## 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" \l "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 – Egypt**

#### Transitioning countries model US Judicial Review and Separation of Powers

Stumpf 13

[István , Justice on the Constitutional Court of Hungary, Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?, 5/29/13, <http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations>]

In summary, let me say that Hungary, of course, has different legal traditions from that of the United States. The American Founding could start from scratch; no continental European nation has had an opportunity to do that. In the last 20 years, Hungarian legal scholars and practitioners have developed much stronger ties with European academia—the German influence is particularly strong—but as you have seen, there is a very strong interest in the American constitutional heritage, and we should by no means underestimate the United States Constitution as a model for other nations**.** The basic notions of rule of law, separation of powers, natural law, judicial review, and human rights came to life thanks to the example of the United States in the last 225 years, which in turn has influenced the entirety of Western civilization, including Hungary. The theoretical foundations of American constitutionalism, the works of American legal scholars, and the practice of the U.S. Supreme Court are valuable resources and strong points of reference for lawyers in Hungary and all over the world. I am confident that it is for the benefit of the American academia to study from time to time how the concepts and institutions of American constitutionalism flourish or face difficulties in other countries. It is an honor for me to be here and take part in this conversation. As Hungary sets out to solidify its commitment to truths that are self-evident, to the protection of unalienable rights, to a limited but effective government, and to a renewed constitutionalism, I am convinced that we may in the future inspire one another. Let me close with this thought: There is much talk about a post-American era and American decline. As a young scholar visiting America since the 1980s, I got to know this country through road trips across the heartland as well as Ivy League university lecture halls, and I can tell you that the ideals of the Founding Fathers, the principles of the U.S. Constitution, and the Declaration of Independence were not and are not in decline. On the contrary, democracies around the world, old and new, need them now more than ever. As Chief Justice John Marshall said, “The people made the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will.”

#### Now is the key time – Egypt will model US judiciary in the wake of its overthrow of Morsi

Krayewski 13 (July 9, Ed, assistant editor at *Reason* and former producer for Fox and NBC, http://reason.com/archives/2013/07/09/egypt-should-adopt-the-us-constitution)

In theory, a constitution governs the relationship between the state and the people. Constitutions can be stocked with positive rights, in which the government promises to provide something, or negative rights, in which the government refrains from interfering. The Egyptian constitution somehow managed to turn even the rights of the press into a statement of obligation, requiring the media to "contribute to shaping and directing [public opinion] in accordance with the basic principles of the State and society." When she was in Egypt last year, Justice Ruth Bader Ginsberg told Egyptians that while the U.S. Constitution contained “grand general ideas,” she wouldn’t look to it in drafting a constitution today because of its exclusion of so many groups at the beginning. Instead, she called South Africa’s constitution a “really great piece of work” to learn from. Yet while the South African government boasts that its constitution “enjoys high acclaim internationally,” the African National Congress’s emerging de facto one-party rule is an obstacle to the country becoming a stable democracy. When the ANC ousted Thabo Mbeki as the party’s president, effectively vetoing his attempt to seek a third term, the ANC itself had to become a check on power; a more robust opposition is necessary. Here, despite Justice Ginsberg’s dismissal, the U.S. Constitution could offer a model for Egyptians. Its system of checks and balances has lasted more than 200 years. Yes, it failed to fully apply the principle of legal equality; it was a flawed document from a flawed time that was improved as its society evolved. Yet the fundamental mechanics of America’s federal government have been the same through more than two centuries of relative political stability. (The great exception to that stability, of course, is the Civil War. But we came out of that conflict with more improvements to the Constitution: The Thirteenth, Fourteenth, and Fifteenth Amendments were the most important additions to the document outside the original Bill of Rights.) Many of our constitutional rights are now under assault—the First Amendment, the Second Amendment, the Fourth Amendment, even the Third Amendment. Yet the rights enshrined in those articles are still there to put up a fight about. And despite the ruling party's constant protests about an “obstructionist” Congress, the legislature's ability to thwart an often unpopular presidential agenda is actually a constitutional feature in action. And it might be what Egypt needs. Rather than seeking to draft a constitution that outlines what government ought to do for (and to) people, Egyptians need a constitution that limits the power of government. The Muslim Brotherhood was targeted by the Egyptian state throughout the rule of Nasser, Sadat, and Mubarak; it in turn was overthrown largely on the perception that it was imposing an Islamist agenda on the Egyptian State. Though modern Egyptian constitutions have declared Islam as the religion of the nation and the latest one called on it as a source of law, Egyptians may find a constitution that protects the state from the mosque and the mosque from the state works better. Such a separation could both protect the Muslim Brotherhood from government persecution and also prevent it from trampling on the rights of women and non-Muslims. Drafting a constitution and establishing democratic institutions is no easy task. The coup itself came in the context of a popular revolt, a right implied in the Second Amendment of the U.S. Constitution and mentioned explicitly in a number of state constitutions. The anti-Morsi protests that preceded the president's overthrow were backed by petitions with more than 22 million signatures, far more than the number of votes received by either Morsi or the 2012 constitution. Insofar as the government’s core function is the protection of rights (from itself), the military arguably performed that role in deposing the president. What came after, however, illustrates the importance of also bringing the military within a constitutional regime of checks and balances. The armed forces' all-too-familiar crackdown on the Muslim Brotherhood, which included the killing yesterday of 51 pro-Morsi supporters, is just the kind of display of excessive and unaccountable power that sparked Egypt's contemporary revolutionary fervor in the first place. And the crackdown follows a decades-long pattern of repression that put the Muslim Brothers in a strong position to curry public favor and take political advantage of a democratic moment. Mercifully, Egypt’s experiment with democracy has not yet ended with a return to one-man, or one-party, rule. As Egyptians move to restart the process of drafting a constitution, they could look to America’s and consider whether they might be able to secure a republic capable of protecting them from the excesses of either democratic or undemocratic institutions.

