Terror Massively turns the DA

Perry 6 (William J., Professor – Stanford University and Senior Fellow – Spogli Institute for International Studies, Annals of the American Academy of Political and Social Science, September, p. 86)

Of course, terrorists setting off a nuclear bomb on U.S. soil would not be equivalent to the nuclear holocaust threatened during the cold war. But it would be the single worst catastrophe this country has ever suffered. Just one bomb could result in more than one hundred thousand deaths, and there could be more than one attack. The direct economic losses from the blast would be hundreds of billions of dollars, but the indirect economic impact would be even greater, as worldwide financial markets would collapse in a way that would make the market setback after 9/11 seem mild. And the social and political effects are incalculable, especially if the weapon were detonated in Washington or Moscow or London, crippling the government of that nation.

### Courts Thumper

#### Controversial rulings now

The Economist 13

[“Moderately legitimate”, 6/27/13, <http://www.economist.com/blogs/democracyinamerica/2013/06/supreme-courts-term-review>]

In recent years, the charge of judicial activism has been heard from the left in complaints about the Citizens United decision. It was a trope a year ago from the right when the court upheld the constitutionality of Obamacare on grounds some thought were judicially invented. This season, liberals are unhappy with the court’s decision to ignore the huge margin by which Congress voted to reauthorise the VRA in 2006. Adam B at the Daily Kos writes that the “conservative activist Supreme Court” erred by brushing off the 15,000 pages of evidence establishing discriminatory practices in jurisdictions covered by Section 4. (Matt Berreto shares more evidence of voting discrimination that Chief Justice Roberts willfully ignored.) At the same time, conservatives call the DOMA ruling a “judicial activist opinion which will create disorder and confusion.” Justice Scalia is being mocked on Comedy Central for overturning a law he doesn’t like (the VRA) and upholding one he does (DOMA). But liberals could just as easily be called to account for their inverted views: had the court issued a more sweeping ruling in Hollingsworth and recognised a fundamental, nationwide right to marriage equality, few on the left would have complained about activist intrusions on the rights of Alabamans to define marriage more traditionally. It would be very hard to find someone who is happy with every decision the court has issued this term. This fact alone lends legitimacy to the Supreme Court as an institution and eases the “counter-majoritarian difficulty” diagnosed by Mr Bickel. Several patterns in the court’s 78 opinions this year give it an air of moderation. First, while there were many 5-4 splits (23% of the total), a surprising proportion of decisions—43 percent—were unanimous. So the Roberts court is often cohesive, but it is not ideologically monolithic the way, say, the Warren court was. While it leans conservative and is undoubtedly pro-business (witness the two cases sharply limiting the rights of employees to sue their employers for sexual harassment or retaliation), the Roberts court splits differences and tends to rule on narrow grounds in hot-button cases. Second, this year's court has splintered in unpredictable ways over some sensitive issues: in the Native American adoption case, liberal stalwart Justice Breyer joined the conservatives in the majority and Justice Scalia sided with the liberals in dissent. Justice Scalia is a favorite whipping boy of the left, but he received kudos from the editorial board of the New York Times for opposing Arizona's proof of citizenship law in Arizona v. Inter Tribal Council of Arizona.

# 2AR

### 2AR Arctic War

#### Arctic war outweighs – Talmadge evidence says countries are going to the Arctic now – it’s great on this question – says a new cold war is coming because global warming means we open up those spaces. The need for policing increases which gets other countries involved.

#### Leads to aggression – the US doesn’t have capability and will respond with miscalc – even if they don’t we’ll have to develop it.

#### De-escalation of conflict prevents wars from going nuclear – allied NATO countries will otherwise descend on the region – leads to nuclear war between those states even if they win conventional Russia defense. We’ll inevitably fight for self-interest.

#### Outweighs the case on magnitude – prefer specific conflict scenarios to over-arching claims because we have specific evidence on the conflict.

#### Decline doesn’t turn it – resources are INEVITABLY going to be fought over – we’re the only scenario where countries turn outward.

## Terror

We win because the relative risk of the short term terror impact will outweigh the disad – we’re winning substantial defensive takeouts to their arguments

### Terror 2AR

Short term risk of terror outweighs all of their impacts – you can only die once and there’s no risk of them accessing solvency or turns for terrorist attacks in the short term

attacks are coming now that’s the Hathaway evidence – there’s been little response to the opportunism internal link –

even if they win that there is a low risk of terrorist acquisition of WMDs

 they have the motivation and Aspen and Hathaway both conclude that they will take any opportunity – that means it ONLY TAKES ONCE – even a nonnuclear attack caused retaliation our aspen (Hathaway) evidence says that while a first strike wouldn’t do much damage to the US the retaliation would be *catastrophic* and the united states would try to literally bomb the hell out of terrorist camps all across the globe

We have several conceded internal links – they’ve only gone for detention isn’t key to the narrative but our Spaulding evidence says that detention has propped up the martyrdom theory – and they’ve conceded

Resource trade off

Allied cooperation

Counterterrorism efforts

## Venezuela

## Politics

### A2: econ impact

They can’t access their economy impact absent the plan economic instability is inevitable because they have conceded the Weafer evidence this indicates that declining oil prices will collapse the US economy the oil scenario is explicitly extended by the 1ar – he doesn’t highlight this impact but that’s the crux of the argument – we’re not going for it as offense but it means econ decline is inevitable – don’t buy their timeframe distinctions on this argument economic collapse in October is no worse than economic collapse in December – we’re winning that inevitably it’s going to decline - particularly given that we are winning a substantial risk that the disad never occurs – prefer the risk calculation of the aff and give no weight to the impact given that we

HEG

#### No link – the plan is a form of stealth overruling that avoids public scrutiny

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### Uniqueness O/W

#### Uniqueness overwhelms the link

#### They haven’t answered that the current battle is within the republican party itself – all of their evidence says that NO MATTER WHAT, we will agree – it’s every decade that the other party threatens the ceiling or budget – that means it is inevitable.