## 1AC

**1AC – Advantage One**

**Contention One – Terrorism**

**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, 08** (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 securit**y. 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.

**Decentralization of terrorist groups makes them even more dangerous – the risk is spreading**

**Gertz, 6/19/13** – Bill, Senior Editor at the WFB and Washington Times, Fellow at the Hoover Institute at Stanford University, Lecturer on Defense and National Security at Johns Hopkins, “Al Qaeda Terrorist Threat Is Growing”, http://freebeacon.com/al-qaeda-terrorist-threat-is-growing/

**The threat posed by al Qaeda terrorism around the world** **continues to increase** **despite President Barack Obama’s recent claim that the central group behind the Sept. 11, 2001, attacks is on the path to defeat, according to U.S. and foreign counterterrorism officials and private experts.** Obama said in a speech to the National Defense University May 23 that because of the death of al Qaeda leader Osama bin Laden and most of his top aides, “we are safer.” While terrorist threats still exist, “the core of al Qaeda in Pakistan and Afghanistan is on the path to defeat,” the president said. However, **a U.S. counterterrorism official said the threat posed by al Qaeda is growing**. **“From Africa to Pakistan, it is spreading systematically**,” the official said. The official blamed the Obama administration policy of focusing its counterterrorism efforts almost exclusively on central al Qaeda. The focus on Pakistan and Afghanistan resulted in a lack of targeted counterterrorism efforts in other locations, the official said. The official added that counterterrorism efforts have been weakened by the administration’s policy of dissociating Islam from al Qaeda and other Islamist terrorism. The policy was a key effort of John Brennan, White House counterterrorism chief during the first Obama administration. As CIA director, Brennan has expanded the policy of limiting links between Islam and terrorism at the agency. The result is that **Islamist terror groups are flourishing, posing direct threats to the United States and to U.S. interests outside the country, the official said**. **That assessment is bolstered by a new report by the private Lignet intelligence group**. The report made public Tuesday says **the U.S. government’s overreliance on sanctions and surveillance has limited the war on terror. The result is “a decentralized al Qaeda structure—and a much greater threat**,” the report said. **“Al Qaeda has transitioned from a hierarchical cell structure to a franchise organization that is now responsible for four times as many terrorist attacks a year as it was before 9/11**,” the report said. **“Al Qaeda training camps are now being established on the Arabian Peninsula, in Africa, countries of the former Soviet Union, and Southeast Asia**.” U.S. counterterrorism efforts in Southwest Asia, including a steady series of armed drone attacks against al Qaeda leaders, have resulted in central al Qaeda moving out of the region. York Zirke, head of Germany’s federal criminal police agency, told a conference in Russia recently that **al Qaeda and other terrorist groups are shifting operations from Pakistan and Afghanistan to Syria, northern Africa, Yemen, and other countries.** “Speaking about the situation in the world, **it has to be reiterated that al Qaeda and organizations associated with it are not halting their activities, but the centers of its activities have moved from the area close to the Pakistani and Afghani borders to other regions such as Syria, Northern Africa, Mali, and Yemen**,” Zirke said during a conference in Kazan, Russia, on June 6, according to Interfax. **The U.S. official outlined gains by al Qaeda both ideologically and operationally in expanding its reach as well as developing affiliates in key regions targeted by Islamists over the past several months. Al Qaeda has moved rapidly to expand in parts of east, west, and north Africa, helped by the so-called Arab Spring.** A key affiliate, **al Qaeda in the Islamic Maghreb**, known as AQIM, **and the Somalia-based al Shabaab group are the two main groups operating and expanding in Africa. The Nigerian al Qaeda group Boko Haram also emerged as a new affiliate and is posing a significant threat to the region**. About 4,000 French troops were dispatched to Mali in January to battle al Qaeda terrorists. AQIM is expanding despite the French military intervention. A BBC report from May 29 stated that the expansion is not new. “**Militants and armed radical groups have expanded and entrenched their positions throughout the Sahel and Sahara over the last decade under the umbrella of [AQIM].”** French troops announced a day later they had uncovered an AQIM bomb factory engaged in making suicide bomber vests in northern Mali. U.S. intelligence agencies recently identified a new AQIM training base near Timbuktu in Mali. An al Qaeda training manual discovered in Mali revealed that **terrorists are training with SA-7 surface-to-air missiles**, the Associated Press reported. **Al Qaeda affiliates in Libya are moving into the power vacuum left by the ouster of the regime of Muammar Gadhafi**. The main al Qaeda affiliate there is Ansar al Sharia, blamed for the Sept. 11, 2012, attack against the U.S. diplomatic compound in Benghazi that killed four Americans, including Ambassador to Libya Chris Stevens. France’s government recently said Paris has become increasingly alarmed about al Qaeda activities in Libya and is considering a deployment of troops near Libya for counterterrorism operations. French President Francois Hollande said in a speech last month that **Libya-based jihadists represent the main security threat to North Africa and also to Europe**. He told a reporter May 23 that the terrorist threat in Mali “began in Libya and is returning to Libya.” **The concerns are based on recent intelligence reports that al Qaeda and other jihadists groups have new training camps in the southern Libyan desert.** Further east in Africa, **Egypt’s Muslim Brotherhood government is creating an environment that is allowing al Qaeda to develop in that country. A U.S. intelligence official has said reports from Egypt identified al Qaeda groups operating Al-Azhar University in Cairo. The university is said to be a covert base for al Qaeda organizational and training activities that is developing a jihadist network made up of many different nationalities**. Al Shabaab in Somalia continues to conduct attacks, although there are signs the group is fragmented, with some armed fighting among various groups within al Shabaab. The group remains a key al Qaeda affiliate. Attacks related to al Shabaab continue to increase, according to U.S. officials. **One particular concern for security officials are reports that al Qaeda is moving into Egypt’s Sinai Peninsula**. A U.S. official said in May that **al Qaeda elements were conducting small arms training in the mountainous areas of the Sinai Peninsula in preparation for fighting alongside jihadist rebels in Syria.** The al Qaeda affiliate in the Sinai was identified by U.S. officials as Ansar Bayt al-Maqdis (ABM). The group’s logo is similar to that of al Qaeda—a black flag, an AK-47, and a globe. Saudi Arabia has been battling the affiliate al Qaeda in the Arabian Peninsula, which tried several high-profile airline bombings against the United States. The group is led by several former inmates of the U.S. prison at Guantanamo Bay, Cuba, and is very active against the government of Yemen. Earlier this year, a leaked memorandum from Saudi Arabia’s Interior Ministry revealed that **Riyadh is exporting al Qaeda terrorists to Syria. The memo from April 2012 disclosed that 1,239 prisoners who were to be executed were trained and sent to “jihad in Syria” in exchange for a full pardon**. The prisoners included 212 Saudis and the rest were foreigners from Syria, Pakistan, Yemen, Sudan, Egypt, Jordan, Somalia, Kuwait, Afghanistan, and Iraq and included Palestinians. **Syria’s al Qaeda group is the al Nusra Front, which has emerged as the most powerful rebel group opposing the forces of the Bashar al-Assad regime**. Obama said in his National Defense University speech that the “lethal yet less capable al Qaeda affiliates” and domestic jihadists remain a threat. “But as we shape our response, **we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.” The Lignet report said the use of sanctions and financial penalties against al Qaeda produced the unintended consequence of transforming al Qaeda into a coalition of loose, localized, autonomous terror cells.** “In terms of financing, al Qaeda’s shuria or high command council, no longer plays a central role in allocating expenditures or soliciting funds,” the report said. “Instead, terrorist financing has moved further into the ‘gray’ economy. Cells raise funds from a combination of charities, independent criminal ventures, and licit businesses.” Crime is now the main source of al Qaeda funds and criminal activities by the group include extortion, hijacking, theft, blackmail, the drug trade, and kidnapping for ransom. “Counterterrorism efforts that target the financing of terrorism are a work in process,” the report concludes. “**The measures employed by the United States and others in the last 12 years have reshaped rather than resolved the terrorist threat**. It remains to be seen if the United States will be able to in turn adapt to al Qaeda’s new and alarming franchise cell structure and finance methods.” Joseph Myers, a retired Army officer and specialist on the ideology of Islamist terror, said U.S. efforts to target and kill al Qaeda leaders have been successful. But **al Qaeda affiliates are spreading “from the Horn of Africa, across North Africa and post-Gaddafi Libya into central Africa to Dagestan and like-minded bombers in Boston**,” he noted. **“Al Qaeda is an idea, not simply an organization and ideas are not easily ‘killed,’**” Myers said in an email. **The U.S. government’s counterterrorism paradigm is misguided because the forefront of global Islamic jihad is not al Qaeda, but the Muslim Brotherhood** “we are now partnering with as a matter of policy,” he said. **The doctrine of Islamic jihad remains the key ideological threat that must be recognized,** he said. Until that is realized, “**we will continue to have national security failures of analysis and prediction and not only al Qaeda, but other Islamic jihadist groups will continue to emerge and spread,**” Myers said.

**Nuclear terrorism is specifically likely**

**Brill & Luongo, 12** (Kenneth C., former U.S. Ambassador to the IAEA, Kenneth N., President of the Partnership for Global Security, “Nuclear Terrorism: A Clear Danger”, New York Times, March 15, http://www.nytimes.com/2012/03/16/opinion/nuclear-terrorism-a-clear-danger.html)

Terrorists exploit gaps in security. **The current global regime for protecting the nuclear materials that terrorists desire** for their ultimate weaponis far from seamless. It **is based largely on unaccountable, voluntary arrangements that are inconsistent across borders. Its weak links make it dangerous and inadequate to prevent nuclear terrorism**. Later this month in Seoul, the more than 50 world leaders who will gather for the second Nuclear Security Summit need to seize the opportunity to start developing an accountable regime to prevent nuclear terrorism. There is a consensus among international leaders that **the threat of nuclear terrorism is real, not a Hollywood confection**. President **Obama**, the leaders of 46 other nations, the heads of the International Atomic Energy Agency and the United Nations, **and** numerous **experts have called nuclear terrorism one of the most serious threats to global security and stability**. It is also preventable with more aggressive action. **At least four terrorist groups, including Al Qaeda, have demonstrated interest in using a nuclear device. These groups operate in or near states with histories of questionable nuclear security practices. Terrorists do not need to steal a nuclear weapon. It is quite possible to make an improvised nuclear device from highly enriched uranium or plutonium being used for civilian purposes.** And there is a black market in such material. **There have been 18 confirmed thefts or loss of weapons-usable nuclear material**. In 2011, the Moldovan police broke up part of a smuggling ring attempting to sell highly enriched uranium; one member is thought to remain at large with a kilogram of this material.

