# 1AC Round 1 – Kentucky

### 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.

#### Extinction – tech and poor response mechanisms

Nathan Myhrvold '13, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

Several powerful trends have aligned to profoundly change the way that the world works. Technology now allows stateless groups to organize, recruit, and fund themselves in an unprecedented fashion. That, coupled with the extreme difficulty of finding and punishing a stateless group, means that stateless groups are positioned to be lead players on the world stage. They may act on their own, or they may act as proxies for nation-states that wish to duck responsibility. Either way, stateless groups are forces to be reckoned with. At the same time, a different set of technology trends means that small numbers of people can obtain incredibly lethal power. Now, for the first time in human history, a small group can be as lethal as the largest superpower. Such a group could execute an attack that could kill millions of people. It is technically feasible for such a group to kill billions of people, to end modern civilization—perhaps even to drive the human race to extinction. Our defense establishment was shaped over decades to address what was, for a long time, the only strategic threat our nation faced: Soviet or Chinese missiles. More recently, it has started retooling to address tactical terror attacks like those launched on the morning of 9/11, but the reform process is incomplete and inconsistent. A real defense will require rebuilding our military and intelligence capabilities from the ground up. Yet, so far, strategic terrorism has received relatively little attention in defense agencies, and the efforts that have been launched to combat this existential threat seem fragmented. History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by repeatedly attacking us or hectoring us for decades.

#### 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.

### Plan

####  The United States federal judiciary should affirm the United States District Court for the Southern District of New York's ruling against the indefinite detention provisions of the National Defense Authorization Act.

### Venezuela 1AC

#### 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, 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.

**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.

#### The Forrest decision is key

RT 12 ("Supreme Court asked to strike down NDAA's indefinite detention clause," http://rt.com/usa/supreme-court-ndaa-indefinite-016/)

The US Supreme Court has been asked to step in and make sure the military cannot detain US citizens indefinitely without charge or trial as guaranteed in this year’s National Defense Authorization Act, or NDAA.¶ Attorneys representing the plaintiffs in the case of Hedges, et al. v. Obama filed an emergency motion with the Supreme Court on Wednesday asking the top justices in the United States to stop a White House-ordered stay that ensures US citizens can be locked up without due process [pdf].¶ Under a provision of the 2012 NDAA, the US government can indefinitely imprison any person suspected of terrorist activity without ever requiring them to be brought to trial. In September, US District Judge Katherine Forrest granted a permanent injunction against that part of the annual defense bill, Section 1021, essentially barring the White House from using the law. In response, US President Barack Obama asked the Second Circuit Court to intervene, and they did so by placing a stay on Judge Forrest’s injunction. On Wednesday, the plaintiffs urged the Supreme Court take action and eliminate the appellate decision.¶ “The effect of the Second Circuit stay is to place the plaintiffs in this action and many United States civilians and citizens in actual and imminent danger of losing their core First Amendment rights and fundamental Equal Protection liberties. The stay actually upends the status quo that has been in place for most of our nation’s history: that the military cannot detain civilians,” the plaintiffs argue.¶ Additionally, the plaintiffs argue that the stay ensures that any US citizen is now fair game to be imprisoned indefinitely in military jails “for the first time since the internment of Japanese-Americans during World War II.”¶ Attorneys Carl Mayer and Bruce Afran have filed their request insisting the Supreme Court vacates the Second Circuit’s stay with Associate Justice Ruth Joan Bader Ginsburg, who can at any time now make a ruling that will reinstate the original injunction against Sec. 1021 or disregard the plaintiffs’ plea.¶ Mr. Mayer previously told RT that he is fully prepared to present his arguments before the Supreme Court and suggested the Obama administration is likely to lose that battle.¶ “I think they are ill advised to appeal this at all,” he told RT. “The Obama administration has now lost three times. They lost the temporary injunction, they lost the motion for reconsideration and they lost the hearing for permanent injunction. I say three strikes and you’re out.”¶ Speaking of Pres. Obama, Mayer added, “He knows as a former constitutional law professor that this is wholly unconstitutional.”¶ Mayer and Afran are asking for the Supreme Court to vacate the Second Circuit’s stay because the plaintiffs say the president’s argument that Judge Forrest’s injunction intrudes upon the executive power to detain Americans under the Authorization for the Use of Military Force (AUMF) is incorrect.¶ “No court in the long history of litigation under the AUMF,” write the plaintiffs, has agreed that that legislation allows for the indefinite detention of persons who’ve “substantially supported” terrorists, as outlined in the NDAA. On the president’s part, however, he argues that the injunction impedes that ability; the plaintiffs say he simply doesn’t have that power.¶ But because the language in the 2012 NDAA is so vague, warns Mayer, the White House could make anything possible.¶ “If any journalist or activist is seen as reporting or offering opinions about groups that could somehow be linked not just to al-Qaeda but to any opponent of the United States or even opponents of our allies,” he told RT they could be imprisoned.¶ “The decision to vigorously fight Forrest’s ruling is a further example of the Obama White House’s steady and relentless assault against civil liberties, an assault that is more severe than that carried out by George W. Bush,” plaintiff Chris Hedges wrote earlier this year.

#### Supreme court action is key to end indefinite detention and affirm the court’s duty and independence

Martin 13 (Ronald, Contributor @ Tenth Amendment Center, "Indefinite Detention is Patently Unconstitutional," http://tenthamendmentcenter.com/2013/06/27/indefinite-detention-is-patently-unconstitutional/#.Uhj8TJLqnoI)

In January 2012, New York Times Pulitzer Prize winning reporter Christopher Hedges filed a federal lawsuit against President Obama, challenging detention provisions in the National Defense Authorization Act (NDAA) of Fiscal Year 2012.¶ The Act authorized $662 billion in funding, “for defense of the United States and it’s interests abroad.” Central to Hedges’ suit, a controversial provision set forth in subsection 1021 of Title X, Sub-title (d) entitled “Counter-Terrorism,” authorizing indefinite military detention of individuals the government suspects are involved in terrorism, including U.S. citizens arrested on American soil.¶ Over the last two years, a broad coalition including the Tenth Amendment Center, the American Civil Liberties Union, the Bill of Rights Defense Committee, and many others formed in opposition to indefinite detention provisions, concerned with over-broad language open to wide interpretation and the growing scope of presidential authority. In support of Hedges, many of these individuals and organizations joined together as an Amicus Curiae, otherwise known as a Friend of the Court. The coalition filed an Amicus Brief supporting Hedges’ interpretation of the controversial issues abounding in Hedges v. Obama. The Amicus Curiae states, “Each entity is dedicated, inter alia (among other things), to the correct construction, interpretation, and application of the law.”¶ For those not familiar with an Amicus Brief, it is a document filed with a court by a person or group not directly involved in the case. The brief often contains information useful to a judge when evaluating the merits of a case and it becomes part of the official record. In addition to filing a brief, Amicus Curiae can involve itself in a case in many ways. It can contribute academic evaluations of subject matters, it can testify in a case, and on rare cases it can help contribute to oral arguments. Many times, state and local governments also join a case as a “Friend” if they believe it will impact them. This happened in Hedges v. Obama. A large number of concerned individuals and advocacy organizations enjoined the case as Amicus Curiae.¶ The Amicus Brief of this case commences by focusing on the ambiguity of the language in section 1021 of the 2012 NDAA.¶ “Rarely has a short statute been subject to more radically different interpretations than Section 1021 of the NDAA of 2012.”¶ The “Friends” contend the verbiage offers diametrically opposite meanings.¶ ”The Framers would be greatly shocked to hear the United States assert that an American President has power to place civilians in the U.S. or citizens abroad into military custody absent status as armed combatants. No President has ever held such power.”¶ As the Amicus Curiae implies, the language of this law is dangerously vague. Many believe the provisions of Section 1021 grant dictatorial powers to the federal government to arrest any American citizen without a warrant and indefinitely detain them without charge. Detainees can be shipped to the military’s offshore prisons and kept there until “the end of hostilities.”¶ Section 1021 defines a “covered person” as “one subject to detention” and “a person who was part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities against the United States or it’s coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” However, the law does not define “substantially supported” or “associated forces,” leaving those nebulous terms open to interpretation.¶ The White House and Senate sponsors maintain the Authorization for Use of Military Force (AUMF) previously granted presidential authority for indefinite detention. In their Appellant Brief, the Department of Justice contends that the NDAA does no more than “explicitly reaffirm…the President’s detention authority under AUMF,” a Congressional Joint Resolution passed Sept. 14, 2001.¶ In response to this claim, the plaintiffs’ Coalition rebuts, “If the Government’s theory was true, then the U.S. Senate spent weeks debating and enacting, and the U.S. Department of Justice has worked mightily to uphold a meaningless and unnecessary statute.”¶ The Amicus Curiae addresses a second issue.¶ “The Legislative History of the NDAA Reveals a Gap between the Clear Purpose and the Ambiguous Statutory Language. The NDAA detention provisions, and one amendment which was adopted creating subsection (e), were not drafted in haste. Rather, the legislative history suggests another reason for the stark difference of statutory interpretation.”¶ This section continues, contrasting the original Senate bill (S. 1253) that included limiting language excluding the ability of the government to detain citizens of the United States under the act and the final version of the NDAA. This limiting language was deleted in a substitute bill (S. 1867), by Senator Carl Levin (D-MI). The record shows that this limiting language was removed at the request of the president in order to keep the law consistent with the AUMF of 2001.¶ This fact stands in stark contrast to public statements made by Pres. Obama on the detention issue, including his signing statement.¶ “I want to clarify, that my Administration will not authorize the indefinite detention without trial of American citizens…My Administration will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”¶ However in May 2012, Judge Katherine Forrest, (an Obama-appointed judge) ruled part of section 1021 unconstitutional.¶ “The plaintiffs do have standing, and that section 1021 is facially unconstitutional.”¶ In her ruling, Forrest asserted that the provision denies First and Fifth Amendment rights, and she granted a temporary restraining order against Section 1021 of the NDAA. The government responded by requesting that the judge reverse her ruling, claiming the plaintiffs did not have standing to bring the case against the government because they had yet to be indefinitely detained. And the administration argued that even if Mr. Hedges and the other plaintiffs did have standing, they were the only seven American citizens covered by the temporary restraining order.¶ In spite of the administration’s arguments, Judge Forrest returned a clarifying order, making it abundantly clear, without any equivocation, that the temporary restraining order applied to ALL American citizens. According to the judge, the government cannot indefinitely detain any American citizen without access to due process.¶ In September 2012, Judge Forrest issued a permanent injunction against indefinite detention of American citizens, but the Obama administration appealed and was granted a stay pending that appeal.¶ The next consequential argument forwarded in the Amicus Brief is that the 2001 AUMF is not a Constitutional Declaration of War.¶ “The Government misunderstands the Constitution which was written for a time of war, as well as a time of peace. There is only one provision in the Constitution which can be suspended in wartime conditions: the writ of habeus corpus, and that suspension requires an act of Congress. U.S. Constitution, Article I, Section 9. And there is only one wartime exception, that being the right to a Grand Jury indictment as set forth in the Fifth Amendment. The war power does not trump the rights and protections of the people in any other instances.”¶ “The Government’s sole support in attempt to sweep aside the Constitution’s Bill of Rights, is the Congressional declaration of war against the Imperial Department of Japan in World War II (Govt. Br., p.47), which the Government claims to have been: -stated in broadest terms, with no precise descriptions of who may be the subject of force (including detention) or under what circumstances, and without any express carve-outs for arguably protected speech. This pattern holds for every authorization for the use of military force in our nation’s history-including the AUMF.’”¶ Rather than offering support for the Government’s claim, the differences between the 2001 and 1941 declarations undermine it.¶ In contrast the AUMF provides: “that the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned,authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” [Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001)§ 2(a)¶ The first and most obvious difference between the two resolutions is that the U.S. actually declared war against Japan. Even though the Government argues the Constitution “imposes no constraints on how the declaration should be worded, Congress has never been at a loss for words when declaring war from 1812 to 1941.'”¶ Secondly, the 1941 declaration “authorizes and directs” the President to take action, while the 2001 AUMF merely leaves it to the President’s discretion to “determine” the force necessary.¶ “In 1941, Congress instructed the President to use all of the nation’s military force and government resources to carry on war against a clearly identified enemy, while the 2001 AUMF empowered the President to identify the enemy."¶ Lastly, the 1941 declaration specified a time when the president’s authority ended, when the war was successfully terminated, while the AUMF set no definite time for the president’s power to cease. In the wake of 9/11, Congressman Ron Paul implored Congress to address the war declaration issue, but found little interest in the constitutional process.¶ “As the Apellees have demonstrated, the Constitution does not confer upon the President or upon Congress any power to subject civilians to detention by the military as AUMF and Section 1021 (b)(2) do, even if the nation is at war.”¶ Access to habeus corpus is “not a satisfactory remedy to the burden of military detention” for a citizen who is suspected of “substantially supporting a force associated with any enemy, al-Qaeda, the Taliban, or otherwise.” Not only is habeas relief unsatisfactory, imposing upon an American citizen the burden of seeking habeas relief to escape from military detention is constitutionally impermissible under the Treason Clause of Article III, Section 3. In Federalist No. 43, James Madison asserted that the Treason Clause must be understood as one of the enumerated powers of the federal government, placing severe limits on the legislative power not only to define the elements of treason, but to preclude Congress from evading the constitutional definition of treason by "new-fangled and artificial” definitions.¶ Lastly, the Amicus Brief discusses the judicial branch's duty to address constitutional issues in the case asserted by many states.¶ After the enactment of the NDAA of 2012, many state and local officials expressed opposition to the constitutional violations perceived in Section 1021. State legislators and local officials have taken different approaches in battling this unconstitutional overreach. Some states have passed non-binding resolutions, while others like Virginia and Alaska have enacted laws nullifying Section 1021 by “barring any state agency or political subdivision or employee or National Guard from knowingly aiding an agency of the armed forces of the United States in the unlawful NDAA detention of any citizen…”¶ “These efforts do not break new ground, they build on lessons learned since the beginning of the Republic. When the federal government breeches the bounds of its authority, the nation’s sovereign states can be expected to respond to protect the liberties of the people.” As Chief Justice John Marshall observed, "vesting such power in the courts requires a judge to look into the Constitution, examining it’s text to determine whether actions of the two other branches conform to the written instrument." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178-79 (1803).¶ “In this case, the executive branch is arguing on behalf of the legislative branch that the judicial branch may not even look into the Constitution to determine if Section 1021 (b) (2) violates First and Fifth Amendments. As Chief Justice John Marshall responded in Marbury, the Government’s claim is too extravagant to be maintained.”¶ The appeals process continues and the case is expected to ultimately be heard by the Supreme Court. If the Plaintiff and it’s coalition are correct, then the district court’s conclusion that, “Section 1021(b)(2), and its companion subsections (d) and (e), differ materially from AUMF, creating a reasonable and objective fear of detention , and should be affirmed” as Unconstitutional.