#### Consolidation of power to the executive in Egypt ensures continued instability

Ackerman 13

[Bruce, Sterling Professor of Law and Political Science, Yale University,To Save Egypt, Drop the Presidency, 7/10/13, <http://www.nytimes.com/2013/07/11/opinion/to-save-egypt-drop-the-presidency.html?pagewanted=all&_r=1&>]

AS violence escalates, Egypt’s military is trying to bridge a widening political gap by promising a rapid return to civilian rule. But its gesture of accommodation does not get to the heart of the problem: the presidential system, inherited from the Mubarak era, virtually guarantees a repetition of the tragic events of the past year. A democratic breakthrough requires a more fundamental constitutional redesign, in which the contending sides compete for power in a European-style parliamentary system. If Egypt had made that switch in the interim Constitution adopted two years ago, or in the revisions that Mohamed Morsi, as president, rammed through last year, it could well have avoided the current upheaval and bloodshed in the first place. The presidency is a winner-take-all office. This may be acceptable in countries like the United States, where well-organized parties contend for the prize. But it is a recipe for tyranny in places like Egypt, where Islamists have powerful organizational advantages in delivering the vote. Because their opponents will have great difficulties uniting behind a single candidate, Islamists could probably parlay their strong minority support into another presidential victory. To prevent that result, it is predictable that the military will suppress the political efforts of the Muslim Brotherhood and similar groups — transforming the next election into a democratic farce. The next president would not only emerge with an illegitimate mandate. His victory would convert the Islamists into undying opponents of the regime. Only a parliamentary system provides a realistic path to a more stable, inclusive future. Even if Islamist parties won a substantial share of the vote, they would not be able to monopolize power. Consider the Brotherhood’s best-case scenario: Although millions of Egyptians took part in the street demonstrations that preceded President Morsi’s ouster, the Muslim Brotherhood could still win a quarter of the seats in the parliamentary elections, with the more orthodox Salafists gaining another 15 percent. In contrast, the non-Islamist forces are fractured into a number of different factions, ranging from Christian to social democratic. Although the Brotherhood might well emerge with more seats than any other single party, its non-Islamist opponents might nevertheless cobble together a governing coalition. Even if its opponents failed, the Brotherhood could not form a coalition either, unless it reached out to some secularists for support — especially since the Brotherhood could not count on the Salafists to always back it. Under either scenario, Islamists would remain a significant factor in the political game, as they deserve to be in a democracy; their influence would undercut the arguments of religious zealots who claim that democracy is a sham. But this need for cooperation across the religious-secular divide wouldn’t be met under any presidential scenario. Once the military assures the election of an acceptable president, Islamists would probably walk out of the legislature. Even if they remained, they would predictably use their parliamentary platform to denounce Mr. Morsi’s replacement as illegitimate. If they tried to block legislation, the new president could push through his program without their support by greasing the wheels with political patronage and outright corruption. If that failed, he could make aggressive use of his executive powers — generating cycles of alienation that would, over time, undermine the very ideal of democracy. Parliamentary government is no cure-all, but a good design can remedy the most serious pathologies. Some systems, like the Italian, require a government to fall whenever a majority of representatives votes “no confidence” — leading to notorious episodes of instability. Others, like the German system, keep the old government in power until the new majority can actually agree on a replacement. That is by far the better approach for Egypt. While momentary majorities may say no to government initiatives, they should show that they have the sustained support of Parliament as a body before they can establish themselves in power. Egypt’s future will depend on the statesmanship of its leaders and the effectiveness of its policies. But a decisive move in the direction of a well-designed parliamentary democracy would create a constitutional order that encourages democrats of all persuasions to reach out to one another. The military’s current transition plan doesn’t contemplate such a breakthrough. But it doesn’t preclude it either. The “constitutional declaration” issued by the provisional president, Adli Mansour, establishes a committee of 10 jurists to propose constitutional amendments that will set the stage for a new round of elections. Before these proposals are presented to the voters in a referendum, they must be vetted by a 50-person committee appointed by social and governmental institutions, as well as by the provisional government. The timeline set by the military invites discussion of the fundamental issue. It schedules the new amendments to go before the people in about three months, followed within two more months by parliamentary elections. It then provides for the new parliament to call for presidential elections during the first week of its session. Given this sequence, reformers can simply argue for the elimination of the final stage in the process, demanding that the military turn over power to civilians once a governing coalition gains the support of a parliamentary majority. In making this move, the protagonists would not simply be aping European models. They would be taking sides in a vibrant debate within the Islamic world. When Turks mobilized in protest against their government last month, one of their larger grievances was Prime Minister Recep Tayyip Erdogan’s effort to replace Turkey’s system of parliamentary government, through a constitutional amendment that would allow him to gain direct election as a powerful president. The demonstrators rightly saw this as a move by Mr. Erdogan to consolidate his power, and their mass opposition may well have put an end to his authoritarian initiative. The question now is whether Egyptians will join in this broader popular movement to repudiate presidentialism, before it dooms their country’s great experiment in democracy.