**Nuclear terrorism causes extinction**

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

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

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

**Spaulding, 09** (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.

**1AC – Advantage Two**

**Contention Two – Judicial Independence**

**Now is the key time for judicial independence movements globally**

**RFE, 7/25/13** (Radio Free Europe, Interview with US Supreme Court Justice Elena Kagan, "U.S. Supreme Court Justice Elena Kagan: 'There Are Always Bumps In The Road'," <http://www.rferl.org/content/us-supreme-court-justice-elena-kagan-interview/25056808.html>)

The nine judges of the United States Supreme Court have no armies, no police, and no budgetary authority at their disposal. But nevertheless, for more than two centuries, **the court has been the** undisputed **watchdog of the** U.S. **Constitution. That role has often forced judges to stand toe-to-toe with powerful American presidents** -- from Thomas Jefferson to Barack Obama -- **striking down laws and executive actions** **that exceed their constitutional authority.**  How did the U.S. Supreme Court establish and preserve its independent role? And are there any lessons that can be derived from this experience for countries struggling to establish the rule of law and independent judiciaries? In an exclusive interview at RFE/RL's Prague headquarters, correspondent Brian Whitmore spoke with U.S. Supreme Court Justice Elena Kagan about these issues. Prior to taking her lifetime seat on the Supreme Court in 2010, Kagan served as solicitor-general in the Obama administration and as dean of the Harvard Law School. RFE/RL: Let's start with the very basics. **Many** of the **countries** RFE/RL broadcasts to **are trying -- with varying degrees of success -- to develop independent judiciaries**. **Some say they are, but really aren't. Some are sincerely trying to, but have thus far been unsuccessful**. And a rare few have been fairly successful. How did an independent judiciary really develop in the United States? What were the main bumps in the road? Are there lessons from the early years of the republic that would be useful for countries currently struggling to form independent judiciaries? Was it the brilliance of the founders, like we're taught in civics class, or did we just get lucky? Elena Kagan: Well, we did get lucky. But we also had people who demonstrated enormous skill and wisdom in order to get to the point we're at now. And we're not perfect either, and **there are always bumps in the road**, and **there's always more that can be done to establish** a rule-of-law system and **an independent judiciary**. But we had a number of factors working in our favor in the United States, and not every country has this. And so the lessons that you can draw from country to country are real, but they are limited. You can draw some lessons, but every country's experience is going to be different because every country's traditions and history is different. But **in the United States**, even before the revolution, **there was a very strong commitment to judicial systems** and to the rule of law. This was part of the heritage the United States inherited from England and its common-law system. And in the revolutionary period there was a great deal of influence on some structural matters that have been integral to an independent judiciary. **There was the separation of powers**, so the judiciary stood separate from both the legislature and the executive. There was also a real commitment in the founding period -- the revolution and the development of our constitution -- to federalism, so it wasn't all about the national government. It was about the states; individual states had extensive powers as well. So that meant that there were real checks and balances built into our government that facilitated the development of an independent judiciary. And finally, we had some very wise leaders at the start of our history. This includes someone most nonlawyers don't know about. Everybody knows about [Presidents] Thomas Jefferson and James Madison. But the person who really founded, if you will, our judicial system, founded the concept of judicial review of executive and legislative action, was a very early chief justice named John Marshall, who served as the chief justice of the United States Supreme Court for several decades (1801-1835) and who, more than any single person in the United States, managed to ensure that the courts were an important and independent player in the American governmental process. RFE/RL: Can you point to some important formative experiences in the early years of U.S. history that established an independent judiciary? Kagan: Well, I think that people think the most formative experience was a judicial case that started out as a very unimportant judicial case. It's called Marbury v. Madison and it was a case that John Marshall really used to establish the principle that a court could invalidate legislative or executive action if that action infringed on the constitution. That was a new and revolutionary concept. Our constitution itself does not set forth a system of judicial review. There is no provision of our constitution that says the courts will have the power to invalidate executive or legislative action that violates the constitution. So John Marshall really had to create that power for himself. And he used this case of Marbury v. Madison, a case that involved whether the proper judicial commission was given to a man named Mr. Marbury by Thomas Jefferson. And John Marshall said it was not, but he did it in a very clever way that established the principle but at the same time was not too threatening to President Jefferson and, indeed, gave President Jefferson part of what he wanted. From that moment, the system of judicial review was never really questioned in American history. (Editor's Note: Marbury v. Madison was a landmark ruling in 1803 that established the Supreme Court's power to overturn actions by the executive and legislative branch.) RFE/RL: Did this have more to do with the American political culture or institutions? Kagan: Well, culture and institutions are related. And certainly there was something in the political culture that allowed John Marshall to do what he did, which was to say that **somebody has to be the supreme guardian of the constitution and that role falls to the courts**. **It falls to the courts to say when** Congress or the executive branch -- in our case, **the president -- violates the constitution**. You can imagine that there were many people who were not so happy about that principle, who thought that the courts had no special role in this area and that the Congress and the president were as good as the courts were in determining what did and didn't violate the constitution. Marshall said there had to be somebody who ultimately sets the rules of the road and determines when the constitution is violated, and that falls to the courts. And, as I said, there have been plenty of times when actors questioned that, including heroes of American history. Abraham Lincoln was never a great fan of judicial review. But for the most part, it has stuck as an important part of our political system. In the end the courts get to say whether Congress or the president have exceeded their powers. RFE/RL: So this was a pivotal moment. The history of the United States could have gone down a different path if not for Marbury v. Madison? Kagan: I'm sure that is true. But at the same time, it's important to say that courts only gain respect, and their judgments are only acceded to, if they use their powers wisely. So judicial restraint is a very significant part of judicial review. Just as the courts can say when the executive or legislative branches have overstepped their powers, the courts have to ensure that they don't overstep their own powers. The system only works if the courts don't unwisely or unduly step on the prerogatives of the other players in the government. RFE/RL: The problems of the judiciary in most of the countries we broadcast to are remarkably similar. I wanted to go through some of them and get you to address them. Were there ever similar issues in U.S. history? If so, how were they addressed? If not, as a legal scholar, how do you think they might be addressed? First, there is the issue of what the Russians call "telephone justice." In theory, this means that in all important cases, the judge hearing the case gets a phone call from the executive branch or its proxy spelling out how he or she is supposed to rule. How do you build an independent judiciary in societies where this is common practice? Kagan: If we did [have such issues], those would have been understood as abuses of the system and violative of the rules of the system. That is the very opposite of a system founded on the rule of law, which says the way a judge decides a case, the way a court decides a case, is by virtue of legal principle, not by virtue of legal power, by who called him and said this is how we want the case to turn out. **The independence of a judiciary can in some sense be measured by its ability and willingness to challenge the powers that be and say they've overstepped their role and to hold them to account**, **not to accede** **to everything that the powers that be want.**

**Current deference to the executive over detention policy has downed judicial independence**

**McCormack, 8/20/13** (Wayne, E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, "U.S. Judicial Independence: Victim in the “War on Terror”," <https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/>)

**One of the principal victims in the U.S**. so-called “**war on terror” has been the independence of the U.S. Judiciary**. **Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside**, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. **The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review**. In the face of governmental claims of crisis and national security needs, **the courts have refused to examine, or have examined with undue deference, the actions of government officials**. **The U.S. Government has taken the position that inquiry by the judiciary** into a variety of actions **would threaten the safety of the nation**. **This is pressure that** amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it **undermines due process of law**. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But **a long pattern of threats and intimidation to depart from established law undermines judicial independence**. That has been the course of the U.S. “war on terror” for over a decade now. Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference. 1. Guantanamo. **In Boumediene** v. Bush,1 **the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards** to be developed by the lower courts **with “deference” to Executive determinations**. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.” 2. Detention and Torture Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP) Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities. Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity. Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP. 1 553 U.S. 723 (2008). 2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007). 3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009). 4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012). 5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP. 3. Unlawful Detentions Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant. Ali **Al-Marri was** originally charged with perjury, then **detained as an enemy combatant, for a total detention of four years** before the Fourth Circuit finally held that he must be released or tried.7 Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security. Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute 4. Unlawful Surveillance Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others. 5. Targeted Killing Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes. 6. Asset Forfeiture 6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009). 7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007). 8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) 9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002). 10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013). 11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010) Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge. Avoiding Accountability **The “head in the sand” attitude of the U.S. judiciary** in the past **decade is a rather dismal record that does not fit the high standard for judicial independence** on which the American public has come to rely. Many authors have discussed these cases from the perspective of civil rights and liberties of the individual. What I want to highlight is how **undue deference to the Executive in “time of crisis” has undermined the independent role of the judiciary**. Torture, **executive detentions**, illegal surveillance, and now killing of U.S. citizens, have all **escaped judicial review** under a variety of excuses. To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh **Muhamed and Anwar al-Aulaqi should not be allowed to roam free** to kill innocent civilians. **But hundreds of years of history show** that **there are ways of dealing** **with such people** within the limits of restrained government **without resort to** the hubris and indignity of **unreviewed executive discretion**. **The turning of blind eyes by** many, albeit not all, **federal judges is a chapter** of this history **that will weigh heavily against us in the future**. No judge wants to feel responsible for the deaths of innocents. But moral responsibility for death is with those who contribute to the act. Meanwhile **the judge has a moral responsibility for abuses by government of which the judiciary is a part.**

**US judicial independence is a key model – detention policy is used to justify abuses globally**

**CJA, et al 03** ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, <http://jenner.com/system/assets/assets/5567/original/AmiciCuriae_Center_for_Justice_Int_League_Human_Rights_Adv_For_Indep_Judiciary2.pdf?1323207521>)

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

**Scenario One – Latin America**

**US constitutional jurisprudence and decisions are modeled by Latin America**

**Mirow, 07** (M.C., Asst Prof of Law @ Florida International, "Marbury in Mexico: Judicial Review's Precocious Southern Migration," http://www.hastingsconlawquarterly.org/archives/V35/I1/Mirow.pdf)

In an era in which the use of foreign sources by the United States Supreme Court is one of law professors' topics du jour,10 this Mexican example from over 125 years ago has much to contribute."1 In this context, this study asks not what other countries can do for us, but rather what we have done to or for other countries. 12 **The U**nited **S**tates **Constitution has played an extremely important role in the establishment and development of constitutional orders in Latin America**.' 3 **It served as a model in drafting Latin American constitutions, and**, at times, even United States constitutional commentators and **the opinions of** United States **Supreme Court Justices found their way into the decisions of Latin American supreme court judges**. 14 Keith Rosenn writes that **in Latin America "the influence of the U**nited **S**tates **experience with judicial review has been direct and substantial.**' 15 **This is true, despite the fact such a region "of chronic political instability and short-lived constitutions** with a civil law tradition **would appear most infertile soil** for the seeds of Marbury v. Madison to take root."'16 Marbury now embodies a particular approach to constitutional law and decision making; it is emblematic of the doctrine of judicial review. 17 The decision provides the constitutional cornerstone of the doctrine in the United States and, as a result, supports the core democratic structures of government in this country. 1 With the flurry of scholarship accompanying the recent bicentennial of the decision, it would seem there is hardly anything new left to say about the opinion.' 9 But there is: The decision was also instrumental in the development of Mexican constitutional law, leaving a legacy of constitutional jurisprudence and a broadly construed supreme court power in Mexico. **The Mexican Supreme Court would not be the same institution today were it not for Marbury**. Indeed, the decision is selected here for study because it is representative of Vallarta's consistent recourse to United States materials in the 1880s. **The recognition of this influence in the domestic literature of Latin American countries varies**. 20 **National pride and long-standing political tensions** between the United States and many Latin American countries **have led some Latin American writers to ignore, gloss over, or underplay United States influence on their country's constitutional development**. Similarly, national pride and the revolutionary spirit of 1917 in Mexico may make the United States origins of its constitutional method a difficult fact to accept.21 A common Mexican saying is "Pobre Mexico, tan lejos de Dios, tan cerca de los Estados Unidos.' , 22 Reflecting popular disdain for the United States, Mexican historiography has greatly downplayed and for the most part silenced the United States' voice in the development of some of the most fundamental substantive provisions and procedures for the protection of constitutional rights in Mexico.23

**Independent judiciaries are key to Latin American stability and democracy**

**Cooper, 08** (James, Institute Professor of Law and an Assistant Dean at California Western School of Law, "COMPETING LEGAL CULTURES AND LEGAL REFORM: THE BATTLE OF CHILE," 29 Mich. J. Int'l L. 501, lexis)