# 2AC

## 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.

#### Not an alt cause – our evidence indicates that overturning indefinite detention is SUFFICIENT to solve the aff – its seen as changing the deference trend – that’s Martin and Reinhardt and it’s the key internal to hearts and minds - spaulding

#### 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.

#### Drone arms race inevitable

USA Today 13

(1/9, http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/, “Experts: Drones basis for new global arms race”, AB)

The success of U.S. drones in Iraq and Afghanistan has triggered a global arms race, raising concerns the remotely piloted aircraft could fall into unfriendly hands, military experts say. The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress. Iran and China are among the countries that have fielded their own systems. "People have seen the successes we've had," said Lt. Gen. Larry James, the Air Force's deputy chief of staff for intelligence, surveillance and reconnaissance. The U.S. military has used drones extensively in Afghanistan, primarily to watch over enemy targets. Armed drones have been used to target terrorist leaders with missiles that are fired from miles away.

#### No drone shift link---numbers don’t line up

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

## 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

#### Correlational studies prove - US judicial independence is modeled globally

Goldbach, Brake and Katzenstein 13 (Toby, Benjamin, and Peter, Doctor of the Science of Law (J.S.D.) at Cornell University Law School and was the Rudolf B. Schlesinger Research Fellow for 2011-2012 + foreign affairs officer at the U.S. Department of State, Walter S. Carpenter, Jr. Professor of International Studies at Cornell University, "The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating," 20 Ind. J. Global Leg. Stud. 141, lexis)

The transplanting of foreign laws by some countries, however, reveals a transplant bias, whereby importing state actors operate with an unthinking receptivity to foreign law because of social conditions such as the general prestige, linguistic accessibility, and the training and experience of local lawyers. n39 Many of these factors have helped the transnational movement of U.S. law. Academic writers typically are most susceptible to the sway of grand foreign theories, whereas those following legal precedents are sometimes more resistant. Judges borrowing foreign rules will carefully weigh the pros and cons, while academics are more likely to be swept away by the logic of an elegant or innovative argument. n40 Economic factors can also play an important role. Economic efficiency has proven to be a powerful engine driving the process of transplanting law in legal domains such as competition and estate law. n41¶ The process of transplanting law emphasizes domestic differences, especially between adversarial common law systems and their inquisitorial civil law counterparts. As David Sklansky observed, "if scholars of comparative law agree on anything, it is the hazards of legal [\*151] transplants," most especially between civil and common-law systems. n42 Thus, the origin of a transplanted rule is one condition that can affect the process of legal transplanting. In general, transplants occur more readily within, rather than across, legal families. n43 The institutionalization of different legal cultures accounts for the persistence of legal families over time. n44 The closer states' legal systems are in terms of cost structure and constitutive rules, the more likely those states are to look to each other for legal innovations. n45 For example, though they lack an analysis of causal mechanisms specifying how transplants occur, correlational studies have shown a persistent relationship between legal family and observable phenomena such as financial development, n46 government ownership of banks, n47 burden of entry regulations, n48 incidence of military conscription, n49 government [\*152] ownership of the media, n50 formalism of judicial procedures, n51 and judicial independence. n52

#### Second- We will always be engaged- isolationist tendencies come and go, its just a question of doing more effective interventions to prevent drawn out violence- Iraq proves- That’s kagan

And the transition goes nuclear

 Posen and Ross 97

[Barry Posen, Professor of Political Science in the Defense and Arms Control Studies Program at MIT, Andrew Ross, Professor of National Security Studies at the Naval War College, International Security, Winter 1997]

The United States can, more easily than most, go it alone. Yet we do not find the arguments of the neo-isolationists compelling. Their strategy serves U.S. interests only if they are narrowly construed. First, though the neo-isolationists have a strong case in their argument that the United States is currently quite secure, disengagement is unlikely to make the United States more secure, and would probably make it less secure. The disappearance of the United States from the world stage would likely precipitate a good deal of competition abroad for security. Without a U.S. presence, aspiring regional hegemons would see more opportunities. States formerly defended by the United States would have to look to their own military power; local arms competitions are to be expected. Proliferation of nuclear weapons would intensify if the U.S. nuclear guarantee were withdrawn. Some states would seek weapons of mass destruction because they were simply unable to compete conventionally with their neighbors. This new flurry of competitive behavior would probably energize many hypothesized immediate causes of war, including preemptive motives, preventive motives, economic motives, and the propensity for miscalculation**. There would** like **be more war. W**eapons of **m**ass **d**estruction **might be used in** some of **the wars**, with unpleasant effects even for those not directly involved.

### 2AC

**Oil prices not key to economy— inflation**

**Kelly 11** — writer for Reuters (Lidia, May 19, 2011, “Russia's economy struggles for sustainable growth” http://in.reuters.com/article/2011/05/18/idINIndia-57105920110518)

Russia's economy is struggling to attain sustainable growth despite the surge in prices for its oil exports, data showed on Wednesday, pointing to another tough decision on official interest rates later this month. Industry output grew at its slowest rate in 18 months in April, while producer prices rose more than forecast and weekly consumer inflation, stuck at 0.1 percent, underlines the conflicting pressures on the central bank. Pledging to keep full-year inflation below 7.5 percent ahead of presidential elections in March 2012, the central bank is expected to continue tightening monetary policy -- but a sluggish economy will complicate its decision-making on how to control prices and manage rouble appreciation driven by high oil prices. Investors have been scrutinising data for clues on the central bank's move after the regulator unexpectedly raised all key rates last month, including the benchmark refinancing rate. The latest data, including Monday's figures showing gross domestic product growing a weaker than expected 4.1 percent year-on-year despite surging oil prices, suggests that emerging Europe's largest economy is struggling. "**We would have expected that given the high oil prices something of this would transfer to the real economy**, but the big story is inflation, which is eating into the real income of consumers," said David Oxley, an emerging markets economist at Capital Economics in London.