#### Egyptian instability spills over throughout the region

Friedman 13

[Thomas, Pulitzer Prize Winning Foreign Affairs Correspondent for the New York Times, Egypt at the Edge, 7/9/13, <http://www.nytimes.com/2013/07/10/opinion/friedman-egypt-at-the-edge.html?>]

In every civil war there is a moment before all hell breaks loose when there is still a chance to prevent a total descent into the abyss. Egypt is at that moment. The Muslim holy month of Ramadan starts this week, and it can’t come too soon. One can only hope that the traditional time for getting family and friends together will provide a moment for all the actors in Egypt to reflect on how badly they’ve behaved — all sides — and opt for the only sensible pathway forward: national reconciliation. I was a student at the American University in Cairo in the early 1970s and have been a regular visitor since. I’ve never witnessed the depth of hatred that has infected Egypt in recent months: Muslim Brotherhood activists throwing a young opponent off a roof; anti-Islamist activists on Twitter praising the Egyptian army for mercilessly gunning down supporters of the Brotherhood in prayer. In the wake of all this violent turmoil, it is no longer who rules Egypt that it is at stake. It is Egypt that is at stake. This is an existential crisis. Can Egypt hold together and move forward as a unified country or will it be torn asunder by its own people, like Syria? Nothing is more important in the Middle East today, because when the stability of modern Egypt is at stake — sitting as it does astride the Suez Canal, the linchpin of any Arab peace with Israel and knitting together North Africa, Africa and the Middle East — the stability of the whole region is at stake.

#### Egyptian instability causes conflict in the Mediterranean, Africa, and Middle East --- collapsing the Suez Canal

Copley 11 (Gregory O., Editor – Global Information System and Defense & Foreign Affairs Strategic Policy, “Strategic Ramifications of the Egyptian Crisis”, World Tribune, 2-1, http://www.worldtribune.com/worldtribune/ WTARC/2011/me\_egypt0088\_02\_01.asp)