The legal transplantation process involves, by its very nature, the adoption of, adaptation n57 to, incorporation of, or reference to legal cultures from abroad. n58 **Judges**, along with other actors in the legal [\*512] sector - including prosecutors, justice ministry officials, judicial councils, supreme courts, law school professors, ombudspeople, and public defenders - **often look to rules, institutions, and jurisprudence from other countries, particularly to those from similar legal traditions** and Anglo-Saxon or other legal cultures. n59 Professor Alan Watson contends that "legal transplants [are] the moving of a rule or a system of law from one country to another, or from one people or another since the earliest recorded history." n60 For many centuries, the legal codes and legal cultures that were established in Latin America were products of the colonial experience with Spain and Portugal. n61 Prior to independence, laws were merely imposed on the territories of the colonial powers. Spain, through the legal culture it transplanted during colonial times, enjoyed a consistent influence on the New World in the Americas. n62 In the colonies, "the Spanish judiciary was given almost no autonomy and continued to depend on the Crown's scholarly-inspired statutes with limited reflection of the principles, customs and values arising from Spain's diverse regions." n63 After independence in the early part of the nineteenth century, however, **legal models from** other countries like the United Kingdom and **the United States soon found receptive homes in the southern parts of the Western Hemisphere**. n64 Statutes, customs, and legal processes were [\*513] transplanted in a wholesale fashion, themselves the product of French influence over the codification process. n65 For much of the twentieth century - at least until the early 1980s - most governments in Latin America pursued policies of economic nationalism, including import substitution and controls on capital flows. Latin American governments closed markets to foreign competition and pursued state intervention. n66 When these policies failed, they resulted in economic stagnation, hyperinflation, and the erosion of living standards. n67 International bond defaults in the early 1980s produced military dictatorships and oppressive regimes simultaneously throughout Latin [\*514] America. The region was ready for a change. n68 In exchange for the adoption of certain rules and regulations concerning the functioning of markets, and some strengthening of democratic institutions, the international financial community lent money to these nascent democracies in an attempt to encourage a set of "neoliberal" policies - the so-called Washington Consensus. n69 Privatization of state assets was a central part of the prescription. n70 Deregulation, the opening of markets to foreign competition, and the lowering of barriers to trade were also recommended policies. n71 These policies - involving **the flow of capital, intellectual property, technology, professional services, and ideas** - **require that disputes be settled fairly and by a set of recognized and enforced laws**. n72 **The rule of law**, after all, **provides the infrastructure upon which democracies may thrive**, because **it** functions to enforce property rights and contracts. n73 [\*515] **Likewise, the rule of law is the foundation for economic growth and prosperity**: n74 **Law is a key element of both a true and a stable democracy and of efficient economic interaction and development both domestically and internationally** ... . **The quality and availability of court services affect private investment decision and economic behavior at large**, from domestic partnerships to foreign investment. n75 Foreign businesses that invest or do business abroad want to ensure that their intellectual property, shareholder, capital repatriation, contract, and real property rights will be protected. n76 It is not surprising, then, that in [\*516] the aftermath of the economic reforms, or at times concurrently, there also have been efforts to implement new criminal procedures, protect human and civil rights, and increase access to justice. n77 **Economic growth and sustainable development require a functioning, transparent, and efficient judicial sector**. n78 "It is not enough to build highways and factories to modernize a State ... **a reliable justice system - the very basis of civilization - is needed** as well." n79 Without the rule of law, corruption in the tendering regimes was rampant, encouraging the looting of national treasuries, n80 the exploitation of labor, and the polluting of the environment. n81 As Professor Joseph Stiglitz sadly points out, "The market [\*517] system requires clearly established property rights and the courts to enforce them; but often these are absent in developing countries." n82 **A healthy and independent judicial power is** also **one third of a healthy democratic government**. n83 Along with the executive and legislative branches, **the judicial branch helps form the checks and balances to allow for an effective system of governance.** **Instead, what has resulted** over the last few decades **in many Latin American governments is a breakdown in the rule of law: a judiciary unable to change itself**, virtual impunity from prosecution, judicial officers gunned down, **and the wholesale interference with the independence of the judicial power**. **The judiciary is not as independent as the other two branches of government**. n84 Instead, the judiciary functions as part of the civil service: devoid of law-making abilities, merely a slot machine for justice that applies the various codes. n85

**Latin America instability causes disease outbreaks and regional conflict escalation**

**Manwaring, 05** (Max G., Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, October 2005, <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub628.pdf>)

President Chávez also understands that the process leading to **state failure is the most dangerous** long-term **security challenge facing the global community** today. The argument in general is that failing and **failed state status is the breeding ground for instability**, criminality, **insurgency, regional conflict, and terror**ism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as Bolivarianismo. More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. **These** means of coercion and persuasion **can spawn** further **human rights violations, torture, poverty, starvation, disease**, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking **and proliferation of conventional weapons** systems **and WMD, genocide, ethnic cleansing**, warlordism, **and criminal anarchy**. At the same time, **these** actions are usually unconfined and **spill over into regional syndromes of poverty, destabilization, and conflict** .62 Peru’s Sendero Luminoso calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.63 Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, **instability** and the threat of subverting or **destroying such a government are real**.64 But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, **the longer dysfunctional**, rogue, criminal, and narco-**states** and people’s democracies **persist, the more they and their** associated **problems endanger global security, peace, and prosperity**.65

**Disease pandemics cause extinction**

**Keating, 09** (Joshua – Foreign Policy web editor , "The End of the World," Foreign Policy, 11-13-9, [www.foreignpolicy.com/articles/2009/11/13/the\_end\_of\_the\_world?page=full](http://www.foreignpolicy.com/articles/2009/11/13/the_end_of_the_world?page=full))

How it could happen: **Throughout history, plagues** have **brought civilizations to their knees**. **The Black Death killed** more off **more than half of Europe**'s population in the Middle Ages. In **1918**, a **flu** pandemic **killed** an estimated **50 million people**, nearly 3 percent of the world's population, a far greater impact than the just-concluded World War I. **Because of globalization, diseases today spread even faster** - witness the rapid worldwide spread of H1N1 currently unfolding. A **global outbreak of a disease such as ebola** virus -- which has had a 90 percent fatality rate during its flare-ups in rural Africa -- **or a mutated drug-resistant** form of the **flu** virus on a global scale **could have a** devastating, even **civilization-ending impact**. How likely is it? Treatment of deadly diseases has improved since 1918, but so have the diseases. Modern industrial farming techniques have been blamed for the outbreak of diseases, such as swine flu, and **as the world’s population grows and humans move into previously unoccupied areas, the risk of exposure to previously unknown pathogens increases**. More than 40 new viruses have emerged since the 1970s, including ebola and HIV. **Bio**logical **weapons experimentation** has **add**ed **a new and** just as **troubling complication**.

**Failure of Latin American democracy causes Brazil-Argentina prolif**

**Schulz, 00** (Donald E., Chairman of Political Science - Cleveland State University, former Research Professor - SSI of the U.S. Army War College, March, The United States and Latin America: Shaping An Elusive Future, http://www.strategicstudiesinstitute.army.mil/Pubs/display.cfm?pubID=31)

**A** second **major interest is the promotion of democracy**. At first glance, this might appear to be a peripheral concern. For much of its history, the United States was perfectly comfortable with authoritarian regimes in Latin America, so long as they did not threaten higher priority interests like regional security or U.S. economic holdings. But that is no longer the case. U.S. values have changed; democracy has been elevated to the status of an “important” interest. In part, this has been because American leaders have gained a greater appreciation of the role of legitimacy as a source of political stability. **Governments that are popularly elected and respect** human rights and the **rule of law are less dangerous to** both their citizens and **their neighbors. Nations** which **are substantively democratic tend not to go to war** with one another. They are also less vulnerable to the threat of internal war provoked, in part, by state violence and illegality and a lack of governmental legitimacy. 6 In short, **democracy and economic integration are not simply value preferences, but are increasingly bound up with hemispheric security**. To take just one example: **The restoration of democracy in Brazil and Argentina** and their increasingly strong and profitable relationship in Mercosur **have contributed in no small degree to their decisions to forsake the development of nuclear weapons. Perceptions of threat have declined, and perceptions of the benefits of cooperation have grown, and this has permitted progress on a range of security issues** from border disputes, to peacekeeping, environmental protection, counternarcotics, and the combat of organized crime. Argentina has also developed a strong bilateral defense relationship with the United States, and is now considered a non-NATO ally.

**That causes conflict escalation and war**

**Pravda, 03** Argentina concerned on Brazil's nuclear program, http://english.pravda.ru/world/2003/01/09/41762.html

The new **Brazilian Minister of Science** and Technology, Roberto **Amaral, shook** the **South America**n and international media **after announcing** **his Government was interested on developing a nuclear program** to "handle such technology". In confusing declarations, Amaral said: "We are against the atomic bomb, wherever it comes from: Brazil, Argentina, USA or Israel". However, he added: "there cannot be limits to the knowledge" and puzzled local and foreign authorities. As **the** polemic **declarations may provoke a reaction from Brazil's neighbors** and the international community, the Foreign Minister Celso Amorim consulted his colleague and said Amaral did not mean Brazil was interested on developing an atomic bomb. "We will keep on fighting for the world nuclear disarming", said Amorim to the press. The problem with Amaral declarations is that he actually said what he says he didn't said. On Monday, the BBC correspondent to Brasilia asked him if he was of the idea that his country should eventually has the know-how to produce atomic bombs. His answer was very clear: "I agree, I agree", he said. **If Brazil plans to have the bomb, they would alter the military equilibrium in the region and may face a diplomatic reaction from its Mercosur partners.** Argentina, as well as Brazil, already handles atomic energy, but with pacific purposes. If its neighbor plans to develop massive destruction weapons, then **the Argentine militaries would push their civil authorities to follow Brazil's path.** Sources in the Argentine Army confirmed to PRAVDA.Ru that even in peacetime, **Brazil and Chile** are always targets for military actions and the Armed Forces **have defensive plans to neutralize hypothetical neighbor attacks.** This is mere speculation as an armed conflict in the region is unthinkable with democratic governments.

**Scenario Two – Africa**

**Now is key for African independent judiciaries – they’re integral to stability**

**Mogoeng, 13** (June 25, The Hon. Mogoeng Mogoeng Chief Justice of South Africa, “Transcript: The Rule of Law in South Africa: Measuring Judicial Performance and Meeting Standards” <http://www.tradingplaces2night.co.za/wp-content/uploads/2013/07/250613Mogoeng.pdf>)