**Low prices have no impact- leads to diversification which prevents collapse**

**Kommersant 06**

 [Russia’s Daily Online New Source, “Low Oil Prices May Push Up Russia’s Economy,” 7/16/2006, [http://www.kommersant.com/p705040/r\_500/Low\_Oil\_Prices\_May\_Push\_Up\_Russia’s\_Economy/](http://www.kommersant.com/p705040/r_500/Low_Oil_Prices_May_Push_Up_Russia%27s_Economy/)]

The OPEC Reference Basket has fallen below $60 per barrel, for the first time over the last five months, closing at $59.08 at the New York exchange yesterday. However, futures for Light Sweet grew. Analysts explain it, saying that stags decided to buy more contracts at attractive low prices. Experts note that a new drop is the start of a long-term trend of a decline in oil prices. Russian authorities have already given their predictions of how Russia’s economy will be affected by lower oil prices. The Central Bank’s head Sergey Ignatyev said that Russia would not suffer even if oil falls below $25-30 per barrel. Independent experts are of a different opinion, though. With a Urals barrel at $80 a Russian oil company has after-tax net profit of $36.3 billion annually. If Urals decline to $30, the net profit will plummet to $7.8 billion. Yet, a fall in natural resources prices may give a positive impulse to the Russian economy. “Certainly, if the natural resources industry slows down, other sectors may speed up as the Central Bank will no longer have to strengthen the ruble to trend down inflation,” Evgeny Nadoshin at the Trast bank said. “This is what Russian business has long been asking for.” A sharp drop in oil prices may force the Russian government to reinvigorate reforms and diversify economy, which will boost Russia’s economy. Even if authorities prefer a passive stance and keep on increasing budget expenses ahead of presidential election, Russia’s gold reserves and stabilization fund will help the economy to slow down as smoothly as possible.

**-- Russian economy resilient – and impact is empirically denied**

**Post Magazine 8** (3-31, Lexis)

In late 1998 Russia's economy suffered a major downturn that saw its financial markets collapse. As a result of world commodity prices sinking, Russia's slick black oil and gas-driven economy turned into a red sea of disasters - and the insurance market followed suit in a crash of its own. But, slowly, Russia began to rebuild itself. And like any country depending on exports, the win-lose battle suddenly started to improve. With oil prices skyrocketing to a new all-time high of close to $105 (£52.6) per barrel this month, it seems likely the country will stay in the black. "It is impossible to think of any event that might cause a similar fall in country's insurance market," says Nikolay Galushin, deputy chief executive officer for corporate development of Ingosstrakh, one of the country's largest domestic insurance companies.

## Off Case

### Amendment CP – 2AC

#### Perm --- do the counterplan --- functionally mandates the plan

#### Perm --- do both --- solves the link

Denning 2 (Brannon P, Assistant Professor of Law – Southern Illinois University School of Law; John R. Vile, Chair of Political Science – Middle Tennessee State University; November, 77 Tul. L. Rev. 247, Lexis)

The Article V process is, as the Framers intended, rigorous. The supermajority provisions for both proposal and ratification almost always guarantee that additions will not be made to the Constitution without both deep and broad support. Though some have criticized the necessity of such supermajorities, 127 holding additions to the Constitution in abeyance until it is clear that support is broad generally prevents populous regions from dominating less populous ones. This, in turn, allows the amendment to become part of the Constitution with a near-conclusive presumption of legitimacy. This legitimacy, then, helps free the other branches (courts, for example) to enforce it vigorously; indeed, such enforcement would likely be expected after an amendment makes it through Article V's arduous process. And if, after popular expectations were raised through the debates over proposal and ratification, the amendment is not enforced, institutions responsible for the foot-dragging may again face costs for evasion. This legitimization element is so crucial that the examples Strauss cites of amendments that, he argues, did not do anything immediately (the Reconstruction Amendments) or are not likely to have a significant effect despite their eventual ratification (the Twenty-Seventh Amendment), 128 could be cited as proof of what [\*279] happens when attempts are made to short-circuit (or play games with) Article V's procedural requirements. 129

#### Multi-actor fiat is a voter – it makes it impossible for us to find literature and destroys predictability because you can combine any variety of actors – they don’t even take a stance on which actors which is uniquely abusive

#### Perm --- do the CP, then plan --- means its just enforcement

#### No solvency --- delay

Duggin 5 (Sarah, Professor of Law – Catholic University of America, and Mary Collins, Law Clerk, Boston University Law Review, February, 85 B.U.L. Rev. 53, Lexis)

The process of amending the Constitution is often a lengthy one – the Twenty-seventh Amendment was adopted more than two hundred years after it was first proposed. 513 Recent Congresses have generally provided self-executing, seven-year sunset provisions in the resolutions proposing constitutional amendments, 514 but even an amendment on the fast track is likely to take several years to become part of the Constitution. Preparations for Presidential elections begin long before the actual events, and the threat of a national crisis is all too immediate. Congress should take interim measures to decrease the impact of the uncertainty created by the natural born citizenship proviso over the eligibility of Congressional leaders and cabinet members to assume the office of Acting President.

#### Amendment counterplans are a reason to reject the team –

#### they detract from topic-specific education because they force us to focus on the process instead of whether or not the plan is a good idea – winning the CP doesn’t disprove the aff and creates a focus on stale issues and steals Aff ground by doing all of the plan which makes it difficult to generate offense

#### Amendments obviously can’t solve judicial independence – it’d be seen as the court being deferential on detention issues – that’s Reinhardt and Martin

#### And it uniquely collapses judicial independence

ABA 97 (Report of the ABA Commission on Separation of Powers and Judicial Independence,

http://www.abanet.org/govaffairs/judiciary/r6a.html)

Congress has shown the judiciary less deference than in the past, in the course of overseeing and reforming the courts' jurisdiction, practice, procedure, administration, and budget. Judges, on the other hand, have not always responded constructively to such initiatives, sometimes accusing Congress of "micromanaging" the courts or of threatening judicial independence. That, in turn, has served only to deepen Congress' resolve to look at the courts even more closely, which may ultimately inure to the detriment of the courts' institutional independence. The third problem is related to the first two: if Congress and the courts do not cooperate in a constructive and restrained manner, public confidence in the judiciary will be adversely affected. When judges are publicly accused of committing impeachable offenses or engaging in illegitimate criminal coddling or "activist" decision-making, it diminishes public faith in the judicial system as a whole. Although targeted, rational criticism can result in improvements, the increasingly contentious relationship between courts and Congress and the atmosphere of skepticism that has begun to work its way into congressional oversight of the judiciary, manifests shrinking confidence in the judiciary's capacity or willingness to regulate itself, and further fuels public disenchantment with the courts. Public support for the judicial system is currently at its lowest point in recent memory. If confidence in the courts is not restored, real threats to judicial independence are sure to follow. In a representative democracy, the judiciary will remain independent only as long as the people trust it to be so. When the public loses faith in its judges, threats to judicial independence, in the form of amendments to Article III of the Constitution, are a logical next step.

#### Counterplan fails – timeframe

Strauss 01

[David, Harry N. Wyatt Professor of Law, The University of Chicago, The Irrelevance Of Constitutional Amendments, 2001 The Harvard Law Review Association, L/N]

These arguments presuppose that amending the Constitution - and, by implication, failing to amend the Constitution - is a significant event. If this supposition is true, a formal, textual amendment might legitimately be read back into other provisions of the Constitution to produce a result that would not be warranted without the formal amendment. n24 But if the amendments carry no special significance - if they are not the principal means (or even an important means) by which the People change our constitutional order - then these interpretive approaches lose their foundation. It may be correct to interpret the Fourteenth Amendment to forbid gender discrimination, and the movement toward greater equality for women, including women's suffrage, may be a legitimate reason to interpret the Fourteenth Amendment this way. But the fact that women's suffrage was formally recognized by the Nineteenth Amendment - instead of coming about through, for example, state legislation or judicial interpretation - should not carry great weight. One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or **declarations of national holidays**. If they bring about change, they do so because of their **symbolic value**, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutional change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they **do not require that the ground be prepared so thoroughly**, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place. Whatever one thinks of these broader speculations, however, they certainly do not entail a general skepticism about whether political activity matters at all. On the contrary, legislation and judicial decisions - as well as activity in the private realm that may not even be explicitly political - can accumulate to bring about fundamental and lasting changes that are then, sometimes, ratified in a textual amendment. Sustained political and nonpolitical activity of that kind is precisely what does bring about changes of constitutional magnitude. My claim is that such changes seldom come about, in a mature democracy, as the result of a formal amendment adopted by a supermajority.

#### 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.

#### Amendments on War powers not enforced – explicit judiciary action key

Griffin 11

[Stephen, Rutledge C. Clement, Jr. Professor in Constitutional Law, Tulane Law School, The National Security Constitution and the Bush Administration, The Yale Law Journal Online March 25, 2011, L/N]

In previous work, I have advanced the concept of the "legalized Constitution," which is essentially identical to Eskridge and Ferejohn's definition of the "Large 'C'" Constitution. n16 In the legalized Constitution, constitutional change occurs through formal amendments and judicial decisions. It is well known, however, that some parts of the Constitution, especially those having to do with foreign affairs and war powers, are enforced either irregularly by the judiciary or not at all. n17 This creates a space for a [\*371] "nonlegalized" but "Large 'C'" Constitution. Although it is not clear, Eskridge and Ferejohn imply that the judiciary enforces (or underenforces) all parts of the Constitution. n18 By contrast, I regard constitutional norms with respect to the initiation of war (the Declare War Clause of Article I, Section 8) as determinate but not enforced by the judiciary. Thus, I am not proceeding under the assumption that clauses with respect to war and foreign affairs are "underenforced." Rather, in crucial respects they are not enforced at all, thus leaving a clear field for de facto constitutional change through executive action. The theoretical task is to describe and explain how this occurs. The parts of the nonlegalized Constitution relevant to presidential power, such as the Commander-in-Chief Clause of Article II, are nonetheless supreme law even if they are not enforced by the judiciary. Presidents can wield, and have wielded, such clauses with enormous impact in contests for power both inside and outside the Executive Branch. The crucial point of distinction between Eskridge and Ferejohn's theory and my own is that these existing nonlegalized "Large 'C'" constitutional powers can and have been used by presidents to leverage significant constitutional change. The distinction between the parts of the "Large 'C'" Constitution that have been legalized by the judiciary and those that have not cuts across the theories offered by Eskridge and Ferejohn and those offered by Ackerman. These theories are similar in that they posit a process, alternative to that specified in Article V, to account for important changes that have kept the constitutional order up to date. But suppose a President uses "Large 'C'" but nonlegalized powers to transform the constitutional order? Eskridge and Ferejohn's model, in which non-Article V, nonjudicial changes are made through statutory and administrative channels, does not appear to allow for this possibility. By contrast, in the postwar era presidential power in foreign affairs expanded primarily through "Large 'C'" constitutional means. President Truman's decision to use his Article II Commander-in-Chief power unilaterally to involve U.S. armed forces in the Korean War is a classic example. n19

#### Judicial deference erodes the rule of law and constitutional rights – turns democracy

Masur 5 -- Law clerk to the Honorable Richard A. Posner, Seventh Circuit Court of Appeals, Chicago, IL; J.D., magna cum laude, Harvard Law School, 2003 (Johnathan, 5/3/2005, "A Hard Look or a Blind Eye: Administrative Law and Military Deference," Hastings Law Journal 56, SSRN)