In the preface to the Defense & Foreign Affairs Handbook on Egypt, in 1995, I noted: If Egypt remains strong, and in all senses a power in its regional contexts, then world events will move in one direction. If Egypt's strength is undermined, then world events (and not merely those of the Middle East) will move along a far more uncertain and violent path. It is significant that Egypt began to fail to be strong, internally, within a few years of that 1995 book. It became less resilient as Mubarak became more isolated and the inspiration offered by Sadat began to erode. This resulted in the rise in Egypt of the Islamists who had killed Sadat, and the growing empowerment of the veteran Islamists from the Afghan conflict, including such figures as Osama bin Laden (who had spent considerable time living in Egypt), and Ayman al-Zawahiri, et al. The reality was that Mubarak's management-style presidency could not offer the requisite hope because hope translates to meaning and identity to Egyptian society as it was transitioning from poverty and unemployment to gradually growing wealth. What are the areas of strategic concern, then, as Egypt transforms? The following are some considerations: -- Security and stability of Suez Canal sea traffic: Even temporary disruption, or the threat of disruptions, to traffic through the Suez Canal would disturb global trade, given that the Canal and the associated SUMED pipeline (which takes crude oil north from the Red Sea to the Mediterranean) are responsible for significant volumes of world trade, including energy shipments. Threats of delays or closure of the Canal and/or the SUMED, or hints of increased danger to shipping, would significantly increase insurance costs on trade, and would begin to have shippers consider moving Suez traffic, once again, to the longer and more expensive Cape of Good Hope seaway. -- Disruption of Nile waters negotiations and matters relating: Egypt's support for the emerging independence of South Sudan was based on that new state s control over a considerable stretch of the White Nile, at a time when Egypt has been attempting to dominate new treaty discussions regarding Nile (White and Blue Nile) water usage and riparian rights. Already, Egyptian ability to negotiate with the Nile River states has entered an hiatus, and unless the Egyptian Government is able to re-form quickly around a strong, regionally-focused model, Egypt will have lost all momentum on securing what it feels is its dominance over Nile water controls. In the short term, the Egyptian situation could provide tremors into northern and South Sudan, and in South Sudan this will mean that the U.S., in particular, could be asked to step up support activities to that country's independence transition. Such a sudden loss of Egypt's Nile position will radically affect its long-standing proxy war to keep Ethiopia which controls the headwaters and flow of the Blue Nile, the Nile's biggest volume input landlocked and strategically impotent. This means that Egypt's ability to block African Union (AU) and Arab League denial of sovereignty recognition of the Republic of Somaliland will decline or disappear for the time being. Already Egypt's influence enabled an Islamist takeover of Somaliland, possibly moving that state toward re-integration with the anomic Somalia state. Equally importantly, the interregnum in Egypt will mean a cessation of Cairo's support for Eritrea and the proxy war which Eritrea facilitates but which others, particularly Egypt, pay against Ethiopia through the arming, logistics, training, etc., of anti-Ethiopian groups such as the Oromo Liberation Front (OLF), the Ogaden National Liberation Front (ONLF), etc. -- Overall security of the Red Sea states and SLOC: Egypt has been vital to sustaining the tenuous viability of the state of Eritrea, because Cairo regarded Eritrean loyalty as a key means of sustaining Egyptian power projection into the Red Sea (and ensuring the security of the Red Sea/Suez Sea Lane of Communication), and to deny such access to Israel. Absent Egyptian support, the Eritrean Government of President Isayas Afewerke will begin to feel its isolation and economic deprivation, and may well, on its own, accelerate new pressures for conflict with Ethiopia to distract local populations from the growing deprivation in the country. -- The Israel situation: A protracted interregnum in Egypt, or a move by Egypt toward Islamist or populist governance could bring about a decline in the stability of the Egypt-Israel peace agreement, and provide an opening of the border with the Hamas-controlled Gaza region of the Palestinian Authority lands. This would contribute to the ability of Iran to escalate pressures on Israel, and not only further isolate Israel, but also isolate Jordan, and, to an extent, Saudi Arabia. The threat of direct military engagement between Israel and Egypt may remain low, but a move by Egypt away from being a predictable part of the regional peace system would, by default, accelerate the growth of the Iran-Syria-Hizbullah-Hamas ability to strategically threaten Israel. Moreover, the transforming situation would also inhibit the West Bank Palestinian Authority Government. -- Eastern Mediterranean stability: The instability, and the possible move toward greater Islamist influence, in Egypt reinforces the direction and potential for control of the regional agenda by the Islamist Government of Turkey. It is certainly possible that the transformed mood of the Eastern Mediterranean could inhibit external investment in the development of the major gas fields off the Israeli and Cyprus coasts. This may be a gradual process, but the overall sense of the stability of the region particularly if Suez Canal closure or de facto closure by any avoidance of it by shippers due to an Islamist government in Cairo would be jeopardized if the area is no longer the world s most important trade route. -- Influence on Iran's position: It should be considered that any decline in Egypt's ability to act as the major influence on the Arab world enhances Iran's de facto position of authority in the greater Middle East. It is true that Egypt's position has been in decline in this regard for the past decade and more, and that even Saudi Arabia has worked, successfully to a degree, to compete with Egypt for regional (ie: Arab) leadership. Without strong Egyptian leadership, however, there is no real counterweight to Iran's ability to intimidate. During the period of the Shah's leadership in Iran (until the revolution of 1979 and the Shah's departure, ultimately to his death and burial, ironically, in Cairo), Iran and Egypt were highly compatible strategic partners, stabilizing the region to a large degree. The Shah's first wife was Egyptian. Absent a strong Egypt (and, in reality, we have been absent a strong Egypt for some years), we can expect growing Iranian boldness in supporting such groups as those fighting for the so-called Islamic Republic of Eastern Arabia. -- U.S. interests: A stable Egypt is critical for the maintenance of U.S. strategic interests, given its control of the Suez; its partnership in the peace process with Israel; and so on. Why, then, would the Barack Obama administration indicate that it would support the masses in the streets of Egyptian cities at this point. There is no question that Washington has supported moves to get Mubarak to provide for a smooth succession over recent years: that would have been beneficial for Egypt as well as for the U.S. But for the U.S. to actively now support as Barack Obama has done the street over orderly transition of power lacks strategic sense. It is true that the State Dept., and even the strategically-challenged Vice President Joe Biden, have urged caution on the Egyptian people, but Obama has effectively contradicted that approach, as he did in Tunisia, where he literally supported the street revolution against its president earlier in January. If Egypt moves to anti-Western, anti-U.S. governance, the U.S. will be required to re-think its entire strategic approach to the Middle East, Africa, and the projection of power through the Eastern Mediterranean and into the Indian Ocean. It would give a strong boost of importance to the U.S. Pacific Fleet, which is responsible for U.S. projection the Indian Ocean. CENTCOM (Central Command) would need to be re-thought, as would USAFRICOM (U.S. African Command). -- Impact on the U.S. positions in Iraq, Afghanistan, and Pakistan: The loss of Egypt and the questionable ability which the U.S. could have over projection through the Suez Canal if it came to that would certainly impact U.S. ability to support the final military operations it has in Iraq, and Afghanistan. A loss (or jeopardizing) of U.S. military access via Egyptian-controlled areas such as the Red Sea/Suez would absolutely fragment the way in which the U.S. can project power globally. Even the accession of an Islamist state in Egypt, as opposed to closure of the Suez Canal, would achieve much of this. What is clear is that the U.S. did not adequately prepare for the end of the Mubarak era, even though it was absolutely obvious that it was coming. Now, only by luck will the U.S. see the Egyptian armed forces re-assert control over Egypt and introduce a new generation of leadership to bridge the transition until the re-emergence of a charismatic leader.