Even if all others were to be unable to give practical expression to the rule of law, human rights and the constitutional aspirations of the people in any democracy, that **constitutional democracy would survive; provided a truly independent body of judges** and magistrates, loyal to the oath of office or solemn affirmation, **is in place** and ready to administer justice to the aggrieved in terms of their oath of office or affirmation. And that is the oath or affirmation to be faithful to the Republic of South Africa, to uphold and protect the constitution and the human rights entrenched in it and to administer justice to all persons alike without fear, favour or prejudice, in accordance with the constitution and the law. **Central to the affirmation** or oath of office **is the obligation to uphold** the foundational values of our constitutional democracy, which include **the rule of law, human dignity, equality, freedom, transparency and accountability**. This is the legal philosophy and the vision necessary for the promotion of the rule of law and the economic developmental agenda not only for South Africa and the SADC (Southern African Development Community) region but of the African continent as well. Because African countries face similar challenges albeit to varying degrees, I have decided not to confine my address to South Africa but to deal with the broader African situation. Africa is a beautiful continent. And Africa is populous, comprises vast tracts of land and is extremely rich in minerals and natural resources. It has what it takes not only to have its people bask in the glory of sustainable economic development and prosperity; but also to enjoy peace and all-round stability in an environment of good governance, facilitated by an independent, efficient and effective court system. And yet reports about Africa are generally negative. Africa is generally associated with massive corruption, social and political instability, rigged elections, dictatorships, abuse of human rights with near impunity, rampant non-observance of the rule of law, coups d’état, sickness and disease, high mortality rate, abject poverty, economic underdevelopment, dependency and in general, the paucity of accountability, responsiveness and good governance. Yet economists say that the United Kingdom and Switzerland, which do not have the mineral and natural resources we have, with a very small population and a small piece of land, are each richer than all African countries put together. We must therefore play our part to reverse this unacceptable state of affairs. To avoid dwelling on the predictable lamentations of Africa, generally based on what colonization has done to us, and how some superpowers possibly continue to employ more nuanced and sophisticated ways of prospering with our resources at our expense, we need to identify the challenges that strangle the possibility of African people enjoying the peace and the prosperity that this great continent is pregnant with, which African people can change. The judiciary is the third branch of government; the third arm of the state. **There simply can be no state or government without the judiciary in a genuine constitutional democracy. To breathe life into the African dream that is inspired by the desire to break free from centuries of economic oppression, and to recapture the lost glory of Africa, the judiciary in Africa must be more alive to the enormous responsibilities it bears on its shoulders to contribute to the renaissance of Africa. When the judiciary enjoys both individual and institutional independence and is faithful to its constitutional mandate, then peace, good governance and sustainable economic development is achievable.** It must be for this reason that it is recalled in the preamble to the statute of the Conference of Constitutional Jurisdictions of Africa (CCJA); that the Constitutive Act of the African Union enshrines the commitment of heads of state and government of the Union ‘to promote and protect human and people’s rights, to consolidate institutions and democratic culture, to promote good governance and the rule of law’. The judiciaries of Africa have, through the CCJA, also committed themselves to supplementing the AU mechanisms to consolidate the rule of law, democracy and human rights. Finally, we recognise again in the CCJA statute that the achievement of the above objectives is ‘closely linked to the independence and impartiality of judges’. And it is to this end that the CCJA and the court system in a true democracy were primarily established. How then can we, as the judiciary, make this African dream and the renaissance of Africa come true? I am one of those who believe that lasting solutions to our problems are simple but certainly not simplistic. We often fail to address problems that beset our systems and countries because we tend to look for complex and highly sophisticated solutions, when simple and practical ones, borne out of the experiences of others, and our own experiences are at hand and best suited to yield the much needed results. Why do we not witness in France, Singapore and the UK problems that have become familiar in Africa? We have oil, gas, gold, diamonds, platinum, chrome, coal etc. in abundance, and breath-taking tourist attractions. The UK is the size of a game reserve in South Africa known as the Kruger National Park. South Korea is about the size of a province in South Africa known as KwaZulu-Natal – where Durban is – and Singapore was very poor and insignificant in 1965, but is now rightly counted among the big world economies although it has nothing but its people and a tiny piece of land. A closer examination of the operations of their judiciaries would, without ignoring the damage done by our painful history, be quite revealing. **Africa desperately needs a truly independent and efficient judiciary in each of its countries to create peace and stability**. **When citizens know that there is an effective and efficient court system** in their country and that arrest, prosecution, conviction and sentence for the guilty is predictable, then **corruption and crime** in general will **go down**. **Those who may wish to take power through unconstitutional means would be deterred** from forging ahead with their unconstitutional plans **by** what **an independent judiciary** in their country could do to them. I asked colleagues in countries like Germany where people cycle freely with no apparent fear of crime even at night what the secret was. And they said the efficiency of the judicial system and the predictability and probability, as opposed to a remote possibility, of paying for one’s crime is the reason behind the peace and overall stability the people enjoy. **When the other branches of government know that courts as the guardians of the constitution will always do their job without fear, favour or prejudice, they will observe and promote the rule of law.** When it is known that a challenge to the executive’s failure to deliver on a constitutional obligation could result in an executable court order against anybody from the president to a mayor, of their own accord government functionaries and role players in business will obey the law of the land, observe business ethics and good governance will materialize. **Good governance stems from compliance with conventional, legislative and constitutional governance prescripts**. The entrenchment of the human rights culture, the observance of the rule of law and giving priority to, among others, the realization of the legitimate aspirations of the citizenry in terms of the law, transparency, accountability, responsiveness, the creation of a truly independent and effective corruption-busting machineries, protection of press freedom and the creation of an investor-friendly climate are some of the key ingredients of good governance. For example, the Constitutional Court of South Africa ruled that the corruption-busting body created in terms of legislation was not sufficiently independent to deal with corruption effectively and the relevant legislation had to be appropriately amended to meet the independence requirement. All of the above conspire to create an investor-friendly atmosphere. **When potential investors know that in Africa you will get justice** against any lawbreaker when defrauded, and when government, business partners or any entity tries to get an unjust or unlawful advantage of them, **they will come in droves to invest**, given the huge and diligent labour force, the fertile and productive land, the very rich minerals and abundant natural resources we have to offer. In this regard, the United Nations observed a few years ago that there was a direct link between the capacity of the judiciary to promote the rule of law and facilitate good governance on the one hand, and the willingness of multinational companies to embark upon massive and sustainable economic development on the other. And a concern was raised about the apparent lack of capacity by African judiciaries and governments to facilitate an investor friendly environment.

**US judicial independence is crucial to democratic consolidation and stability in Africa**

**CJA, et al 03** ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, <http://jenner.com/system/assets/assets/5567/original/AmiciCuriae_Center_for_Justice_Int_League_Human_Rights_Adv_For_Indep_Judiciary2.pdf?1323207521>)

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

**Independent, judicial checks on executive power are key to African rule of law – that’s vital for political and economic stability**

**Mbaku, 13** (John Mukum, Presidential Distinguished Professor of Economics, Willard L. Eccles Professor of Economics, and John S. Hinckley Research Fellow at Weber State University, "PROVIDING A FOUNDATION FOR WEALTH CREATION AND DEVELOPMENT IN AFRICA: THE ROLE OF THE RULE OF LAW," 38 Brooklyn J. Int'l L. 959, lexis)

These priorities are all interrelated. For example, **the failure of African governments to manage** ethnic and religious **diversity has often resulted in destructive and violent mobilization** by groups that perceive themselves as being marginalized by a central government dominated and controlled by other groups. n308 **The result has been significantly high levels of political instability,** which have created economic environments that are not suitable for, or conducive to, investment and/or engagement by entrepreneurs in productive activities. Peaceful coexistence creates opportunities for mutually-beneficial exchanges between groups, which may include cultural exchanges and trade. Such exchanges can lead to innovation and the creation of new knowledge that can aid production and the peaceful resolution of problems and conflicts. **State actors**, such as civil servants and politicians, **are responsible for a significant amount of the corruption and rent seeking that takes place in the African countries today**. n309 [\*1051] Thus**, to minimize the engagement of state actors in growth-inhibiting behaviors, it is necessary that the state be adequately constrained by the constitution**. **To** adequately **restrain the state**, **the law must be supreme**--no citizen, regardless of their political, economic, or traditional standing in society, can be above the law. **Judicial independence must** also **be assured, so that the executive does not turn judiciary structures into instruments of control and plunder.** In addition, the laws chosen must reflect the values and aspirations of citizens, that is, the laws need to be locally-focused, and must also be laws that citizens can obey in order to enhance compliance and minimize the costs of policing. Furthermore, government operations must be conducted in an open and transparent manner to minimize corruption, enhance participation, and increase the people's trust in the government. Finally, the rights of minorities must be protected--it is critical that the rights of minority ethnic and religious groups be protected, not just from state tyranny, but also from violence perpetuated against them by non-state actors. The rule of law is a critical catalyst to Africa's effort to deal effectively with poverty. **Each country must engage its citizens in democratic constitution-making to provide laws and institutions that guarantee the rule of law**. One must caution that what is being advocated here is not simple regime change as has occurred in many countries throughout the continent. In order to secure institutional arrangements that guarantee the rule of law, countries must engage in the type of robust state reconstruction that provides all of the country's relevant stakeholders with the wherewithal to participate fully and effectively in institutional reforms. **It is only through such a democratic process that a country can avail itself of legal and judicial frameworks** **that guarantee the rule of law, and hence**, **provide the environment for peaceful coexistence, wealth creation, and democratic governance.**

**Instability and conflict escalate to great power war**

**Glick, 07** (Caroline, Senior Middle East Fellow – Center for Security Policy, “Condi’s African Holiday”, 12-12, [http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568](http://www.centerforsecuritypolicy.org/home.aspx?sid=56&categoryid=56&subcategoryid=90&newsid=11568%29))

US Secretary of State Condoleezza Rice introduced a new venue for her superficial and destructive stewardship of US foreign policy during her lightning visit to the Horn of Africa last Wednesday. The Horn of **Africa is a dangerous and strategically vital place. Small wars**, which rage continuously, **can easily escalate into big wars. Local conflicts have** regional and **global aspects. All** of the **conflicts in this tinderbox, which controls shipping lanes** from the Indian Ocean into the Red Sea, **can** potentially **give rise to** regional, and indeed **global conflagrations between competing regional actors and global powers**. Located in and around the Horn of Africa are the states of Eritrea, Djibouti, Ethiopia, Somalia, Sudan and Kenya. Eritrea, which gained independence from Ethiopia in 1993 after a 30-year civil war, is a major source of regional conflict. Eritrea has a nagging border dispute with Ethiopia which could easily ignite. The two countries fought a bloody border war from 1998-2000 over control of the town of Badme. Although a UN mandated body determined in 2002 that the disputed town belonged to Eritrea, Ethiopia has rejected the finding and so the conflict festers. Eritrea also fights a proxy war against Ethiopia in Somalia and in Ethiopia's rebellious Ogaden region. In Somalia, Eritrea is the primary sponsor of the al-Qaida-linked Islamic Courts Union which took control of Somalia in June, 2006. In November 2006, the ICU government declared jihad against Ethiopia and Kenya. Backed by the US, Ethiopia invaded Somalia last December to restore the recognized Transitional Federal Government to power which the ICU had deposed. Although the Ethiopian army successfully ousted the ICU from power in less than a week, backed by massive military and financial assistance from Eritrea, as well as Egypt and Libya, the ICU has waged a brutal insurgency against the TFG and the Ethiopian military for the past year. The senior ICU leadership, including Sheikh Hassan Dahir Aweys and Sheikh Sharif Ahmed have received safe haven in Eritrea. In September, the exiled ICU leadership held a nine-day conference in the Eritrean capital of Asmara where they formed the Alliance for the Re-Liberation of Somalia headed by Ahmed. Eritrean President-for-life Isaias Afwerki declared his country's support for the insurgents stating, "The Eritrean people's support to the Somali people is consistent and historical, as well as a legal and moral obligation." Although touted in the West as a moderate, Ahmed has openly supported jihad and terrorism against Ethiopia, Kenya and the West. Aweys, for his part, is wanted by the FBI in connection with his role in the bombing of the US embassies in Kenya and Tanzania in 1998. Then there is Eritrea's support for the Ogaden separatists in Ethiopia. The Ogaden rebels are Somali ethnics who live in the region bordering Somalia and Kenya. The rebellion is run by the Ogaden National Liberation Front (ONLF) which uses terror and sabotage as its preferred methods of warfare. It targets not only Ethiopian forces and military installations, but locals who wish to maintain their allegiance to Ethiopia or reach a negotiated resolution of the conflict. In their most sensationalist attack to date, in April ONLF terror forces attacked a Chinese-run oil installation in April killing nine Chinese and 65 Ethiopians. Ethiopia, for its part has fought a brutal counter-insurgency to restore its control over the region. Human rights organizations have accused Ethiopia of massive human rights abuses of civilians in Ogaden. Then there is Sudan. As Eric Reeves wrote in the Boston Globe on Saturday, "The brutal regime in Khartoum, the capital of Sudan, has orchestrated genocidal counter-insurgency war in Darfur for five years, and is now poised for victory in its ghastly assault on the region's African populations." The Islamist government of Omar Hasan Ahmad al-Bashir is refusing to accept non-African states as members of the hybrid UN-African Union peacekeeping mission to Darfur that is due to replace the undermanned and demoralized African Union peacekeeping force whose mandate ends on December 31. Without its UN component of non-African states, the UN Security Council mandated force will be unable to operate effectively. Khartoum's veto led Jean-Marie Guehenno, the UN undersecretary for peacekeeping to warn last month that the entire peacekeeping mission may have to be aborted. And the Darfur region is not the only one at risk. Due to Khartoum's refusal to carry out the terms of its 2005 peace treaty with the Southern Sudanese that ended Khartoum's 20-year war and genocide against the region's Christian and animist population, the unsteady peace may be undone. Given Khartoum's apparent sprint to victory over the international community regarding Darfur, there is little reason to doubt that once victory is secured, it will renew its attacks in the south. **The conflicts in the Horn of Africa have regional and global dimensions**. Regionally, Egypt has played a central role in sponsoring and fomenting conflicts. Egypt's meddling advances its interest of preventing the African nations from mounting a unified challenge to Egypt's colonial legacy of extraordinary rights to the waters of the Nile River which flows through all countries of the region.