In awarding deference on these grounds, the judiciary has ignored the operation of the Constitution and laws as **contemporaneous structural constraints on executive military action**. The President and the military hold **only the authority vested in them by the Constitution or by law**. Action outside of those legal boundaries is by definition unconstitutional and unauthorized. Similarly, the Bill of Rights enshrines individual freedoms that executive action, even if otherwise lawful, cannot infringe. Moreover, many cases implicating national security turn on issues of individual statutory and constitutional rights—such as the lawfulness of detention or free speech rights such as access to information—that form the archetypal bailiwick of civilian tribunals. Thus, even in wartime circumstances there is often constitutional and statutory law to apply, law to which courts must hold the Executive and the legislature. As courts have nearly unanimously recognized, **it is emphatically the province of the judiciary to vindicate the rule of law by demanding that government bodies remain within circumscribed boundaries.** It is in this respect that administrative law can usefully inform the adjudication of wartime cases. Administrative law jurisprudence developed to address the particular problems presented by executive branch agencies possessing tremendous institutional expertise and resources and specially empowered by Congress to manage technically difficult subject matter. So-called “military” cases come to Article III courts within precisely the same jurisprudential framework as civilian administrative ones: courts must determine the degree to which they should defer to the legal or factual allegations of an expert, empowered executive branch organization. Despite the obvious considerations favoring substantial administrative deference, the Supreme Court’s modern administrative law jurisprudence stands for the principle that adherence to the rule of law demands that courts meaningfully scrutinize administrative determinations of fact. The Court has recognized that enforcement of a legal stricture is toothless without a concomitant inquiry into that stricture’s factual predicate. It has therefore insisted upon “substantial evidence” in support of agency judgments before affirming them and required courts to perform “rationality review” of agency policy decisions to ensure that agencies have considered all available alternatives and reached logical conclusions from available information. The rule-of-law principles that motivate judicial scrutiny of administrative determinations compel similar treatment for the claims of fact proffered by the military in the interest of surmounting constitutional restraints. The reasons that courts advance in defense of their acquiescence in wartime circumstances are logically unconvincing. The military matters that have come before the judiciary are neither more judicially inscrutable nor more legally intractable than the administrative issues upon which hard look and substantial evidence review were founded. If military cases present greater national dangers— a question that can hardly be answered accurately without judicial review in the first instance—than their civilian counterparts, they also threaten **more dramatic erosions of civil and constitutional rights**. Courts cannot continue to invoke “national security” as a shibboleth absolving them from their responsibility, exemplified within the principles of administrative law, to examine especially those actions taken by broadly empowered, highly experienced executive bodies. On September 22, 2004, almost three years after Yaser Esam Hamdi was taken into custody by American forces in Afghanistan, and nearly three months after the Supreme Court had ruled that he could not be held indefinitely without some nature of adjudicative process, the United States Department of Justice decided that Hamdi’s “intelligence value had been exhausted” and agreed to release him, provided he never again set foot in the United States.321 Nineteen days later, Hamdi was placed on a flight bound for Saudi Arabia.322 What justification the United States military believed it possessed for holding Hamdi may never be known; one can only presume that it would not have withstood even the limited scrutiny the Supreme Court had prescribed. Hamdi’s release completed the military’s circular narrative: it was the executive branch that chose to incarcerate Hamdi; it was the executive branch that unilaterally chose to release him; and it appears that the executive branch never ceased believing that it alone held the authority to make these decisions. Yaser Hamdi, José Padilla, and all American citizens bearing constitutional rights are entitled to a government that operates by law and logic, **not** by **executive fiat**. Courts must act to vindicate the rule of law if such a government is to persevere.

#### Fiat abuse --- amending requires multi-actor fiat --- not reciprocal, destroys predictability --- voting issue

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

Our Constitution is extraordinarily difficult to amend. Article V of the Constitution provides two routes, but both both require large supermajorities. First, Congress may propose amendments by a two-thirds vote of both houses. Second, the legislatures of two-thirds of the states may request that Congress call a constitutional convention. Amendments proposed by either route become valid only when ratified by three-fourths of the states. Once an amendment clears these hurdles into the Constitution, it is equally difficult to remove. The amendment that imposed Prohibition is the only one in our history ever to be repealed. The Constitution thus remains a remarkably pristine document. More than 11,000 amendments have been proposed, but only 33 have received the necessary congressional supermajorities and only 27 have been ratified by the states. Half of these amendments were enacted under extraordinary circumstances.

#### Turn --- amendments crush public confidence --- tanks Constitutional credibility

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall. (“Constitutional Amendments” – American Prospect) http://www.albionmonitor.com/1-12-96/amendmentitis.html)

For there are strong structural reasons for amending the Constitution only reluctantly and as a last resort. This strong presumption against constitutional amendment has been bedrock in our constitutional history, and there is no good reason for overturning it now. Proponents of the current wave of amendments suggest that it simply represents the appropriate product of a mobilized citizenry exercising popular sovereignty. We the People created the Constitution and, they imply, We the People are free to rewrite it as We please. Amendment advocates could, if they wished, cite Thomas Jefferson in their cause. Jefferson wrote in an 1816 letter, "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment." But, he urged, one should not "believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs." As Jefferson had put it years earlier in a letter to James Madison, "I hold that a little rebellion now and then is a good thing." Constitutional idolatry, of course, is not an attractive organizing principle. But Jefferson's position lost out in our constitutional history for good reasons that do not depend on fetishizing the Constitution or treating it as mystically sacred. Stability is a key virtue of a Constitution 1. Stability. James Madison, one of the principal architects of Article V, disagreed with Jefferson. In Madison's view, "a little rebellion now and then" is to be avoided. To be sure, Madison acknowledged in Federalist No. 43 that "useful alterations will be suggested by experience," and that amending the Constitution must not be made so difficult as to "perpetuate its discovered faults." But Madison cautioned too "against that extreme facility" of constitutional amendment "which would render the Constitution too mutable." Implicit in this caution is the view that stability is a key virtue of a Constitution, and that excessive "mutability" would thus undercut the whole point of having a Constitution in the first place. As Chief Justice John Marshall put the point similarly in McCulloch v. Maryland, the Constitution is "intended to endure for ages to come." Keeping amendment relatively infrequent thus preserves public confidence in the stability of the basic constitutional structure.  While the Framers had to take the argument from stability on faith, the argument looks stronger two centuries later. The relative success of the American constitutional regime, one bloody civil war excepted, supports arguments along the lines of "if it ain't broke don't fix it." Our spare Constitution has withstood the test of time. Anyone with a Burkean trust in the collective wisdom embodied in custom and tradition ought to be wary of a sudden shift to rapid constitutional revision.  Prohibition, the only modern amendment to enact a social policy, is also the only modern amendment to have been repealed.

#### Nuclear war

Hemesath 00 (Paul A., Georgetown Law Journal, August, 88 Geo. L.J. 2473, Lexis)

In the case of an offensive nuclear attack, the importance of a coherent and legitimate decision cannot be overestimated. Even with the force of a congressional declaration of war, Harry Truman still faced critics that questioned the sagacity of his atomic decision in World War II. 183 Although the wisdom of any nuclear use may always remain open to criticism, the legality of such a decision should be beyond reproach. As previously noted, the potentially "unlimited costs" of a nuclear war are extremely difficult to fathom, both physically and politically. 184 A legitimate decision to utilize a nuclear weapon thus requires a high level of legality and consensus--two qualities that cannot be attained with a Congress plausibly asserting the nonexistence of the Executive's very constitutional authority to carry out the act.   Finding a resolution to nuclear war powers uncertainty is not an obvious endeavor. However, the harms associated with an unprepared and contentious "on-the-fly" decisionmaking process are serious enough to demand a principled solution based on the Constitution and not on improvised convenience. To reach such a solution, Congress must cohere in an attempt to draft an unambiguous War Powers Act and proceed to pursue remedies in the courts well in advance of a nuclear crisis. In return, the courts must either deign to decide the issue on its merits, or provide a definitive jurisdictional holding upon which the courts and the President may come to rely.

#### There’s no solvency advocate for amending about indefinite detention --- voting issues --- it means we have no literature to answer, makes counterplan mechanisms unpredictable, and divorces debate from real-world issues – also just means there’s no CP solvency

#### CP spurs future amendments --- undermines rule of law

Sullivan 95 (Kathleen M., Professor of Constitutional Law, Stanford Law School, and author of the influential Sullivan & Gunther Constitutional Law Casebook, Fall, “Constitutional Amendments”, American Prospect, http://www.albionmonitor.com/1-12-96/amendmentitis.html)

2. The Rule of Law. The very idea of a constitution turns on the separation of the legal and the political realms. The Constitution sets up the framework of government. It also sets forth a few fundamental political ideals (equality, representation, individual liberties) that place limits on how far any short-term majority may go. This is our higher law. All the rest is left to politics. Those who lose in the short run of ordinary politics obey the winners out of respect for the long-run rules and boundaries set forth in the Constitution. Without such respect for the constitutional framework, the peaceful operation of ordinary politics would degenerate into fractious war. Frequent constitutional amendment can be expected to undermine this respect by breaking down the boundary between law and politics. The more you amend the Constitution, the more it seems like ordinary legislation. And the more the Constitution is cluttered up with specific regulatory directives, the less it looks like a fundamental charter of government. Picture the Ten Commandments with a few parking regulations thrown in. This is why opponents of new amendments often argue that they would tend to trivialize or politicize the Constitution. They trivialize it in the sense that they clutter it up and diminish its fundamentality. Consider the experience of the state constitutions. Most state constitutions are amendable by simple majority, including by popular initiative and referendum. While the federal Constitution has been amended only 27 times in over 200 years, the fifty state constitutions have had a total of nearly 6,000 amendments added to them. They have thus taken on what Marshall called in McCulloch "the prolixity of a legal code" -- a vice he praised the federal Constitution for avoiding. Many of these state constitutional amendments are products of pure interest-group politics. State constitutions thus are difficult to distinguish from general state legislation, and they water down the notion of fundamental rights in the process: The California constitution, for example, protects not only the right to speak but also the right to fish. Amendments politicize a constitution to the extent that they embed in it a controversial substantive choice. Here the experience of Prohibition is instructive: The only modern amendment to enact a social policy into the Constitution, it is also the only modern amendment to have been repealed. Amendments that embody a specific and controversial social or economic policy allow one generation to tie the hands of another, entrenching approaches that ought to be revisable in the crucible of ordinary politics.