#### Middle East war causes global nuclear war

Primakov 9 (Yevgeny, President of the Chamber of Commerce and Industry – Russian Federation, Member – Russian Academy of Science, “The Middle East Problem in the Context of International Relations”, Russia in Global Affairs, 3, July/September, http://eng.globalaffairs.ru/number/n\_13593)

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS Liberty was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overreacted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusion no longer conforms to the reality. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect of a nuclear collision in the region, which would have catastrophic consequences for the whole world. The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

#### Shutdown of the Suez Canal causes economic collapse

**PE 11** (Peak Effect, “Suez Canal Oil Choke Point,” 1-29, http://www.thepeakeffect.com/2011/01/suez-canal-oil-choke-point.html)

Why the recent developments in Egypt can send the world in recession or worst. Egypt can seem a Middle East or North African problem catching our headlines for few days and then disappearing but in reality depending on how this revolution will develop can practically bring the entire world in recession. Why Egypt is vital to the global economy is due to the Suez Canal, even if not that important today as it used to be it still represents one of the main oil choke-points in the world. Petroleum (both crude oil and refined products) accounted for 16 percent of Suez cargos, measured by cargo tonnage, in 2009. An estimated 1.0 million bbl/d of crude oil and refined petroleum products flowed northbound through the Suez Canal to the Mediterranean Sea in 2009, while 0.8 million bbl/d travelled southbound into the Red Sea. With only 1,000 feet at its narrowest point, the Canal is unable to handle the VLCC (Very Large Crude Carriers) and ULCC (Ultra Large Crude Carriers) class crude oil tankers. The 200-mile long SUMED Pipeline, or Suez-Mediterranean Pipeline provides an alternative to the Suez Canal for those cargos too large to transit the Canal. The pipeline moves crude oil northbound from the Red Sea to the Mediterranean Sea, and is owned by Arab Petroleum Pipeline Co., a joint venture between the Egyptian General Petroleum Corporation (EGPC), Saudi Aramco, Abu Dhabi’s ADNOC, and Kuwaiti companies. Closure of the Suez Canal and the SUMED Pipeline would divert tankers around the southern tip of Africa, the Cape of Good Hope, adding 6,000 miles to transit. Even a temporary blockade of the flow of oil would cause oil prices to spiral upwards, yesterday as news from Egypt were coming through the price of oil went above $100 immediately. A longer disruption could case an already weak economy to down spiral in recession. Currently the most worrisome scenario is in Europe since it is more affected by a possible blockade of the Suez Canal. The question is, if this happen what Europe will do about it, it will start a military intervention as in the Suez Crisis in 1956 to re-establish transit and vital energy supplies, any alternative route or source is not viable at the moment in the short and medium term and waiting too much to re-establish supplies would cause devastating damage to an already feeble economy.

#### Economic collapse causes extinction

Auslin 9 (Michael, Resident Scholar – American Enterprise Institute, and Desmond Lachman – Resident Fellow – American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187)

What do these trends mean in the short and medium term? The Great Depression showed how social and global chaos followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a big bang.