**Goes nuclear**

**Lancaster, 00** (Carol, Associate Professor and Director of the Master's of Science in Foreign Service Program – Georgetown University, “Redesigning Foreign Aid”, Foreign Affairs, September / October, Lexis)

THE MOST BASIC CHALLENGE facing the United States today is helping to preserve peace. The end of the Cold War eliminated a potential threat to American security, but it did not eliminate conflict. In 1998 alone there were 27 significant conflicts in the world, 25 of which involved violence within states. Nine of **those intrastate conflicts were in** sub-Saharan **Africa, where poor governance has aggravated ethnic and social tensions**. The ongoing war in the Democratic Republic of the **Congo has been particularly nightmarish, combining** intrastate and interstate conflict **with** another troubling element: **military intervention driven by the commercial motives of several neighboring states. Such motives could fuel future conflicts in** other weak states with valuable resources. Meanwhile, a number of other wars -- in Colombia, the former Yugoslavia, Cambodia, **Angola, Sudan, Rwanda, and Burundi** -- have reflected historic enmities or poorly resolved hostilities of the past. Intrastate conflicts are likely to continue in weakly integrated, poorly governed states, destroying lives and property, **creating large numbers of refugees and displaced persons, and threatening regional security**. The two interstate clashes in 1998 -- between India and Pakistan and Eritrea and Ethiopia -- involved disputes over land and other natural resources. Such contests show no sign of disappearing. Indeed, **with the spread of weapons of mass destruction, these wars could prove more dangerous than ever**.

**African stability is vital to the global economy**

**Business Day, 13** (January 18, Ivor Ichikowitz, “Stability in Africa now key to world economy” <http://www.bdlive.co.za/world/africa/2013/01/18/stability-in-africa-now-key-to-world-economy>)

A significant change in the way the world’s leaders are starting to see Africa was revealed this week but has gone almost entirely unreported. Christine Lagarde, **the head of the** International Monetary Fund **(IMF**), was in Cote d’Ivoire’s capital, Abidjan, and **identified conflict as the "enemy number one" of Africa’s economic growth**. She said: "**Security is too fragile … if there is no peace, the people simply won’t have the confidence or courage to invest in their own future and neither will (foreign investors**)." However, **Lagarde did not stop at security being significant merely because it crippled economic development in Africa. She said it was vital for the financial stability of the entire world**. "It’s clear that **emerging countries are the motor of world economic growth**," she said, backing the IMF’s projections that sub-Saharan Africa will grow 5.25% this year, second only to Asia’s boom economies and well above the world average of 3.6%. To hear the recognition from such a leading figure in the international community that security is one of Africa’s core problems was incredibly uplifting. It echoes statements I made last year, when I said: "Capitalism is the most powerful driving force behind Africa’s economic development…. Stability is crucial because the growing middle classes (up to a third of all Africans) will spend more money if they feel confident, and they will feel more confident if they feel safe. The next stage will be to convince private investors that no sudden, unexpected or violent shift in government will happen and make their funds disappear overnight." Lagarde said: "I cannot help but be impressed by the continent’s resilience … in the face of the most serious disturbances seen by the world’s economy since the Great Depression." While the leading economies are struggling to tiptoe back into growth, **it is to Africa that the world is turning for impetus.** Lagarde’s recognition of this is a minor historical moment in **Africa**’s relations with the rest of the world — instead of Africa being seen as a drain, it **has been accepted as a vital driver of the global economy by one of its leading figures.** Global leaders have previously come close but have never been so explicit. When US President Barack Obama visited Ghana in 2009, he said: "Your prosperity can expand America’s. Your health and security can contribute to the world’s…. All of us must strive for the peace and security necessary for progress." He also said that "**development depends upon good governance**" but I would say that, beyond this, good governance depends on stable societies. I would venture that Lagarde agrees. I have had the privilege to work with many African countries to strengthen the capabilities and capacity of their defence, police and peacekeeping forces. I have seen first-hand the benefits for economic activity, inward investment, regional stability and long-term growth that stability can bring. **Africa** cannot rely solely on its booming sectors, such as oil, for its growth. It **needs to build strong and wide economic foundations. Its projected growth might be second only to Asia’s, but unlike Asia it is happening in the absence of the institutional framework necessary to absorb that growth and direct it** towards more investment in things such as infrastructure, health, education and public transport.

**Economic decline causes nuclear war**

**Harris and Burrows, 09** – \*counselor in the National Intelligence Council, the principal drafter of Global Trends 2025, \*\*member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis”, Washington Quarterly, http://www.twq.com/09april/docs/09apr\_burrows.pdf)

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

**African instability creates massive incentives to exploit and destroy forests of the Congo River Basin**

**Sites, 04** (Kevin, Conflict Studies Expert @ World Wildlife Fund, "Conflict in the Green Heart of Africa," http://wwf.panda.org/what\_we\_do/where\_we\_work/congo\_basin\_forests/problems/conflict/)

**In the Congo River Basin, conflict has been a recurring nuisance** for the development of several countries. Natural resources play a significant role in feeding **conflicts**, many of which **involve securing control and access to natural resources**. **Communities and forests pay the price**. Wars in the Congo River Basin involve groups of combatants that are always on the move, gaining temporary control over towns and settlements, but who are almost never able to subdue the surrounding areas. The constant movement of militias and the unpredictability of their actions have a devastating impact on human lives. Estimates of war-related deaths in eastern regions of the Democratic Republic of Congo (DRC) range from 3.3 million to 4.5 million. **To avoid conflict, refugees and displaced rural populations avoid major roads and move into the forests and protected areas**, where they are less likely to encounter soldiers and rebels.1 How natural resources fuel war **Natural resources such as timber**, as well as other commodities such as diamonds, **all play roles in motivating these wars because of their characteristics** (accessibility, weight-to-value ratios and the ability to loot, conceal and sell them later)2. In the DRC, rebel groups, government troops and their foreign allies have used the country’s diamonds, gold, timber, ivory, coltan and cobalt to pay for their war-related expenses.3 Perpetuating conflict… A United Nations panel of experts on the illegal exploitation of natural resources of the DRC recently stated that "**illegal exploitation remains one of the main sources of funding for groups involved in perpetuating conflict**". According to the panel, neighbouring countries such as Rwanda, Uganda, Burundi and Zimbabwe have all helped themselves to the DRC's gold, diamonds, timber and coltan; systematically stripping factories, farms and banks in the process.4 What are the impacts of conflict? A breakdown in the rule of law and other controls during and immediately after conflicts. Mass movements of people and human rights abuses. Decline in agricultural production, trade and food availability as conditions become unsafe to carry out such activities and transport is disrupted. Increased dependence on wild natural resources (such as bushmeat) for survival when other livelihoods are made impossible: **As refugees seek means to sustain themselves away from their home areas and hold their families together, they often invade poorly protected areas** in search of housing materials, bush foods and products that they can sell. **Protected areas** also **often contain more wildlife than other areas** and can thus provide a ready supply of meat for rebels or small armies. Moreover, **when it becomes too dangerous for the staff in protected zones to continue patrols, the frequency of illegal** mining of gold and diamonds, hunting for ivory and bushmeat, **felling of timber** and agricultural encroachment **often increases**.5

**Destruction of the Congo River Basin forests ensures planetary extinction**

**Boukongou, 05** (Jean Didier, Professor – Central African Catholic University (Cameroon), “The Protection of the Congo basin: A Multilateral Challenge", www.african-geopolitics.org/show.aspx?ArticleId=3836#\_ftn1)

This is not a revival of “good savage” ideology which is useful for the “civilized world,” but it is simply a matter of understanding that **the forests of the Congo basin is the entire humanity’s precious “lung.”** Beyond the traditional quarrels1 of the sycophants of environmental protection and the relevance of advocated public programs2, one notices the intensification of multilateral initiatives, which try to respond both to the stakes of protecting the Congo basin as well as to the challenge of preserving life on Earth. Nevertheless, even the advocates of sustainable development cannot forget that “bio-humanity” is a naturally complex vision of society. As far as one can go back in time, and on the principle of the divine message, man will always return to nature. This implies an organization and structuralization of spaces, which cannot be strictly limited to the protection of the fauna and flora. Consequently, international concern about the ecosystem of the Congo basin is neither the result of sudden philanthropy, nor the outcome of triumphant environmentalism. The region is a dynamic geopolitical area, where forests are a source of oil and conflicts. I think that it is fundamental not to separate the issue of forests from the less media-covered question of the rich oil and mineral resources in the hinterland and maritime zones of Central Africa. The predators are in the forests and on the political scene, and they are searching for democratic legitimacy3. Thus, I’m calling for combining the “green” debate with the “political” debate in order to promote better governance of the geopolitical basin of the Congo, give rise to concrete and multilateral awareness of the problems of Central Africa which aren’t only environmental but also political. It is a matter of emphasizing political and civil implications, on one hand, and legal instruments and institutional frameworks, on the other, in order to assure a better progressive transition in Central Africa from “Black governance” (in other words, oil-based governance) to “green governance”. A Geopolitical Basin The geographic entity called the “Congo basin” includes territories extending from the end of the Sahelian areas of Chad and Sudan and the edge of the plains along the Zambezi. The voluntarily extensive vision of this basin challenges the thesis that this forest area is confined to narrow post-colonial zones in Central African States, which doesn’t challenge the principles of international law relating to boundaries. **This basin is a vast forest area that covers** approximately 2,300,000 sq. km., or **26 percent of the world’s rainforests**4. **The forests are well known for their exceptional biodiversity** and contribute, in an important way, to countering the greenhouse effect by absorbing the carbon dioxide which is emitted into the atmosphere5. **This is the natural environment of more than half of the world’s wildlife and vegetable species**. Some consider it the compost of numerous diseases, such as the terrible Ebola fever.The Congo basin regroups several countries (Cameroon, the Congo, the Democratic Republic of the Congo, the Central African Republic, Equatorial Guinea, Gabon, Burundi, Rwanda, Angola and Chad), which form (with Sao Tome e Principe) the Economic Community of Central African States (ECCAS). On the one side, one may identify the Congo basin area itself to the ECCAS, and on the other, consider it as the logical construction of a regional area where sustainable governance of ecosystems should contribute, via the mobility of people, to economic links and ecological flows, to restoring and strengthening peace. One must remember that during the Millenium Summit held in New York in 2000 the Heads of State and Government declared their intention not to spare “any effort in order to assure that the entire humanity, and especially our children and grandchildren, will not live on a planet irreversibly degraded by human activities whose resources can no longer meet their requirements6.” This appeal is in line with the dynamics of building the concept of sustainable development, advocated by the UICN7 in 1980 and resumed in the Bundtland report in 19878. States have to cooperate in a spirit of world partnership in order to preserve, protect and restore the integrity of the ecosystem. Of course, according to Resolutions 1803 (XVII) and 1514 (XV)9 of the United Nations General Assembly and Principle 2 of the Rio Declaration, “States have the sovereign right to exploit their own resources according to their environment and development policies.” In other words, they can implement their proper environmental policies. But these actions do not produce concrete effects. The degradation of the environment and certain natural or industrial disasters directly affect the Earth as a continuous portion of space. It is only on this scale that adequate initiatives can be taken in order to obtain durable and adequate results. International CooperationActually, environmental protection has become one of the most important issues in contemporary world relations. International cooperation is necessary to protect humanity’s common heritage. No country can do it on its own, because this is a common responsibility. Therefore, the quality of air and the atmosphere depends on world coordination in many domains. The protection of the quality of the waters of a boundary river, or of a lake common to several countries, requires international coordination and cooperation. As the International Court of Justice reminded in the case Gabcikovo-Nagymaros: “During ages, man did not stop influencing nature for economic and other purposes. In the past it often accomplished this without taking into account the effects on the environment. Due to the new horizons opened by science and the increasing awareness of the risks of these interventions for humanity – whether it is for the present or for future generations – new standards and requirements have been put in place, enounced in a substantial number of instruments over the past two decades. These new standards must be taken in consideration and these new requirements appropriately appreciated, not only when States envisage launching new activities, but also when they pursue projects that have already been launched. The concept of sustainable development expresses the need for reconciling economic development and environmental protection10.” Since the Earth Summit in Rio in 1992 the pressure exercised by NGOs and the international financial backers prompted governments to adjust their institutional frameworks and to work out coherent policies, in particular environmental action plans relating to the national, regional and international dimension. At the sub-regional level, such initiatives led to setting up mechanisms and processes such as the Conference of Ministers for Forests of Central Africa (COMIFAC)11, Conference on Central Africa’s Moist Forest Ecosystem (CEFDHAC) and the Africa Forest Law Enforcement and Governance Process (AFLEG)12. Organized in March, 1999 in Yaoundé, the summit of leaders of Central African States on the conservation and sustainable management of rain forests confirmed the Rio commitment to lead common policies for sustainable management of forested ecosystems. This regional dynamics led to the elaboration and adoption of a “convergence plan” for the Congo basin, whose main objective is the “conservation, restoration, development and durable use of biologic resources in the framework of management adapted to the social and cultural economic development of populations and the protection of the global environment13.” This convergence plan covers a ten-year period (2004-2013 and will globally cost an estimated US$ 1.5 billion, or 840 billion CFA Francs14. Regional dynamics led to international participation in efforts to respond to this universal concern, and the Johannesburg summit on sustainable development in September 200215 paved the way to a multilateral initiative: the United States of America and South Africa inspired, along with many other actors, the idea of a multilateral partnership for the protection of forests in **the Congo basin. Considered as the left lung of the earth, these forests are a vegetable and wildlife reserve inextricably bound to human life**16. According to Walter Kansteiner, **they are a “world treasure,” a “world lung” necessary for preserving biologic diversity**.