#### Extinction

Sadat 4 (Henry H. Oberschelp Professor of Law, “An American Vision for Global Justice” Sept 7, <http://www.google.com/search?q=importance+of+supreme+court+legitimacy+poverty&num=20&hl=en&hs=277&lr=&client=firefox-a&rls=org.mozilla:en-US:official&start=20&sa=N>)

Bringing the rule of law back into American thinking about foreign policy will take time. But it is inevitable. Without rules, human civilization cannot survive; without rules, there is no true freedom. Law is, of course, only one element of foreign policy, but it is a powerful one. By appealing to principle, we can better persuade. By acquiring legitimacy, our actions take on a new authority. By delivering justice, we win hearts and minds. From Thomas Jefferson to Warren Christopher, the tradition of the lawyer statesman persists. The challenge ahead is formidable – it is hard to live in a global age. But we can take comfort in the words of Jean Monnet, one of the most passionate advocates of a United States of Europe after the war, and one of the chief architects of the European Community – although I should, in all fairness, disclose that he was a cognac merchant, not a lawyer! Monnet was never discouraged in his efforts to create the European Economic Community, and he later wrote in his memoirs, “Resistance is proportional to the scale of the change one seeks to bring about. It is even the surest sign that change is on the way. . . To abandon a project because it meets too many obstacles is often a grave mistake: the obstacles themselves provide the friction to make movement possible.”

#### Amendments destroy SOP

Schaffner 5 (Joan, Associate Professor of Law – George Washington University Law School, “The Federal Marriage Amendment: To Protect the Sanctity of Marriage or Destroy Constitutional Democracy?”, American University Law Review , August, 54 Am. U.L. Rev. 1487, August, Lexis)

 [\*1525] Through amendment, the legislative branch has the power to enact laws that establish societal standards only so long as the laws enacted do not violate the constitutional rights of individuals. 222 The legislature is not empowered to draft laws to enshrine illegitimate prejudices of the majority. Allowing the legislature, with the endorsement of the executive, to amend the Constitution to expressly overrule a decision of the judiciary, which acted consistently with democratic principles by protecting the rights of a minority of the people, destroys the delicate balance of power among the branches.

#### That destroys diplomacy abd denocracy

Ikenberry 1 (G. John, Professor of Geopolitics and Global Justice – Georgetown, “Getting Hegemony Right”, National Interest, Spring, Lexis)

When other major states consider whether to work with the United States or resist it, the fact that it is an open, stable democracy matters. The outside world can see American policymaking at work and can even find opportunities to enter the process and help shape how the overall order operates. Paris, London, Berlin, Moscow, Tokyo and even Beijing-in each of these capitals officials can readily find reasons to conclude that an engagement policy toward the United States will be more effective than balancing against U.S. power. America in large part stumbled into this open, institutionalized order in the 1940s, as it sought to rebuild the postwar world and to counter Soviet communism. In the late 1940s, in a pre-echo of today's situation, the United States was the world's dominant state--constituting 45 percent of world GNP, leading in military power, technology, finance and industry, and brimming with natural resources. But America nonetheless found itself building world order around stable and binding partnerships. Its calling card was its offer of Cold War security protection. But the intensity of political and economic cooperation between the United States and its partners went well beyond what was necessary to counter the Soviet threat. As the historian Geir Lundestad has observed, the expanding American political order in the half century after World War II was in important respects an "empire by invitation."(n5) The remarkable global reach of American postwar hegemony has been at least in part driven by the efforts of European and Asian governments to harness U.S. power, render that power more predictable, and use it to overcome their own regional insecurities. The result has been a vast system of America-centered economic and security partnerships. Even though the United States looks like a wayward power to many around the world today, it nonetheless has an unusual ability to co-opt and reassure. Three elements matter most in making U.S. power more stable, engaged and restrained. First, America's mature political institutions organized around the rule of law have made it a relatively predictable and cooperative hegemon. The pluralistic and regularized way in which U.S. foreign and security policy is made reduces surprises and allows other states to build long-term, mutually beneficial relations. The governmental separation of powers creates a shared decision-making system that opens up the process and reduces the ability of any one leader to make abrupt or aggressive moves toward other states. An active press and competitive party system also provide a service to outside states by generating information about U.S. policy and determining its seriousness of purpose. The messiness of a democracy can, indeed, frustrate American diplomats and confuse foreign observers. But over the long term, democratic institutions produce more consistent and credible policies--policies that do not reflect the capricious and idiosyncratic whims of an autocrat.

#### Fiating states is a voter --- robs our best offense, no solvency advocate exists, and they don’t specify which so we can’t read DAs

#### Nepal models the CP --- they’ve built their independent judiciary around limiting amendments

CJA 3 (Center for Justice and Accountability, Supreme Court Brief, October, http://supreme.lp.findlaw.com/supreme\_court/briefs/03-334/03-334.mer.ami.cja.pdf)

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 (viewed 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

#### Leads to instability

Poudel 1 (Keshab, Ritualistic Respect, The National NewsMagazine, 21(19))

At a time when the country is facing manifold challenges in the field of social and economic transformation, Nepalese politicians and intellectuals are involved in an unending debate on the Constitution of Kingdom of Nepal1990 which has nothing to do with the overall development drive of the country. The Maoist insurgency broke out in 1996 following a decision by the Supreme Court to reinstate the House of Representatives. In the first five years under the new constitution, the country saw only two prime ministers. But after the Supreme Court's decision, Nepal has seen six prime ministers.  "If efforts to amend the constitution are made, the country will be plunged into further chaos," says a political analyst. "As there is a mechanism to internally improve the constitution, touching the constitution is not going to fulfill the interest of any party," he says. After a few years of relative stability and peace, controversies have been arising regularly following the Supreme Court's misinterpretation of constitution in 1995. The decision also paved the way for seemingly   unending political uncertainty as well as chaos and violence. Although the  decision has been accepted by all, it has stripped the prime minister of his  ability to discipline members by dissolving the House of Representatives, which  is a leading cause of today's political instability. The Nepali Congress, which secured an absolute majority in the last election, has seen three prime ministers in its two and half years in  power. When a small misinterpretation by the court can bring such unbearable instability and chaos, amending the constitution would open a Pandora's box. "The constitution must be allowed to evolve and develop," said Taranath Ranabhat, speaker of the House of Representatives, addressing a program organized by the Society for Constitutional and Parliamentary Exercises (SCOPE) on the 11th anniversary of the promulgation of the constitution. "There is no need to go for amendment."

#### The impact is nuclear war --- draws in China, India, and Pakistan

Poudel 2 (Keshab, Looming Uncertainty, The National NewsMagazine, 21(34), 3-8,

http://www.nepalnews.com.np/contents/englishweekly/spotlight/2002/mar/mar08/national2.htm)

Following the September 11 terrorist attacks, however, the United States and western European countries have been expressing solidarity with Nepal. The visit of US Secretary of State Colin Powell and expressions of concern from other western powers over the last three months underscore how the dimensions of violence in Nepal has extended beyond its frontiers. After the government imposed the state of emergency and the Maoist launched deadly assaults in Achham and Salyan districts, western powers have increased their interest in the kingdom. The growing concern expressed by Washington and European powers is understandable, as escalating violence and instability in Nepal could heighten the possibility of external intervention. Such intervention from either of Nepal's two neighbors — India and China — may trigger a direct conflict between the two. Even an indirect conflict between the two Asian powers could prove to be more dangerous than the confrontation between India and Pakistan. Foreign-relations experts say the recent visit of British Foreign Office Minister Ben Bradshaw to Nepal and US Ambassador Michael E. Malinowski trip to Achham and Salyan are clear indicators of Nepal's geo-strategical importance. Another senior US diplomat, A. Peter Burleigh, spoke more candidly about US concerns over the possibility of a prolonged confrontation. "[W]hen situations arise that challenge that positive world order, and which can be addressed by a collective response, it is the responsibility and obligation of all of our countries to come together to restore and preserve the peace," said Ambassador Malinowski in an address to a seminar on South Asian Peace Operations. "Here in Nepal, as we all know, there is no peace. But I do believe that there are lessons for both those of us who live in Nepal and for the international community," he said. Nepal's Position in South Asia Nepal has been ensnared in political instability following the restoration of democracy in 1990. After the Maoist insurgency began in 1996, the kingdom's economic, security and political processes have been thrown into a tangle. According to the Central Bureau of Statistics, Nepal has a length of 885-km (east-west) and a non-uniform mean width of 193-km (north-south). The kingdom shares a frontier of more than 1400 km with China in north and more than 1600 km with India in the east, west and south. The Nepal-India border is open and easy to cross. Although the frontier with China is more or less open, it straddles rugged mountain terrain. It is impossible to build border posts along the border with either country. Therefore, the geographical position of Nepal has been psychologically threatening to both neighbors. "China appears very sensitive towards activities against her in neighboring countries, including Nepal. China's security concern is indicated from [the visits of its] defense minister, senior army officials and home ministry officials from time to time," says Hiranya Lal Shrestha, a foreign relations expert in his article "Nepal-India Relations: Security Issue" published in Policy Study Series by the Institute of Foreign Affairs (November 2000). "At the same time, we cannot overlook the weaknesses of a landlocked state. Indian security perception regards the Himalayas as its sphere of influence. Since 14.9 percent of Nepal's territory lies to the north of the Himalayas, we may have to be divided into two spheres of influence if the northern neighbour also puts forward similar logic concerning its security perception. Nepal, in brief, does not want to remain under anyone's sphere of influence," says Shrestha. Be it the British Raj or independent India, Chinese influence in Nepal has always been a matter of concern to leaders of the south neighbor. In the book, "Life of Brian Houghton Hodgson, the British Resident at the Court of Nepal", William Wilson Hunter mentions how the British government was worried about Nepal's relations with China in 18th century. "But my situation by no means so agreeable as it might be if these barbarians did but know their own good. Instead of which they are insolent and hostile and play off on us, as far as they can dare, the Chinese etiquette and foreign polity. The Celestial Emperor is their idol, and, by the way, whilst I write, the  [Nepalese] sovereign himself is passing by the Residency in all royal pomp to go three miles in order to receive a letter which has just reached Nepal from Pekin. There they go! Fifty chiefs on horseback, royalty and royalty's advisors and on eight elephants and three thousand troops before and behind the cavalcade! They have reached the spot. The Emperor's letter, enclosed in a cylinder covered with brocade, hangs round the neck of a chief; who mounted on a spare elephant, is placed at the head of the cavalcade, and the cortege," writes Hodgson in a letter. This reflected how assertive and powerful the Chinese were in the internal dimensions of Nepalese politics in the 18th century. After independence, Indian leaders have been equally concerned about security issues, considering Nepal and Tibet to be the soft underbelly of their own country's security. "This is altogether more inexplicable when one examines the rapidity with which Nehru reacted to events in Nepal in the mid-fifties, forcefully intervening there to restore the Nepalese monarchy. Nepal and Tibet were both Himalayan kingdoms, both were of vital strategic importance to India, and they were both afflicted, almost simultaneously, whether externally or internally, and yet India and its political leadership reacted differently," writes Indian Foreign Minister Jaswant Singh in his book "Defending India". Referring to India's security, Indian Prime Minister Jawahar Lal Nehru once observed: "Now our interest in the internal conditions of Nepal became still more acute and personal, if I may say so, because of the developments in China and Tibet, to be frank. And regardless, of our feelings about Nepal, we were interested in our country's border. We have had from immemorial time a magnificent frontier, that is to say, the Himalayas are concerned, and they lie on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal and we are not going to tolerate any person coming over that barrier. Therefore, much as we appreciate the independence of Nepal, we cannot risk our own security by anything going wrong in Nepal." For his part, Li Peng, the chairman of China's National People's Congress, openly expressed China's security concerns in Nepal during the visit of Sher Bahadur Deuba in 1998 as a former prime minister. South Asia has three nuclear powers, India, China and Pakistan. Two powers, China and India, are competing for the status of regional power. Any form of direct confrontation between China and India in the south of the Himalayas will have far-reaching consequences.