**Supreme court action to restrict detention powers is key**

**Reinhardt 6** (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. ¶ Another 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 charge. Detainees can be shipped to the military’s offshore prisons and kept there until “the end of hostilities.”¶ Section 1021 defines a “covered person” as “one subject to detention” and “a person who was part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities against the United States or it’s coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.” However, the law does not define “substantially supported” or “associated forces,” leaving those nebulous terms open to interpretation.¶ The White House and Senate sponsors maintain the Authorization for Use of Military Force (AUMF) previously granted presidential authority for indefinite detention. In their Appellant Brief, the Department of Justice contends that the NDAA does no more than “explicitly reaffirm…the President’s detention authority under AUMF,” a Congressional Joint Resolution passed Sept. 14, 2001.¶ In response to this claim, the plaintiffs’ Coalition rebuts, “If the Government’s theory was true, then the U.S. Senate spent weeks debating and enacting, and the U.S. Department of Justice has worked mightily to uphold a meaningless and unnecessary statute.”¶ The Amicus Curiae addresses a second issue.¶ “The Legislative History of the NDAA Reveals a Gap between the Clear Purpose and the Ambiguous Statutory Language. The NDAA detention provisions, and one amendment which was adopted creating subsection (e), were not drafted in haste. Rather, the legislative history suggests another reason for the stark difference of statutory interpretation.”¶ This section continues, contrasting the original Senate bill (S. 1253) that included limiting language excluding the ability of the government to detain citizens of the United States under the act and the final version of the NDAA. This limiting language was deleted in a substitute bill (S. 1867), by Senator Carl Levin (D-MI). The record shows that this limiting language was removed at the request of the president in order to keep the law consistent with the AUMF of 2001.¶ This fact stands in stark contrast to public statements made by Pres. Obama on the detention issue, including his signing statement.¶ “I want to clarify, that my Administration will not authorize the indefinite detention without trial of American citizens…My Administration will interpret section 1021 in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”¶ However in May 2012, Judge Katherine Forrest, (an Obama-appointed judge) ruled part of section 1021 unconstitutional.¶ “The plaintiffs do have standing, and that section 1021 is facially unconstitutional.”¶ In her ruling, Forrest asserted that the provision denies First and Fifth Amendment rights, and she granted a temporary restraining order against Section 1021 of the NDAA. The government responded by requesting that the judge reverse her ruling, claiming the plaintiffs did not have standing to bring the case against the government because they had yet to be indefinitely detained. And the administration argued that even if Mr. Hedges and the other plaintiffs did have standing, they were the only seven American citizens covered by the temporary restraining order.¶ In spite of the administration’s arguments, Judge Forrest returned a clarifying order, making it abundantly clear, without any equivocation, that the temporary restraining order applied to ALL American citizens. According to the judge, the government cannot indefinitely detain any American citizen without access to due process.¶ In September 2012, Judge Forrest issued a permanent injunction against indefinite detention of American citizens, but the Obama administration appealed and was granted a stay pending that appeal.¶ The next consequential argument forwarded in the Amicus Brief is that the 2001 AUMF is not a Constitutional Declaration of War.¶ “The Government misunderstands the Constitution which was written for a time of war, as well as a time of peace. There is only one provision in the Constitution which can be suspended in wartime conditions: the writ of habeus corpus, and that suspension requires an act of Congress. U.S. Constitution, Article I, Section 9. And there is only one wartime exception, that being the right to a Grand Jury indictment as set forth in the Fifth Amendment. The war power does not trump the rights and protections of the people in any other instances.”¶ “The Government’s sole support in attempt to sweep aside the Constitution’s Bill of Rights, is the Congressional declaration of war against the Imperial Department of Japan in World War II (Govt. Br., p.47), which the Government claims to have been: -stated in broadest terms, with no precise descriptions of who may be the subject of force (including detention) or under what circumstances, and without any express carve-outs for arguably protected speech. This pattern holds for every authorization for the use of military force in our nation’s history-including the AUMF.’”¶ Rather than offering support for the Government’s claim, the differences between the 2001 and 1941 declarations undermine it.¶ In contrast the AUMF provides: “that the President is authorized to use all necessary and appropriate force against those nations, organizations or persons he determines planned,authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” [Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001)§ 2(a)¶ The first and most obvious difference between the two resolutions is that the U.S. actually declared war against Japan. Even though the Government argues the Constitution “imposes no constraints on how the declaration should be worded, Congress has never been at a loss for words when declaring war from 1812 to 1941.'”¶ Secondly, the 1941 declaration “authorizes and directs” the President to take action, while the 2001 AUMF merely leaves it to the President’s discretion to “determine” the force necessary.¶ “In 1941, Congress instructed the President to use all of the nation’s military force and government resources to carry on war against a clearly identified enemy, while the 2001 AUMF empowered the President to identify the enemy."¶ Lastly, the 1941 declaration specified a time when the president’s authority ended, when the war was successfully terminated, while the AUMF set no definite time for the president’s power to cease. In the wake of 9/11, Congressman Ron Paul implored Congress to address the war declaration issue, but found little interest in the constitutional process.¶ “As the Apellees have demonstrated, the Constitution does not confer upon the President or upon Congress any power to subject civilians to detention by the military as AUMF and Section 1021 (b)(2) do, even if the nation is at war.”¶ Access to habeus corpus is “not a satisfactory remedy to the burden of military detention” for a citizen who is suspected of “substantially supporting a force associated with any enemy, al-Qaeda, the Taliban, or otherwise.” Not only is habeas relief unsatisfactory, imposing upon an American citizen the burden of seeking habeas relief to escape from military detention is constitutionally impermissible under the Treason Clause of Article III, Section 3. In Federalist No. 43, James Madison asserted that the Treason Clause must be understood as one of the enumerated powers of the federal government, placing severe limits on the legislative power not only to define the elements of treason, but to preclude Congress from evading the constitutional definition of treason by "new-fangled and artificial” definitions.¶ Lastly, the Amicus Brief discusses the judicial branch's duty to address constitutional issues in the case asserted by many states.¶ After the enactment of the NDAA of 2012, many state and local officials expressed opposition to the constitutional violations perceived in Section 1021. State legislators and local officials have taken different approaches in battling this unconstitutional overreach. Some states have passed non-binding resolutions, while others like Virginia and Alaska have enacted laws nullifying Section 1021 by “barring any state agency or political subdivision or employee or National Guard from knowingly aiding an agency of the armed forces of the United States in the unlawful NDAA detention of any citizen…”¶ “These efforts do not break new ground, they build on lessons learned since the beginning of the Republic. When the federal government breeches the bounds of its authority, the nation’s sovereign states can be expected to respond to protect the liberties of the people.” As Chief Justice John Marshall observed, "vesting such power in the courts requires a judge to look into the Constitution, examining it’s text to determine whether actions of the two other branches conform to the written instrument." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178-79 (1803).¶ “In this case, the executive branch is arguing on behalf of the legislative branch that the judicial branch may not even look into the Constitution to determine if Section 1021 (b) (2) violates First and Fifth Amendments. As Chief Justice John Marshall responded in Marbury, the Government’s claim is too extravagant to be maintained.”¶ The appeals process continues and the case is expected to ultimately be heard by the Supreme Court. If the Plaintiff and it’s coalition are correct, then the district court’s conclusion that, “Section 1021(b)(2), and its companion subsections (d) and (e), differ materially from AUMF, creating a reasonable and objective fear of detention , and should be affirmed” as Unconstitutional.