**Supreme Court action to restrict detention powers, particularly during war time, is ESSENTIAL to protecting and strengthening US judicial independence – judicial passivity only encourages attacks on the courts**

**Reinhardt, 06** (Stephen, Judge, U.S. Court of Appeals for the Ninth Circuit, "The Judicial Role in National Security," http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n5/documents/REINHARDTv.2.pdf)

**The role of judges during** times of war – whether it be a traditional war or **a “war on terrorism**” – **is essentially no different than during times of peace**: **it is to interpret the law** to the best of our ability, **consistent with our constitutionally mandated role and without regard to external pressure**. **Among the differences in wartime** for the judiciary, however, **is one that involves a principle that is essential to the proper operation of the federal courts** – **judicial independence**. **In wartime, the need for judicial independence is at its highest, yet the very concept is at its most vulnerable**, imperiled by threats both within and without the judiciary. Externally, **there is pressure from the elected branches**, and often the public, **to afford far more deference than may be desirable** to the President and Congress, **as they wage wars** to keep the nation safe. Often this pressure includes threats of retribution, including threats to strip the courts of jurisdiction. Internally, judges may question their own right or ability to make the necessary, potentially perilous judgments at the very time when it is most important that they exercise their full authority. This concern is exacerbated by the fact that the judiciary is essentially a conservative institution and judges are generally conservative individuals who dislike controversy, risk taking, and change. As Professor Stone can tell you, the history of judicial responses to threats to our liberties in wartime is mixed at best.1 Now, **in the** first years of the **twenty-first century, the threat to judicial independence is proving particularly troublesome**, and I am not referring just to those demagogues who rush to the steps of the Capitol to call for legislation stripping the federal courts of jurisdiction every time they do not like a decision bolstering the Bill of Rights. Rather, I refer to the chilling reality that, as we enter the fifth year of the socalled “Global War on Terror,” **we are faced with a conflict with no projected or foreseeable end, and**, thus, with the prospect that the **war-related challenges to constitutional rights and to judicial independence**, which typically subside with the end of a conflict, **will continue unabated into the indefinite future**. In an era of “war without end,” **any inclination of judges to lessen** the **necessary constitutional vigilance** will not only seriously jeopardize basic rights to privacy and liberty, but also **will make it more difficult to fend off** other, nonwar-related **challenges to judicial independence**, and as a result cause harm to all of our fundamental rights and liberties. Archibald Cox – who knew a thing or two about the necessity of government actors being independent – emphasized that an essential element of judicial independence is that “there shall be no tampering with the organization or jurisdiction of the courts for the purposes of controlling their decisions upon constitutional questions.”2 Applying Professor Cox’s precept to current events, we might question whether some recent actions and arguments advanced by the elected branches constitute threats to judicial independence. Congress, for instance, recently passed the Detainee Treatment Act.3 The Graham-Levin Amendment, which is part of that legislation, prohibits any court from hearing or considering habeas petitions filed by aliens detained at Guantanamo Bay.4 The Supreme Court has been asked to rule on whether the Act applies only prospectively, or whether it applies to pending habeas petitions as well. It is unclear at this time which interpretation will prevail.5 But if the Act is ultimately construed as applying to pending appeals, one must ask whether it constitutes “tampering with the . . . jurisdiction of the courts for the purposes of controlling their decisions,” which Professor Cox identified as a key marker of a violation of judicial independence. All of this, of course, is wholly aside from the question of whether Congress and the President may strip the courts of such jurisdiction prospectively. And it is, of course, also wholly apart from the Padilla case,6 in which many critics believe that the administration has played fast and loose with the courts’ jurisdiction in order to avoid a substantive decision on a fundamental issue of great importance to all Americans. **A**nother possible **threat to judicial independence** **involves the position taken**  **by the administration regarding the scope of its war powers.** **In challenging**  **cases brought by individuals** charged as enemy combatants or **detained** at Guantanamo, **the administration has argued that the President has “inherent**  **powers” as Commander in Chief** under Article II and **that actions he takes**  **pursuant to those powers are essentially not reviewable by courts** or subject to limitation by Congress.7 The administration’s position in the initial round of Guantanamo cases was that no court anywhere had any jurisdiction to consider any claim, be it torture or pending execution, by any individual held on that American base, which is located on territory under American jurisdiction, for an indefinite period.8 The executive branch has also relied on sweeping and often startling assertions of executive authority in defending the administration’s domestic surveillance program, asserting at times as well a congressional resolution for the authorization of the use of military force. To some extent, such assertions carry with them a challenge to judicial independence, as they seem to rely on the proposition that a broad range of cases – those that in the administration’s view relate to the President’s exercise of power as Commander in Chief (and that is a broad range of cases indeed) – are, in effect, beyond the reach of judicial review. The full implications of the President’s arguments are open to debate, especially since the scope of the inherent power appears, in the view of some current and former administration lawyers, to be limitless. What is clear, however, is that **the administration’s**  **stance raises important questions about how the constitutionally imposed**  **system of checks and balances should operate during periods of military**  **conflict, questions judges should not shirk from resolving**. The fundamental question, I suppose, is whether the role of the judge should change in wartime. The answer is that while our function does not change, the manner in which we perform the balancing of interests that we so often undertake in constitutional cases does. In times of national emergency, we must necessarily give greater weight in many instances to the governmental, more specifically the national security, interest than we might at other times. As courts have often recognized, the government’s interests in protecting the nation’s security are heightened during periods of military conflict. Accordingly, **particular** searches or **detentions that might be unconstitutional**  **during peacetime may well be deemed constitutional during times of war** – not because the role of the judge is any different, and not because courts curtail their constitutionally mandated role, but **because a governmental interest** that may be insufficient to justify such deprivations in peacetime **may be**  **sufficiently substantial to justify that action during times of national**  **emergency. Courts must not**, however, **at any time allow the balancing to turn**  **into a routine licensing of unbridled and unsupervised governmental power**.

**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 charg**e. 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**.

**Plan**

**The United States federal judiciary should rule that the President of the United States lacks the authority to detain individuals indefinitely.**

## 2AC

### Case

#### Terrorist threat is high now – there are multiple ways terrorists could aquire nuclear weapons rapidly – that’s 1AC Neely – cites stealing, attacking convoys, loose material

#### Terrorism causes extinction and the risk is increasing- improving tech and inefficient 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.

### A2: No Global Modeling

#### US is modeled globally – our CJA evidence says rulers are JUSTIFYING THEIR ABUSES by citing US detention policy – and we read evidence specific to latin America and Africa about modeling – threshold analysis – only evaluate regionally specific evidence

#### 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

#### Executive circumvention isn’t possible on detention policy – judicial review creates powerful incentives for compliance

Martin 5 (David, professor of law at the University of Virginia, 25 B.C. Third World L.J. 125, Winter, lexis)

For administrative officers, including both those in charge of initial detention decisions and those who serve on the review tribunals, the single most important fact is that the federal courts have a review role at all -- whatever the precise formal constraints on that role may be. Such [\*155] a role is now solidly entrenched for detainees at Guantanamo, and apparently for U.S. citizen detainees anywhere in the world; I argue here for extending that entrenchment to longer-term alien detainees at other overseas facilities. In such a setting, anything the administering authorities do is at least potentially subject to being called into question before a federal judge. This exposure provides significant inducements for greater rigor in the internal processes that lead to initial detention decisions, and in decisions to continue detention -- especially when compared to a situation where the administrators know that they cannot be called to explain their actions in any external forum. The pattern of Defense Department responses to the Supreme Court's "enemy combatant" cases illustrates this point. The press reported an accelerated pace of releases from Guantanamo shortly after certiorari was granted in Rasul. 124 More concretely, as noted, within two weeks of the actual decision in Rasul, the Defense Department began to establish combatant status review tribunals at Guantanamo, along lines generally consistent with Hamdi (even though that latter decision was technically distinguishable). 125 Internal review and quality control mechanisms doubtless existed before, but the prospect of court review gives them new urgency, polish, and force. Significantly, the mere prospect of court review greatly enhances the bargaining position of those within the agency who wish to adopt tighter standards, closer supervision, or more protective procedures. The real-world operation of such review magnifies this effect. As a realistic matter, federal judges, even within the confines of a highly deferential standard, can increase the pressure on the agency in any case where they sense that the panel has acted questionably or reached a ruling deeply inconsistent with the evidence presented -- even if there is enough, when it comes time to announce a final decision in the case, to sustain the final agency determination under the [\*156] "some evidence" standard. A judge suspecting such a misfire of decision-making can, for example, minutely scrutinize the procedures employed, or find fault with some element of the description of the legal standard employed. In short, at least some judges will yield to the undertow about which Judge Wilkinson wrote, and find ways to put administrative officers through extra hoops while not overtly transgressing the boundaries of the governing deferential standard -- at least until an appellate court calls them back into line. Most courts, to be sure, will not undertake such a covertly interventionist role and will honor the prescribed limits on their powers. But here is the key to understanding administrative reactions to the presence of review: the administrators cannot know when they make an initial decision to put someone into longer-term detention, or when they conduct a formal review proceeding before a military tribunal, exactly which cases might run into a judicial buzz saw. This ineluctable uncertainty provides an ongoing external incentive for the administrators to set up the administrative system in as professional and careful a manner as possible, and to conduct each case with close attention to fairness, in order to avoid tempting a court into quietly pressing the boundaries of judicial deference and adopting, de facto, a more intrusive review process. Even a deferential standard of review, then, creates an external force for serious internal checks and balances, an outside factor that also strengthens the hand of the inside players who push for better individual protections and closer internal review and monitoring. This dynamic significantly increases the odds of avoiding factually erroneous outcomes, as compared with a system that has no such external spur. Undeniably, it still falls short of guaranteeing against individual injustice worked by a biased or lazy or inattentive decisionmaker. It must be acknowledged, of course, that arming the reviewing court with a highly demanding standard of review would catch and correct a few more wrongful outcomes that evade the internal checks and balances than does a deferential standard. But the point here is that a deferential standard moves us a good deal further in the direction of accuracy than is ordinarily credited, precisely because of the interplay that will regularly occur between judges and the military. We may need to accept the remaining divergences as the price of assuring that the system does not intrude too far on military effectiveness in the struggle against terrorist forces.

#### Doesn’t take out judicial exchanges in Venezuela – the *decision* is the internal link

#### 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

#### No burnout

**Torrey and Yolken 5** E. Fuller and Robert H, Directors Stanley Medical Research Institute, 2005, Beasts of the Earth: Animals, Humans and Disease, pp. 5-6

The outcome of this marriage, however, is not as clearly defined as it was once thought to be. For many years, it was believed that microbes and human slowly learn to live with each other as microbes evolve toward a benign coexistence wit their hosts. Thus, the bacterium that causes syphilis was thought to be extremely virulent when it initially spread among humans in the sixteenth century, then to have slowly become less virulent over the following three centuries. This reassuring view of microbial history has recently been challenged by Paul Ewald and others, who have questioned whether microbes do necessarily evolve toward long-term accommodation with their hosts. Under certain circumstances, Ewald argues, “Natural selection may…favor the evolution of extreme harmfulness if the exploitation that damages the host [i.e. disease] enhances the ability of the harmful variant to compete with a more benign pathogen.” The outcome of such a “marriage” may thus be the murder of one spouse by the other. In eschatological terms, this view argues that a microbe such as HIV or SARS virus may be truly capable of eradicating the human race.