### 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

#### 8. Court action is critical to ensure rights and prevent executive tyranny

Simpson 13 (Mike Simpson, May 16, writer and teacher on topics related to government and politics, Tutor2u, online learning resource of the year via BETT, the world’s leading educational show, “Revision Update: US / UK Politics: Exemplar Answer: A Bill of Rights?” <http://www.tutor2u.net/blog/index.php/politics/print/revision-update-us-uk-politics-exemplar-answer-a-bill-of-rights>)

The concept of “paper rights” would suggest that rights exist on paper (in a bill of rights) but that they are not enforced in practice. This would suggest that the judiciary need to play an active role in the defence of rights and liberties. The role of an independent judiciary in enforcing the “rule of law” allows them to stand up to the arbitrary exercise of power by executives and legislatures which might see the tyranny of the majority override minority and individual rights. The record of the Supreme Court in this regard might be regarded as inadequate in this regard. The Roberts Court has failed to protect rights as outlined in the Bill of Rights. The composition of the court has a conservative bias. The Bush appointment of Alito was critical in this regard as the departure of Justice O’Connor allowed GW Bush to replace a centrist with a conservative. The above ruling and others such as Florence v Board of Chosen Freeholders 2012 allowing strip searches for any offence contrary to privacy rights established under the fourth amendment; Wal-mart v Dukes 2011 which prevented a case to prove sex discrimination contrary to equal protection 14th amendment rights; and Baze v Rees which allowed lethal injection contrary to 8th amendment rights which prevent “cruel and unusual” punishments. The Supreme Court has not ruled on the constitutionality of the Patriot Act. In Russia, the courts upheld the decision to punish the members of “Pussy Riot” which illustrates the need for a judiciary to be independent in order to enforce a bill of rights.

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

### Deference

### A2: Deference – Syria Thumps

We control the IL

#### 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?

#### No Reason the gov’t would disclose weapons location – they have no internal link here

### State Secrets DA – 2AC

#### 1. State secrets doctrine low now

Bazzle 12 (Tom – J.D., Georgetown University Law Center, 2011, “Shutting the Courthouse Doors: Invoking the State Secrets Privilege to Thwart Judicial Review in the Age of Terror”, 2012, 23 Geo. Mason U. Civ. Rts. L.J. 29, lexis)

The district court's threshold inquiry in resolving the state secrets claim was determining whether the NSA surveillance program that gave rise to the suit actually qualified as a "secret." n74 Because the government had disclosed the existence of the program and AT&T admitted to assisting the government in classified matters when asked, the court concluded that state secrets did not foreclose discovery. n75 While the state secrets privilege did not support pre-discovery dismissal of the case, the court found that there was sufficient ambiguity about the extent of AT&T's involvement in the program, and the contents of any communication records surveyed, so as to permit AT&T to not disclose the extent of its participation in the TSP. n76 The court [\*42] made clear, however, that if information about AT&T's role in supporting the TSP became public during the course of the litigation, the government could no longer invoke state secrets to resist disclosing this information. n77 After rejecting the government's motion to dismiss on state secrets grounds, the court reiterated its constitutional duty to exercise judicial review: But it is important to note that even the state secrets privilege has its limits. While the court recognizes and respects the Executive's constitutional duty to protect the nation from threats, the court also takes seriously its constitutional duty to adjudicate the disputes that come before it. To defer to a blanket assertion of secrecy here would be to abdicate that duty, particularly because the very subject matter of this litigation has been so publicly aired. The compromise between liberty and security remains a difficult one. But dismissing this case at the outset would sacrifice liberty for no apparent enhancement of security. n78 This is a revealing statement by the court. While forcefully asserting its authority to decide the complicated constitutional questions at issue in this case, the court implied that this duty is not absolute, and that the balance between liberty and security may tilt toward security under different facts. Of particular importance, especially with regard to how the government has applied the state secrets privilege to subvert judicial review in the war-on-terror context, is the weight the court conferred to the public airing of the wiretapping program. n79 The court was reluctant to defer to the government's claim of secrecy in this case because the government's own public statements about the existence of the program directly contradicted its state secrets claim. n80 Acknowledging the extensive media coverage of the program, the court insisted that the only relevant public disclosures about the contested government program, at least with respect to measuring a claim [\*43] of government secrecy, are public statements by the government and its implicated private accomplices. n81

#### 2. Fisa thumps

**WSJ 13**  – Wall Street Journal, “The Absent Commander in Chief”, 6/16/13 <http://online.wsj.com/article/SB10001424127887324188604578545233232040760.html>

Even an effort by Mr. Obama to lead from behind would be better than this abdication. The President's mistake seems to be a combination of moral afflatus—how could anyone possibly imagine that he would abuse government power?—and treating the current furor as a law school seminar. The political danger is a lot greater than that. A real and growing risk is that Congress will move in a way that limits the war powers of the Commander in Chief and endangers national security. To take one example, support seems to be growing for Senate legislation from Democrats Ron Wyden and Jeff Merkley of Oregon and Republican Mike Lee of Utah that would require the declassification of certain legal opinions from the oversight court under the Foreign Intelligence Surveillance Act, or FISA. This infringes on executive power because the President has traditionally defined what is secret, especially in times of war.

#### 3. Courts would impose tougher standards – not remove the doctrine

Bazzle 12 (Tom – J.D., Georgetown University Law Center, 2011, “Shutting the Courthouse Doors: Invoking the State Secrets Privilege to Thwart Judicial Review in the Age of Terror”, 2012, 23 Geo. Mason U. Civ. Rts. L.J. 29, lexis)

 [\*65] The most direct approach would be to impose higher standards on agencies seeking to dismiss cases at the pleading stage based on purported state secrets. As the Plaintiffs argued in their certiorari petition for Jeppesen Dataplan, the growing trend for courts to grant pre-discovery dismissal on state-secrets grounds raises significant due process concerns. n218 Others have argued that the judicial decision about whether to examine allegedly privileged materials ex parte and in camera should be controlled by the more demanding "clear and convincing" standard than the deferential "reasonable danger" standard articulated in Reynolds. n219 In Reynolds, the Supreme Court convolutedly framed its "reasonable danger" standard as follows: When the court determines that there is a "reasonable danger that compulsion of the evidence will expose military matters which ... should not be divulged," the court will not "jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers." n220 In other words, if there is a "reasonable danger" that the documents would reveal privileged and injurious information, judges must refrain from examining the documents to determine if in fact the allegedly injurious information actually exists in the documents.

#### 4. No internal link – their evidence distinguishes between military secrets and state secrets – even if the plan overturns the state secrets doctrine, no reason the courts would apply that to military secrets like detentions

#### 5. No spillover – the doctrine will be firmly in place – one case not sufficient

Donohue 10 (Laura – Associate Professor of Law, Georgetown University Law Center, “The Shadow of State Secrets”, 2010, 159 U. Pa. L. Rev. 77, lexis)

Failure to appreciate the extent to which state secrets doctrine now permeates substantive law sidesteps the difficult question of whether the law is what it appears to be. Few people realize by reading tort law that private contractors who possess state secrets are exempted from their duties to behave nonnegligently. Pari passu, employment law, patent law, contract law, environmental law, and criminal law - in these and other areas, private and public actors can bypass the values and goals that animate the law. Evidence from the 2001 to 2009 period suggests that this is done with some regularity, and that the exercise of associated power distorts the course of litigation. Judging by the number of lawsuits that emerged from 2001 to 2009, the use of the state secrets privilege is not going to subside. n720 If anything, new issues, such as the emergence of graymail, will present themselves. Neither the DOJ guidelines, which lack an enforcement mechanism and are narrowly limited to the DOJ's exercise of the state secrets privilege (i.e., not the invocation of the same by the DoD, the [\*216] CIA, or the State Department), nor the statutes currently before Congress have grasped the extent to which the state secrets privilege operates. The reason is because these "solutions" are built on only a partial understanding of the problem - one based narrowly on published judicial opinions ruling on the invocation of the privilege.

#### 6. no link – indefinite detention policy isn’t secret

#### 7. **Secrets don’t actually protect national security – your authors are biased**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

The question is: who should decide which information to reveal or conceal? Or, formulating the question with an eye to institutional design: how should the decision-making process be organized to increase the chances that choices about concealment will be relatively reasonable, rather than whimsical and capricious? Secrecy is a serious problem during national emergencies because disclosure and concealment are both risky, for different reasons and--depending on context-to a different extent. It is also an empirical question, since we are talking about predicting the real-world effects, whether harmful or beneficial, of revealing closely held intelligence. Without delving deeply into this issue, we can say one thing with confidence: a well-designed national-security constitution would not assign the right and responsibility to make the conceal/reveal decision to parties with a reputational stake in the choice. Covert operatives themselves **consistently over-value** the secrets **that inflate their personal feelings of self-importance**. 4 8 They also exaggerate the damage to national security that the release of such secret information would cause. No system for deciding what to conceal and what to reveal, if crafted to supply the defects of human nature, would place unmonitored discretion in the hands of executive-branch officials whose **self- image as custodians of precious secrets might interfere with an objective assessment of the actual consequences** of classification and declassification in any particular case.