**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

### A2: Terrorist cant get nukes

#### Terrorists will obtain nuclear weapons—multiple potential sources

Neely 13 (Meggaen, research intern for the Project on Nuclear Issues, 3-21-13, "Doubting Deterrence of Nuclear Terrorism" Center for Strategic and International Studies) csis.org/blog/doubting-deterrence-nuclear-terrorism

The risk that terrorists will set off a nuclear weapon on U.S. soil is disconcertingly high. While a terrorist organization may experience difficulty constructing nuclear weapons facilities, there is significant concern that terrorists can obtain a nuclear weapon or nuclear materials. The fear that an actor could steal a nuclear weapon or fissile material and transport it to the United States has long-existed. It takes a great amount of time and resources (including territory) to construct centrifuges and reactors to build a nuclear weapon from scratch. Relatively easily-transportable nuclear weapons, however, present one opportunity to terrorists. For example, exercises similar to the recent Russian movement of nuclear weapons from munitions depots to storage sites may prove attractive targets. Loose nuclear materials pose a second opportunity. Terrorists could use them to create a crude nuclear weapon similar to the gun-type design of Little Boy. Its simplicity – two subcritical masses of highly-enriched uranium – may make it attractive to terrorists. While such a weapon might not produce the immediate destruction seen at Hiroshima, the radioactive fall-out and psychological effects would still be damaging. These two opportunities for terrorists differ from concerns about a “dirty bomb,” which mixes radioactive material with conventional explosives.

### A2: No retaliation – 1AC ext

#### Group retaliation - any nuclear attack on United States soil creates immediate pressure to respond - – causes draw in of China and Russia and nuclear overreactions – that’s Ayson

[if not read on Acquisition – Aspen, short version]

#### retal is inevitable and *catastrophic*

Aspen 12 (The Aspen Institute Homeland Security Group “WMD Terrorism An Update on the Recommendations of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism” 11/15/12 <http://www.aspeninstitute.org/sites/default/files/content/docs/hsi/AHSG%20WMD%20Paper%2011.15.12.pdf>)