### Prez Powers DA – 2AC

#### 1 – case outweighs – the judicial independence advantage is five minutes of impact turns to this in the 1AC.

#### 1. No link – plan only affects one issue that is not central to Obama’s presidential powers – make them read a card that says the plan prevents Obama from using executive power in other instances

#### Oversight doesn’t determine flexibility---tech, elusive enemies and personnel outweigh

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

Even if the promoters of unfettered executive power were justified in associating legal rules with ineffectiveness during emergencies, their single-minded obsession with circumventing America's allegedly "super-legalistic culture" n33 would need explaining. Let us stipulate, for the sake of argument, that civil liberties, due process, treaty obligations, and constitutional checks and balances make national-security crises somewhat harder to manage. If so, they would still rank quite low among the many factors that render the terrorist threat a serious one. None of them rivals in importance the extraordinary vulnerabilities created by technological advances, especially the proliferation of compact weapons of extraordinary destructiveness, in the context of globalized communication, transportation, and banking. None of them compares to a shadowy, dispersed, and elusive enemy that cannot be effectively deterred. And none of them is as constraining as the scarcity of linguistically and culturally knowledgeable personnel and other vital national-security assets, including satellite coverage of battle zones, which the government must allocate in some rational way in response to an obscure, evolving, multidimensional, and basically immeasurable threat.¶ The curious belief that laws written for normal times are especially important obstacles to defeating the terrorist enemy is based less on evidence and argument than on a hydraulic reading of the liberty-security relationship. One particular implication of the hydraulic model probably explains the psychological appeal of a metaphor that is patently inadequate descriptively: if the main thing preventing us from defeating the enemy is "too much law," then the pathway to national security is easy to find; all we need to do is to discard [\*318] the quaint legalisms that needlessly tie the executive's hands. That this comforting inference is the fruit of wishful thinking is the least that might be said.

#### Judicial Independence outweighs – 1ac had six scenarios -

#### It’s modeled globally – that’s CJA – and key to stability in Latin America – that’s Cooper – this is the only mechanism for solving disease and escalatory war –

#### Latin American instability turns heg – that’s Sabatini

#### And it’s key to stability in Africa – this is key to prevent global economic collapse and congo forest destruction that’s Sites and Business Day

#### 3. Plan allows for better executive decision making

Wells 04(Christina, Prof of law @ U of Missouri – Columbia, Missouri Law Review, Fall)

The psychology of accountability further suggests that opponents of deference are correct to push for more rigorous judicial review. Psychologists describe the phenomenon of accountability as the expectation that one may have to justify one's actions as sufficiently compelling or face negative consequences. Research shows that people who know they will be accountable reach better-reasoned decisions and avoid many of the problems that lead to skewed risk assessment. **Judicial review**, with its requirement that officials explain and justify their infringement of civil liberties, **can serve as a mechanism of accountability**, **thus improving executive branch decision making in times of crisis**. Furthermore, the contextual nature of civil liberties cases suggests that judicial review may be a necessary aspect of executive accountability.

#### 4. The president will do whatever he wants anyway- post-Hamdan Bush proves

#### No internal link - in cases of extreme threats to national security the prez has the ability to make limited exceptions which is probably sufficient to maintain hegemony – its illogical that a particular aspect of war powers authority is key to the entire perception of American heg

#### 7. Executive power kills multilat

Posner & Abebe 11 -- Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School (Eric A. & Daniel, 2011, "The Flaws of Foreign Affairs Legalism," Virgina Journal of International Law 51:507, http://www.ericposner.com/THE%20FLAWS%20OF%20FOREIGN%20AFFAIRS%20LEGALISM.pdf)

For example, one of the authors and Cass Sunstein proposed recently that the Chevron deference doctrine should be extended to executive ac- tions touching on foreign affairs. 11 In their criticism of this proposal, Derek Jinks and Neil Katyal display the characteristic legalist suspicion of the executive. 12 They argue that increased judicial deference to exec- utive decision-making will have **negative consequences for international law:** The United Nations, whatever its limitations, now provides a highly legitimated institutional vehicle for global cooperation in an astonishingly wide array of substantive domains — including national security and human rights. International human rights and humanitarian law provide a widely accepted normative framework that defines with increasing precision the constitu- tional principles of the international order. These developments, and many others like them, provide an institutional structure by which, and a normative framework within which, **effective** and principled **international cooperation is possible**. Posner and Sun- stein would set that project back when the United States, and the world, need it the most. 13 Jinks and Katyal believe that deference to the executive in foreign af- fairs harms international cooperation because the **executive is hostile to international law and cooperation**, whereas **the judiciary promotes inter- national law**. 14 Why would the executive be hostile to international law and the judi- ciary favorable to it? Jinks and Katyal’s main argument is that the exec- utive cares about the short term, looking only to the next election. Con- versely, the judiciary, because it enjoys lifetime tenure, takes the longer view, 15 which is one that recognizes the importance of international law for American security and prosperity. The normative implication of the argument is straightforward. Be- cause the judiciary supports international law and the executive rejects it, and because international law is good and necessary, power should be transferred from the executive to the courts. Courts should derive their power either from an interpretation of the Constitution that emphasizes limited executive power and robust judicial review, or from statutes that regulate foreign relations, which Congress should enact. 16 This is the es- sence of foreign affairs legalism.

#### Only multilateral cooperation prevents great power wars that make extinction inevitable.

**Dyer**, 12/30/**2004** (Gwynne – former senior lecturer in war studies at the Royal Military Academy Sandhurt, The End of War, The Toronto Star, p. lexis)

The "firebreak" against nuclear weapons use that we began building after Hiroshima and Nagasaki has held for well over half a century now. But the proliferation of nuclear weapons to new powers is a major challenge to the stability of the system. So are the coming crises, mostly environmental in origin, which will hit some countries much harder than others, and may drive some to desperation. Add in the huge impending shifts in the great-power system as China and India grow to rival the United States in GDP over the next 30 or 40 years and it will be hard to keep things from spinning out of control. With good luck and good management, we may be able to ride out the next half-century without the first-magnitude catastrophe of a **global nuclear war**, but the potential certainly exists for a major die-back of human population. We cannot command the good luck, but good management is something we can choose to provide. It depends, above all, on **preserving and extending the multilateral system** that we have been building since the end of World War II. The rising powers must be absorbed into a system that **emphasizes co-operation and makes room for them**, rather than one that deals in confrontation and raw military power. If they are obliged to play the traditional great-power game of winners and losers, then history will repeat itself and **everybody loses**.

### 2AC Debt Ceiling

#### No pass –

#### A) Obama rejects

Huffington Post 10/10

[Obama Rejects Republican Proposal For Debt-Limit: NYT, 10/10/13, <http://www.huffingtonpost.com/2013/10/10/obama-debt-limit_n_4080993.html>]

President Barack Obama rejected a Republican proposal for a short-term debt limit hike, the New York Times reports. However, Republicans immediately pushed back against the paper's report. "He did not reject," one House GOP leadership aide who was at the meeting said flatly. On Thursday, Republican House leaders offered Obama and the Senate a six-week hike of the debt limit, pushing the deadline from Oct. 17 to around Thanksgiving. The offer did not, however, include a deal to reopen the shuttered federal government. Senate Majority Leader Harry Reid (D-Nev.) said earlier Thursday the deal was "not going to happen." A statement from the White House said that, though no determination was made, Obama "looks forward to making continued progress with members on both sides of the aisle." "The President’s goal remains to ensure we pay the bills we’ve incurred, reopen the government and get back to the business of growing the economy, creating jobs and strengthening the middle class," the statement said. House Majority Leader Eric Cantor hoped for "a clearer path" moving forward.

#### B) No GOP or Dem support

Calmes and Parker 10/10

[Jackie and Ashley, New York Times, 10/10/13, Obama and G.O.P. Fail to Agree on Debt Limit Plan, <http://www.nytimes.com/2013/10/11/us/politics/debt-limit-debate.html?_r=0>]

The Republican proposal could come to a vote as soon as Friday. But the White House and Congressional Democrats remained skeptical that House Republican leaders could pass the proposal. A large faction of Tea Party conservatives campaigned on promises never to vote to increase the nation’s debt limit, and say they do not believe the warnings — including from Republican business allies — that failing to act could provoke a default and economic chaos globally. And House Democrats vowed not to support the proposal without a companion measure to fully fund a government now shuttered for 10 days.

#### No escalation

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

#### No link – the plan affirms a lower court ruling – that’s fundamentally different from the broad overruling of precedent neg evidence assumes

#### No impact - ignore the hype, we could prioritize payments and programs

Wash Times 10/3/13 ("What will really happen if we don't raise the debt ceiling," http://communities.washingtontimes.com/neighborhood/unicorn-diaries/2013/oct/3/what-will-really-happen-if-we-dont-raise-debt-ceil/#ixzz2gxqsMFS5)

For all the political panic over hitting the debt ceiling, the actual results of doing so are not that serious. The U.S. has never defaulted on its outstanding debt, and will not if nothing is done in the next two weeks. Instead, not raising the debt ceiling simply means that no new debt can subsequently be incurred. If the government’s borrowing cap isn’t increased, it will be forced to balance its books. ¶ With no more easy money to spend, the government would have to prioritize its expenses, only spending as much as it is collecting over a given period of time. It could no longer pay out sums far greater than its revenues for indefinite periods of time.¶ The government has estimated that it will take in about $3 trillion in fiscal year 2013. Without an increase in the debt limit, the government’s budget for the same fiscal year could not top that number. Economists have already proven that the government could easily pay for Social Security, federal employee pensions, Medicare, Medicaid, the interest on the national debt, national defense, food stamps, education, law enforcement, and transportation with a budget balanced at that level.¶ In all likelihood, Congress will vote to raise the debt ceiling. It has done so for many generations, even when contentious items like Obamacare were on the table. Obama and his spin machine will try to convince the public that not raising the debt limit will be the death knell of America, and in turn, the public will heap so much pressure on Republican lawmakers that they’ll have no choice but to cave.¶ This debt ceiling deadline comes at a time of unprecedented turmoil. But even if it were left untouched, the sky would not fall, as the Democrats would like you to believe.

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

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

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

#### Plan’s announced in June

The Hill 13 (6/9, Staffwriter Sam Baker “Decision on gay marriage highlights Supreme Court’s term” <http://thehill.com/homenews/news/304225-decision-on-gay-marriage-highlights-supreme-courts-summer-term#ixzz2gJR8Vkpt>)

The marriage rulings will likely be the last ones released before the justices leave town for summer vacations and teaching positions, although the specific timing is hard to predict. The court doesn’t announce when specific decisions are coming, or even set a fixed end date by which all decisions will be released. But the last rulings, which are usually the most controversial, tend to come out at the end of June. (The court’s ruling on ObamaCare, for example, was released June 28.)