**8**. Disclosure protects the executive – prevents false information

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Although some degree of secrecy is vital in conducting the war on terror, resorting to secrecy is **never risk-free** since it inevitably increases the chances that decision makers will be **thrown off track by undetected falsehoods and half-truths**. The problem of secret intelligence provided by informants with hidden agendas, and swallowed gullibly because of a failure to appreciate the limited probative value of hearsay evidence, is a serious one. This subtle form of state capture could be called "the Chalabi effect." 8 1 The government's duty to disclose, whatever the risks, **protects executive officials** not only from their own false certainty but also from deceptions perpetrated by internal factions and foreign intelligence services (if not by terrorist operatives themselves) with interests that do not coincide with America's national-security concerns. That is why the **duty to disclose should not be one-sidedly disparaged as being always and only an obstacle to pragmatic counterterrorism.**

### JI Good

#### Afghanistan models the U.S. judicial system

Perito 4, Professor at Princeton, 04 Professor at Princeton University and Senior Fellow at the United States Institute of Peace [“Establishing the Rule of Law in Afghanistan” <http://www.usip.org/resources/establishing-rule-law-afghanistan>]

Donors other than the “lead nation” should work more proactively with Afghan authorities and Italy to help define and drive a reform strategy for the justice sec- tor and undertake initiatives where they are needed, as the United States has done recently in police training. Though the United States already has significant commitments in other sectors and is already the second largest donor in the justice sector, it also has the most at stake and invested in Afghanistan’s reconstruction and the greatest political influence of any international player in the country, and should not wait for other donors to act in this area. Other donors should also step up for particular aspects of the rule of law portfolio, such as corrections.

#### Afghanistan’s justice system is *inoperable* now – rule of law via judicial review is the key internal link to stability

ICC 10 (International Crisis Group, 17 November, “Reforming Afghanistan’s Broken Judiciary” http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/195-reforming-afghanistans-broken-judiciary.aspx)

Afghanistan’s justice system is in a catastrophic state of disrepair. Despite repeated pledges over the last nine years, the majority of Afghans still have little or no access to judicial institutions. Lack of justice has destabilised the country and judicial institutions have withered to near non-existence. Many courts are inoperable and those that do function are understaffed. Insecurity, lack of proper training and low salaries have driven many judges and prosecutors from their jobs. Those who remain are highly susceptible to corruption. Indeed, there is very little that is systematic about the legal system, and there is little evidence that the Afghan government has the resources or political will to tackle the challenge. The public, consequently, has no confidence in the formal justice sector amid an atmosphere of impunity. A growing majority of Afghans have been forced to accept the rough justice of Taliban and criminal powerbrokers in areas of the country that lie beyond government control. To reverse these trends, the Afghan government and international community must prioritise the rule of law as the primary pillar of a vigorous counter-insurgency strategy that privileges the protection of rights equally alongside the protection of life. Restoration of judicial institutions must be at the front and centre of the strategy aimed at stabilising the country. The Afghan government must do more to ensure that judges, prosecutors and defence attorneys understand enough about the law to ensure its fair application. Reinvigoration of the legal review process and the adoption of a more dynamic, coordinated approach to justice sector reform are critical to changing the system. Justice is at the core of peace in Afghanistan and international engagement must hew to the fundamental goal of restoring the balance of powers in government and confronting governmental abuses, past and present. Urgent action is also needed to realign international assistance to strengthen support for legal education, case management, data collection and legal aid.

#### Instability leads to Middle East war

**The Guardian ‘7** [“Failure in Afghanistan risks rise in terror, says generals” The Guardian July 15 www.guardian.co.uk/uk/2007/jul/15/world.afghanistan]

Britain's most senior generals have issued a blunt warning to Downing Street that the military campaign in Afghanistan is facing a catastrophic failure, a development that could lead to an Islamist government seizing power in neighbouring Pakistan. Amid fears that London and Washington are taking their eye off Afghanistan as they grapple with Iraq, the generals have told Number 10 that the collapse of the government in Afghanistan, headed by Hamid Karzai, would present a grave threat to the security of Britain. Lord Inge, the former chief of the defence staff, highlighted their fears in public last week when he warned of a 'strategic failure' in Afghanistan. The Observer understands that Inge was speaking with the direct authority of the general staff when he made an intervention in a House of Lords debate. 'The situation in Afghanistan is much worse than many people recognise,' Inge told peers. 'We need to face up to that issue, the consequence of strategic failure in Afghanistan and what that would mean for Nato... We need to recognise that the situation - in my view, and I have recently been in Afghanistan - is much, much more serious than people want to recognise.' Inge's remarks reflect the fears of serving generals that the government is so overwhelmed by Iraq that it is in danger of losing sight of the threat of failure in Afghanistan. One source, who is familiar with the fears of the senior officers, told The Observer: 'If you talk privately to the generals they are very very worried. You heard it in Inge's speech. Inge said we are failing and remember Inge speaks for the generals.' Inge made a point in the Lords of endorsing a speech by Lord Ashdown, the former Liberal Democrat leader, who painted a bleak picture during the debate. Ashdown told The Observer that Afghanistan presented a graver threat than Iraq. 'The consequences of failure in Afghanistan are far greater than in Iraq,' he said. 'If we fail in Afghanistan then Pakistan goes down. The security problems for Britain would be massively multiplied. I think you could not then stop a widening regional war that would start off in warlordism but it would become essentially a war in the end between Sunni and Shia right across the Middle East**.**' 'Mao Zedong used to refer to the First and Second World Wars as the European civil wars. You can have a regional civil war. That is what you might begin to see. It will be catastrophic for Nato. The damage done to Nato in Afghanistan would be as great as the damage done to the UN in Bosnia. That could have a severe impact on the Atlantic relationship and maybe even damage the American security guarantee for Europe.'

#### Middle East war goes nuclear

**STEINBACH ‘2** D.C. Iraq Coalition – Centre for Research on Globalisation –

[John, “Israeli Weapons of Mass Destruction: a Threat of Peace,” Global Peace, http://www.globalresearch.ca/articles/STE203A.html]

Meanwhile, the existence of an arsenal of mass destruction in such an unstable region in turn has serious implications for future arms control and disarmament negotiations, and even the threat of nuclear war. Seymour Hersh warns, "Should war break out in the Middle East again,... or should any Arab nation fire missiles against Israel, as the Iraqis did, a nuclear escalation, once unthinkable except as a last resort, would now be a strong probability." and Ezar Weissman, Israel's current President said "The nuclear issue is gaining momentum(and the) next war will not be conventional." Russia and before it the Soviet Union has long been a major(if not the major) target of Israeli nukes. It is widely reported that the principal purpose of Jonathan Pollard's spying for Israel was to furnish satellite images of Soviet targets and other super sensitive data relating to U.S. nuclear targeting strategy. (Since launching its own satellite in 1988, Israel no longer needs U.S. spy secrets.) Israeli nukes aimed at the Russian heartland seriously complicate disarmament and arms control negotiations and, at the very least, the unilateral possession of nuclear weapons by Israel is enormously destabilizing, and dramatically lowers the threshold for their actual use, if not for all out nuclear war. In the words of Mark Gaffney, "... if the familiar pattern(Israel refining its weapons of mass destruction with U.S. complicity) is not reversed soon- for whatever reason- the deepening Middle East conflict could trigger a world conflagration."

### 2AC Court ptx

#### No link – the plan upholds a lower court decision – that’s fundamentally different from a big ruling overturning precedent

#### 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

#### The uniqueness ev you read about the case isn’t at all about the impact – that’s CX

#### 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 – 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.

#### 3. Not intrninsic – the supreme court can rule for the plan and \_\_\_ - key to effective decisionmaking

#### Warming is irreversible

ANI 10 (“IPCC has underestimated climate-change impacts, say scientists”, 3-20, One India, http://news.oneindia.in/2010/03/20/ipcchas-underestimated-climate-change-impacts-sayscientis.html)

According to Charles H. Greene, Cornell professor of Earth and atmospheric science, "Even if all man-made greenhouse gas emissions were stopped tomorrow and carbon-dioxide levels stabilized at today's concentration, by the end of this century, the global average temperature would increase by about 4.3 degrees Fahrenheit, or about 2.4 degrees centigrade above pre-industrial levels, which is significantly above the level which scientists and policy makers agree is a threshold for dangerous climate change." "Of course, greenhouse gas emissions will not stop tomorrow, so the actual temperature increase will likely be significantly larger, resulting in potentially catastrophic impacts to society unless other steps are taken to reduce the Earth's temperature," he added. "Furthermore, while the oceans have slowed the amount of warming we would otherwise have seen for the level of greenhouse gases in the atmosphere, the ocean's thermal inertia will also slow the cooling we experience once we finally reduce our greenhouse gas emissions," he said. This means that the temperature rise we see this century will be largely irreversible for the next thousand years. "Reducing greenhouse gas emissions alone is unlikely to mitigate the risks of dangerous climate change," said Green.

#### 4. Capital not key – judges vote based on ideology for controversies

Feldman 08

[Stephen, Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming, Southern California Interdisciplinary Law Journal, Fall 2008, L/N]

So, did Roberts and Alito lie during their confirmation hearings? n4 Did they duplicitously proclaim dedication to the rule of law while secretly planning to implement their political agendas? While I disagree with the justices' votes in practically every controversial case, Roberts and Alito most likely answered senators' questions sincerely, and the justices have probably applied the rule of law in good faith during their initial terms. But, one might ask, how is this possible when they repeatedly vote for the conservative judicial outcome? Most simply, law and politics are not opposites. Roberts, Alito, and the other justices do not necessarily disregard the law merely because they vote to decide cases con**sistent with their respective political ideologies.** As a general matter, Supreme Court justices can decide legal disputes in accordance with law while simultaneously following their political preferences. [\*18] I elaborate this thesis by critiquing the theories of Judge Richard Posner n5 and Professor Ronald Dworkin, n6 two of the most prominent jurisprudents of this era. Embattled opponents, Posner and Dworkin have, for years, relentlessly attacked each other while developing strikingly different depictions of law and adjudication. n7 Despite their opposition, however, Posner and Dworkin together challenge a primary assumption of traditional jurisprudence - an assumption featured during Roberts's and Alito's Senate confirmation hearings. Most senators, jurists, and legal scholars assume that legal interpretation and judicial decision making can be separated from politics, that a judge or justice who decides according to political ideology skews or corrupts the judicial process. n8 Posner and Dworkin reject this traditional approach, particularly for hard cases at the level of the Supreme Court. Each in his own way asserts and explains the power of politics in adjudication: the justices self-consciously vote and thus decide cases according to their political ideologies. Posner and Dworkin agree that the justices do not, and should not, decide hard cases by applying an ostensibly clear rule of law in a mechanical fashion. The justices must be political in an open and expansive manner. n9 Supreme Court adjudication is, in other words, politics writ large. The conflicts between Posner and Dworkin stem from their distinct views of politics. Posner views politics as a pluralist battle among self-interested individuals and groups. He therefore argues that Supreme Court adjudication, manifesting politics writ large, should (and in fact does) entail a pragmatic focus on consequences. The justices should resolve cases by looking to the future and by aiming to do what is best in both the short and long term. n10 Dworkin, repudiating a pragmatic politics of self-interest, favors instead a politics of principles. Thus, according to Dworkin, the justices should resolve hard cases by applying law as integrity. They should theorize about the political-moral principles that fit the doctrinal history - including [\*19] case precedents and constitutional provisions - and that cast the history in its best moral light. n11 Consequently, although Posner and Dworkin both describe the Supreme Court as a political institution - as engaging in politics writ large - their theories otherwise clash tumultuously. Posner sees an adjudicative politics of interest and unmitigated practicality, while Dworkin sees an adjudicative politics of principles and coherent theory. Unfortunately, both Posner and Dworkin - like Roberts, Alito, and the senators who questioned them - remain stuck within the magnetic field of the traditional law-politics dichotomy. While most jurists, legal scholars, and senators are pulled to the law pole - maintaining that law mandates case results - Posner and Dworkin are pulled to the opposite pole. If politics matter to adjudication, they seem to say, then politics must become the overriding determinant of judicial outcomes. Supreme Court adjudication must be politics writ large. If their view is true, then Supreme Court nominees who declare their fidelity to the rule of law do, in fact, lie: current and future justices decide cases by hewing to their political ideologies, not to legal doctrines and precedents. But in their struggle against the forces of the law-politics dichotomy, Posner and Dworkin overcompensate. They neglect another possibility: namely, that Supreme Court adjudication is politics writ small. As Posner and Dworkin emphasize, the Court is a political institution: the justices' political ideologies always and inevitably influence their votes and decisions. But usually the justices do not self-consciously attempt to impose their politics in an expansive manner. To the contrary, the justices sincerely interpret and apply the law. Yet, because legal interpretation is never mechanical, the justices' political ideologies necessarily shape how they understand the relevant legal texts, whether in constitutional or other cases.