#### 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”).

### 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.

#### No internal link – any shift has *already occurred* and is *locked in*

Jay Lefkowitz 13, senior lawyer and former domestic policy advisor to President George W. Bush and John O'Quinn, former DOJ official in the Bush administration, Financial Times, "Drones are no substitute for detention", March 4, www.ft.com/cms/s/0/dae6552c-84c2-11e2-891d-00144feabdc0.html#axzz2dZnIVyqb

Memo to all those critics of Guantánamo Bay: beware what you wish for. The nomination of John Brennan to head the CIA was put on hold, in no small part because of the growing debate over the use of drone strikes to kill suspected high-value al-Qaeda operatives and other alleged terrorists. President Barack Obama’s administration defends these strikes as “legal”, “ethical”, “wise” and even “humane”. Opponents characterise them as an aggrandisement of executive power in which the president becomes judge, jury and executioner. Sound familiar? It should – because it parallels the debate over the policy of detaining terrorist suspects at Guantánamo that punctuated most of George W. Bush’s time in office.¶ In the past four years, there has been a dramatic shift from detention to drone strikes as the tool of choice for removing al-Qaeda operatives from the field of battle. They have reportedly been used more than 300 times in Pakistan alone by the Obama administration, at least six times more than under Mr Bush. They inevitably come with collateral damage. Meanwhile, not one detainee has been transferred to Guantánamo, and the US has largely outsourced the running of the detention facility at Bagram air base to the Afghan government. Rather than capture enemies and collect valuable information, this administration prefers to pick them off. In short, every successful drone strike is another wasted intelligence-gathering opportunity.¶ Lost amid recent hysteria over the drone programme is the question of why – when detention produces little collateral damage – there appears to be little appetite for capturing and questioning suspects. The answer: it poses hard choices for an administration fearful of the criticism directed at its predecessors – one that in effect abandoned its efforts to close Guantánamo, and came round largely to defending Bush-era policies regarding detention, but only very reluctantly.¶ Detention requires the government to decide: when is a detainee no longer a threat? Should they be tried, and where? When, where and how can they can be repatriated? What intelligence can be shared with a court or opposing counsel? And, one of the hardest questions of all: what if you release a detainee and they take up arms again?¶ On top of that, it raises questions about intelligence-gathering, a primary mission at Guantánamo. Indeed, it has been widely reported that intelligence from detainees helped lead the US to Osama bin Laden. But how is it to be gathered? What techniques are permissible? Moreover, accusations of torture are easily made – it is literally part of the al-Qaeda play book to do so – but hard to debunk without compromising intelligence.¶ By contrast, drone strikes are easy. With a single key stroke, a suspected enemy is eliminated once and for all, with no fuss, no judicial second-guessing and no legions of lawyers poised to challenge detention. Indeed, one of the unintended consequences of the criticism of Guantánamo is to make drone strikes more attractive than detention for removing al-Qaeda operatives from the field of battle.¶ Yet, even as potential intelligence assets are bombed out of existence, the information trail from detainees captured 10 years ago grows cold. At the same time, al-Qaeda evolves and expands. What could we have learnt from even a handful of the high-value operatives killed in drone strikes?¶ We do not dispute that use of drones against al-Qaeda is a legitimate part of the president’s powers as commander-in-chief, and we have doubts about some proposals that purport to circumscribe that authority. But it is clear this administration is using them as a substitute for capture, detention and intelligence-gathering. The current debate highlights the need for Congress and the administration to refocus their efforts on developing a sensible, sustainable policy for detention of foreign enemy combatants – in which enemies are safely held far from US soil, intelligence is actively gathered and justice promptly administered through military courts – instead of taking the easy way out.

### QDR CP

Happens every 20 years – doesn’t solve

Courts key

**1. Perm --- do the counterplan --- nothing about it mandates certainty or immediacy --- they add a delay and the condition --- we can permute that.**

**2. Not textually competitive --- text is best --- most objective and avoids the worst counterplans like consultation**

**3. It’s acceptable within the range of “should”**

**GAO 8** (Government Accounting Office, Exposure Draft of Proposed Changes to the International Standards for the Professional Practice of Internal Auditing, http://www.gao.gov/govaud/cl\_iia080331.pdf)

The second sentence of the “must” definition used in the exposure draft instructions is more aligned with the definition of “should” as used by other standards setters, including GAO. The definition of “should” as used by GAO, which is intended to be consistent with the definition used by the AICPA and the PCAOB, indicates a presumptively mandatory requirement and contains the following language: “…in rare circumstances, auditors and audit organizations may depart from a presumptively mandatory requirement provided they document their justification for the departure and how the alternative procedures performed in the circumstances were sufficient to achieve the objectives of the presumptively mandatory requirement.” We suggest that the IIA move the second sentence of the “must” definition to the “should” definition. The definition of “must” needs to be clear that “must” indicates an unconditional requirement and that another procedure cannot substitute for a “must.” Also, we suggest adding language to the definition of “should” to indicate that substituting another procedure for a “should” requirement is allowed only if the auditors document their justification for the departure from the “should” and how the alternative procedures performed in the circumstances were sufficient to achieve the objectives of the “should” requirement. The IIA should review every “must” requirement in the Standards to determine whether there are acceptable alternatives to the procedure; if so, “should” is the appropriate word.

**4. “Resolved” means law**

**Words and Phrases 64** (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

**5. CP is bad for debate ---**

**A) Education- Its Artificially competitive and forces repetitive debates- just because they have a topical solvency advocate doesn’t mean it’s important for debate**

**B) Aff ground- it’s infinitely regressive and entirely plan inclusive- makes research impossible and makes it impossible to generate offense**

**6. Conditionality is a voter – creates time and strategy skews, not reciprocal, argumentative irresponsibility, and one conditional advocacy solves their offense**

**7. Say no – the president won’t comply unless he is under legal obligation by the supreme court – status quo exemptions prove**

### Bahrain CP

Supreme Court doesn’t rule on Bahrain – not normal means – can’t expect us to have evidene

Perm do both

Perm do the cp

Doesn’t solve Independent judiciary – have to be about detention to have strong signal

**1AR**

### 1AR – Prez Pwrs

**Obama cred is low and doesn’t affect international affairs**

**Zenko 13**

[Micah, Micah Zenko Douglas Dillon Fellow at CFR, Edward Snowden and Presidential Power, 6/25/13, <http://blogs.cfr.org/zenko/2013/06/25/edward-snowden-and-presidential-power/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+mzenko+%28Micah+Zenko%3A+Politics%2C+Power%2C+and+Preventive+Action%29>]

In today’s Washington Post, former Bush administration adviser Elliot **Cohen stated of Obama: “Nobody’s afraid of this guy**. **Nobody’s saying there are any real consequences that would come from crossing him** — **and that’s an awful position for the president of the United States to be in.**” **What is missing is** **what** exactly **Obama should do to make** Vladimir **Putin afraid**, or what those consequences should be. Similarly, former senior Bush aide Peter Wehner wrote yesterday that “**an irresolute amateur like Barack Obama was the best thing that the brutal but determined Putin could have hoped for**.” Finally, in today’s Wall Street Journal Brett Stephens wrote: “However the **Snowden** episode turns out…what it mainly **illustrates** is that **we are living in an age of American impotence**.” As evidence for this absence of U.S. virility, **Stephens cites** the withdrawal from **Iraq**, draw-down from **Afghanistan**, “giving [**Syria**’s] civil war the widest berth,” **and** ongoing questions about **Iran’**s nuclear program, which stretch back more than a decade. **Somehow**, **deeper** U.S. military **involvement** in some or all of these quagmires **would have scared Moscow into submission.** **Presidents have never been able to direct other foreign leaders to do what they want**—**a fact** George W. **Bush learned** over the eleven days of quiet diplomacy that was required to secure the U.S. servicemembers and EP-3E Aries I spy plane that crash-landed on Hainan Island, China, in April 2001. It was reported at the time: “A senior U.S. official said the impasse was broken when the Bush administration agreed to insert ‘very’ before ‘sorry’,” in a letter to the Chinese Foreign Minister. Those sorts of **painstaking negotiations**—requiring judgment and the flexibility to provide political coverage for other leaders to make tough decisions—**reflect how crisis diplomacy is actually conducted**. **Whether**, or how**, Russia and the United States resolve the dispute over** Edward **Snowden** (if he is in fact there) **will not be a result of Putin’s perception of Obama’s toughness,** or America’s war-making efforts around the world.

**Even if they win that the aff spills over to broader authority, it would not wreck flex**

Andrew **McCarthy 9**, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, <http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf>

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which **the judicial function is being imported for very limited purposes – remains executive and military**. The default position of the criminal justice system **would not carry over** to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants **are not Americans but those who mean America harm**; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is **enumerated and finite** – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that **prosecuting war remains a quintessentially executive endeavor**; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and **they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.**

**And doesn’t hurt warfighting**

**Hecht 05** (Daryl, Judge, Iowa Court Of Appeals, South Dakota Law Review)

As they clarify the nature and extent of process due the Guantanamo prisoners, federal courts will consider the Eisentrager Court's concerns about the prospect that thorough judicial review might disrupt war efforts. [**288**](http://www.lexis.com/research/retrieve?_m=806a6547dc3035150a88b4d0749d3d12&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAt&_md5=8d2f8833b44efc78e3aff8efeee92b52#n288) The realities of war may justify reasonable restriction of the process available to prisoners of war during times of armed conflict and justify some judicial deference allowing the executive to conduct military campaigns with a minimum of distraction. However, the risk that the war effort will be disrupted by judicial or administrative review of the grounds for detention are diminished in these cases because the prison is distant from the present theaters of war. Modern technology will facilitate the presentation of evidence at remote sites in ways not contemplated by the Court in the Eisentrager era and will render unpersuasive many of the Executive's war-powers arguments against meaningful judicial review.

**Judicial review doesn’t hinder the President’s ability to act quickly and decisively**

**Wells 04** (Christina, Prof of law @ U of Missouri – Columbia, Missouri Law Review, Fall)

Thus, the threat of judicial review is still a necessary component of making executive actors accountable.  Second, one could argue that judicial review unreasonably burdens the executive's ability to act quickly and decisively in response to an emergent situation. [**238**](http://www.lexis.com/research/retrieve?_m=de0216e9953095373f699f9d14bbb843&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=9a947f66e07ba5718a84bf5f543141da#n238) National security emergencies are presumably the last instance in which we want such burdens on executive decision making. [**239**](http://www.lexis.com/research/retrieve?_m=de0216e9953095373f699f9d14bbb843&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=9a947f66e07ba5718a84bf5f543141da#n239) While this argument is reasonable as it pertains to executive decisions regarding the actual prosecution of a war -- i.e., decisions to invade a country, troop movements -- the historic patterns described above never involved such decisions. Rather, they involved decisions to pursue groups or individuals via domestic criminal or administrative measures, decisions made over long periods of time. Such actions taken in the name of national security rarely require quick and decisive action. [**240**](http://www.lexis.com/research/retrieve?_m=de0216e9953095373f699f9d14bbb843&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=9a947f66e07ba5718a84bf5f543141da#n240) The argument for executive flexibility thus carries less weight in this context than when military decisions are involved. Furthermore, given what we know of past skewed decision making, we may actually want to slow down that decision-making process when restricting civil liberties.

**Court rules against executive now**

**Wong 13** -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

**This study started out with two questions**. The first was: ?**Does war influence judicial decision - making**?? The second was: ?**Do national security claims influence judicial decision - making**?? The answer to the first question is: **In a general hypothetical s ignificant war, there is a statistically significant finding of voting against the government**. In the models run using the Spaeth database where the government is a party, **the influence of all significant wars on judicial decision - making** generally **was to vote against the government**. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while **Courts** vote strategically and support a popular president, they **are** still **statistically likely to find against the government in a significant war**. These findings altogether suggest that that **the Supreme Court votes** strat egically with an eye towards the popularity of the president, but **revert to skepticism of government‘s wartime claims as the war progresses**. The answer to the second question is: **National security claims brought by the government achieve a statistically significant likelihood that the Supreme Court will vote against the government**. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that **the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims**

### 1AR - Politics

**Aff allows Obama to shift blame onto the court**

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

**Political leaders** in such a situation will have reason to **support** or, at minimum, tolerate **the active exercise of judicial review.** In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, **presidents** and presidential candidates **are** both conscious of the fragmented nature of American political parties and **sensitive to policy goals** that will **not be shared by all** of the president’s putative **partisan allies in Congress. We** would **expect political support for judicial review** to make itself **apparent in** any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) **in the congenial reception of judicial action after it has been taken**, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that **judges and elected officials act in** more-or-less **explicit** **concert to shift the politically appropriate decisions into the judicial arena for resolution**, it is also the case that **judges** might **act** independently of elected officials but nonetheless **in ways that elected officials find congenial** to their own interests **and are willing** and able **to accommodate**. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how **judges might exploit the political space open to them to render controversial decisions** and in how elected officials might anticipate the utility of future acts of judicial review to their own interests. There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including **presidents** and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials **may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As** Mark Graber (1993) has detailed **in** cases such as **slavery and abortion, elected officials** may **prefer judicial resolution of disruptive political** issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. **For** cross-pressured **politicians** and coalition leaders, **shifting blame for controversial decisions to the Court** and obscuring their own relationship to those decisions **may preserve electoral support and coalition unity** without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.