#### 5. No spillover --- there’s no reason \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ would be picked for make-up. The Court would choose another case that requires capital. Even a 50% chance massively reduces the DA.

#### 5. Capital is compartmentalized

Redish 87 (Martin H., Professor of Law – Northwestern University, and Karen L. Drizin, Clerk – Illinois State Supreme Court, New York University Law Review, April, Lexis)

1. The fallacy of the concept of fungible institutional capital. The basis for Dean Choper's suggested judicial abstention on issues of federalism [143](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n143) is the desire "to ease the commendable and crucial task of judicial review in cases of individual consitutional liberties. It is in the latter that the Court's participation is both vitally required and highly provocative." [144](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n144) Judicial efforts in the federalism area, he asserts, "have expended large sums of institutional capital. This is prestige desperately needed elsewhere." [145](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n145) Dean Choper's fundamental assumption, then, is that Supreme Court abstention on issues of constitutional federalism would somehow increase, or at least curtail loss of, limited capital for the more vital area of individual liberty. However, even if one were to concede that judicial review is more fundamental to our constitutional scheme in the area of individual liberty than in matters of federalism, acceptance of Dean Choper's proposal would not necessarily follow. The problem is that it is neither intuitively nor empirically clear that the Court's so-called capital is transferable from one area of constitutional law to another. As one of the current authors has previously argued: It is difficult to imagine . . . that the widespread negative public reactions to Miranda v. Arizona, Engle v. Vitale, or Roe v. Wade would  [\*37]  have been affected at all by the Court's practices on issues of separation of powers and federalism. Rather, public reaction in each seems to have focused on the specific, highly charged issues of rights for criminals, prayer in public schools, and abortions. It is doubtful that the Court would have had an easier time if it had chosen to stay out of interbranch and intersystemic conflicts. [146](http://www.lexis.com/research/retrieve?_m=11c71424f02a19dd3fddea3d6d214ae5&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAb&_md5=29cb5075b93d84858cb8ef752799c5b9&focBudTerms=supreme%20court%20w/35%20political%20capital%20or%20institutional%20capital%20w/35%20strong%20or%20strength%20or%20increas%21%20or%20abundan%21&focBudSel=all#n146)

#### 6. Fiat solves --- normal means is plan’s announced at the same time as the other decision, so it wouldn’t affect capital

#### Schuette decision coming now – it’s controversial

Feder 9/2

[Jody, Legislative Attorney, Banning the Use of Racial Preferences in Higher Education: A Legal Analysis of Schuette v. Coalition to Defend Affirmative Action, 9/2/13, <http://www.fas.org/sgp/crs/misc/R43205.pdf>]

In the more than three decades since the Supreme Court’s ruling in Regents of the University of California v. Bakke affirmed the constitutionality of affirmative action in public colleges and universities, many institutions of higher education have implemented race-conscious admissions programs in order to achieve a racially and ethnically diverse student body or faculty. Nevertheless, the pursuit of diversity in higher education remains controversial, and legal challenges to such admissions programs routinely continue to occur. Currently, the Court is poised to consider a novel question involving affirmative action in higher education during its upcoming 2013-2014 term. Unlike earlier rulings, in which the Court considered whether it is constitutional for a state to use racial preferences in higher education, the new case, Schuette v. Coalition to Defend Affirmative Action, raises the question of whether it is constitutional for a state to ban such preferences in higher education. Schuette arose in the wake of a pair of cases involving admissions to the University of Michigan’s law school and undergraduate programs. Although the Court struck down the undergraduate admissions program, it upheld the law school’s program in a decision that affirmed the constitutionality of the limited use of race-conscious admissions programs in public higher education. In the wake of the University of Michigan cases, opponents of affirmative action in Michigan successfully lobbied for the passage of Proposal 2, which amended the Michigan state constitution to prohibit preferential treatment on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. Opponents of Proposal 2 sued, and a federal appeals court ruled that Proposal 2’s ban on racial preferences in public education violates the equal protection clause of the United States Constitution. This decision was subsequently upheld in a divided ruling by the full court of appeals, sitting en banc, and the Supreme Court will review the case during the upcoming term.

#### 9. Winners win --- plan boosts capital – federalism issues uniquely do so

Little 00 (Laura, Professor of Law – Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, Lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

#### 10. Controversial decisions don’t affect capital – Bush v. Gore proves

Balkin 01

[Jack, Knight Professor of Constitutional Law and the First Amendment, Yale Law School, Bush v. Gore and the Boundary Between Law and Politics, June 2001, L/N]

The Court's legitimacy is often described in terms of its "political capital." n143 The term "political capital" is generally not defined. It is likely that it has many facets. One element of political capital might be the likelihood that people will follow the Court's decisions and treat them as binding law, especially in controversial cases. Yet if the question is merely whether the Court's decisions will be obeyed, it seems clear that its capital was hardly damaged at all. No one doubted for a second that Al Gore would obey the Court's order, or that the Florida Supreme Court would cease the recounts immediately. The Court's ability to command obedience remains largely unaffected by Bush v. Gore. There is little doubt that people will continue to follow the Supreme Court's decisions. Lawyers will continue to cite them, and lower courts and legal officials will continue to apply them as before. Thus, if legitimacy or political capital means only brute [\*1451] acceptance of the Court and its decisions as a going concern, **the Court will not lose any legitimacy as a result of its decision in Bush v. Gore**. If the Court's political capital is judged by whether politicians are well-or ill-disposed toward the Supreme Court, then the Supreme Court may well have increased its political capital in the short term by halting the recounts. n144 After all, there is now a Republican president, and Republicans control both houses of Congress. They are no doubt delighted with the Supreme Court's exercise of judicial review, for it guarantees them a period of one-party rule. As a result, they are probably much more favorably disposed to granting the Justices the pay raise that Chief Justice Rehnquist has been requesting for several years. n145 Judged in raw political terms, the Supreme Court made much more powerful friends than enemies when it decided Bush v. Gore. n146 Nevertheless, legitimacy might mean something more than the two senses of "political capital" that I have just described. When people speak of "legitimacy" - not in a rigorously philosophical sense but in an everyday sense of the word - they are often referring to basic questions of trust and confidence in public officials: Do people believe that public officials are honest and trustworthy, and do they have confidence that public officials will act in the public interest and not for purely partisan or selfish reasons? These forms of legitimacy are crucial to the courts because the courts rely so heavily on the appearance of fairness and reasonableness. To be sure, sometimes people speak of "moral legitimacy" - whether what government officials do is in fact just and fair - and "procedural legitimacy" - whether government officials have employed fair procedures. But often people do not know what government officials are doing - for example, most people do not read judicial opinions - and even then what is actually just and fair is often difficult to determine. So in practice when [\*1452] people speak of a court's "moral legitimacy" or "procedural legitimacy," they may not mean whether courts actually are fair and just but whether people believe that they are fair and just. According to this analysis, moral and procedural legitimacy are elements of trust and confidence in public officials - in this case, trust and confidence that these officials are upright and honest and will do the right thing. Understood in this broader sense, the question of the Court's legitimacy concerns whether people will continue to have faith in the Court as a fair-minded arbiter of constitutional questions, whether they trust the Court, whether they have confidence in its decisions, and whether they believe its decisions are principled and above mere partisan politics. That sort of confidence and trust probably has been shaken, particularly among lawyers and legal academics, but also in portions of the public at large. Even so, the effects of Bush v. Gore on the Court's legitimacy may differ markedly for different populations and social groups. Perhaps trust and confidence have been damaged among Democratic voters - who are a sizeable proportion of the population - and within the legal academy, which tends to be liberal. But in other groups, the evidence of a loss of faith is quite mixed. Republican politicians like Tom DeLay and Trent Lott probably now have renewed confidence in the Court. After Bush v. Gore, they know that they can rely on the Court to do the right thing (in all the different senses of the word "right"). Although liberal legal academics have been badly shaken by the decision, conservative legal academics have come to the Court's defense, and one expects that we will see more spirited endorsements in the future. n147 Finally, most Americans are not privy to the niceties of constitutional argument and so may not be able to judge whether the Court has played fast and loose with the law. Indeed, the polling data do not seem to suggest a sharp drop off in the Court's approval ratings. A Gallup Poll conducted from January 10 to 14, 2001, indicated that 59% of those surveyed approved of how the Court was handling its job while 34% disapproved, only a three percentage point drop from its 62% approval rating in a similar poll taken from August 29 to September 5, 2000, long before the Florida controversy occurred. n148 Make no mistake: Many people are very, very angry at the Supreme Court, and the Court probably has lost their trust and confidence. But these citizens may not constitute a majority [\*1453] of all Americans. Perhaps more importantly, the persons who are currently in power like what the Court is doing just fine. In any case, there is no doubt in my mind that the Supreme Court will eventually regain whatever trust and confidence among the American public that it lost in Bush v. Gore. The Supreme Court has often misbehaved and squandered its political capital foolishly. It has done some very unjust and wicked things in the course of its history, and yet people still continue to respect and admire it. If the Court survived Dred Scott v. Sandford, it can certainly survive this.

#### US credibility is collapsing due to detention policy---plan reverses that

David Welsh 11, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, <http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf>

The Global War on Terror 1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, ithasalsodamaged America’s imageboth at home andabroad. 3 Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. 5 ¶ Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has beenthedetention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

#### No drone shift link---numbers don’t line up

Robert Chesney 11, Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

# 2AR

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120