Assessing the threat posed by terrorist acquisition of a nuclear bomb is not easy. Unlike

chemical, biological, or radiological weapons, which can be used in either small-scale or large-scale attacks (with small-scale attacks being more likely), a nuclear bomb can only be a weapon of mass destruction. Acquisition of a nuclear weapon through fabrication of an improvised device or theft of an existing weapon and circumvention of security measures is far more challenging than the acquisition of other unconventional weapons. But if terrorists could obtain the necessary quantity of fissile material and detonate a nuclear device, the consequences would be catastrophic in terms of lives lost, structural damage, and psychological effects. Although a targeted nation could survive a single nuclear explosion, the attack would set off a terrible chain of events. A post-nuclear-terrorism world would be a dismal and very different place. Thus far only three non-state groups appear to have engaged in serious efforts to acquire a nuclear capability—Aum Shinrikyo in Japan, Chechen rebels in Russia, and al Qaeda. The fact that these three groups all emerged in the 1990s allows an inference that contemporary terrorist groups may be more likely to go nuclear. Al Qaeda’s Nuclear Project Of the three groups, al Qaeda seemed the most determined to acquire nuclear weapons. Al Qaeda terrorists attempted to purchase fissile material or what they believed were nuclear weapons on at least two occasions, once in Sudan and later in Afghanistan. Osama bin Laden persuaded several Pakistani nuclear scientists to come to Afghanistan to discuss how an improvised nuclear device might be fabricated. Numerous news stories after 9/11 suggested that al Qaeda already had nuclear weapons, and al Qaeda’s leaders apparently claimed to have acquired them, although all such claims have proved to be without substance. But al Qaeda did obtain religious rulings allowing it to kill millions of Americans, which some analysts interpret as justifying its eventual use of nuclear weapons. At some point in the last decade, the organization’s nuclear weapons project turned from an actual—albeit unsuccessful—acquisition effort to a propaganda program calculated to excite its followers and frighten its foes. And that effort was successful, although that does not negate the likelihood of a continuing ambition to acquire a nuclear device. In intelligence and policy circles, worries about al Qaeda’s nuclear efforts, especially from late 2001 to 2003, tended to be exaggerated. In retrospect, assumptions at that time revealed a lack of good intelligence regarding al Qaeda’s capabilities. There are no indications that al Qaeda’s leadership or any of its regional affiliates are currently pursuing acquisition of a nuclear capability. Its leaders must devote their attention to survival. However, al Qaeda is historically opportunistic. A weapon or fissile material on offer, perhaps in Russia, or, more likely, a chaotic situation in Pakistan could create a new opportunity. The widespread public alarm created by al Qaeda’s nuclear efforts suggests that the idea of nuclear terrorism will almost certainly be on the minds of tomorrow’s terrorists. At

### A2: environment resilient

#### Make them read specific evidence – we’re not talking about one species dying off, the sites and boukongou evidence speak to destruction of the congo river basin – this is has more than half of the worlds wildlife and vegetable species – it’s the LEFT LUNG of the earth and its necessary for larger questions of biodiversity – their resiliency evidence speaks to smaller, natural die-offs

#### A. President and DOJ prevents stripping even on policies they oppose

**Grove 12**

[Tara Leigh,Assistant Professor, William and Mary Law School, The Article II Safeguards Of Federal Jurisdiction, Columbia Law Review March, 2012, L/N]

This Article argues that scholars have overlooked an important (and surprising) advocate for the federal judiciary in these jurisdictional struggles: the executive branch. The Constitution gives the President considerable authority to block constitutionally questionable legislation. The President can veto problematic legislation or use the threat of a veto to urge Congress to pursue other alternatives. Moreover, under Article II's Take Care Clause, the President is in charge of enforcing federal law in the federal courts - a task that he has largely delegated to the Department of Justice (DOJ). n6 The executive branch can use this enforcement authority to ensure that laws are applied in a manner that accords with constitutional values. Drawing on recent social science scholarship, this Article contends that the executive branch has a strong incentive to use this constitutional authority to oppose efforts to curb federal jurisdiction. First, social scientists have argued that the President often expresses his constitutional philosophy through litigation in the federal courts. Accordingly, the President has some incentive to ensure that the federal courts retain jurisdiction over constitutional claims. These presidential incentives are reinforced by the institutional incentives of the DOJ. Relying on theories of path dependence and institutional entrenchment, this Article argues that the DOJ has a substantial interest in defending the authority of the federal judiciary, because it can thereby maintain its own enforcement power. The DOJ has a particularly overriding interest in protecting the [\*253] appellate jurisdiction of the Supreme Court, because the Solicitor General is in charge of all federal litigation at that level. By defending the authority of the Supreme Court, the DOJ can maximize its power and influence over the development of federal law. In sum, this Article contends that the executive branch has strong institutional incentives to oppose the very kind of legislation that scholars find most problematic: restrictions on the Supreme Court's appellate jurisdiction and the federal courts' authority to adjudicate constitutional claims. The executive branch should be inclined to use its constitutional authority to shield the judiciary from such challenges to the federal judicial power. This structural argument has considerable historical support. The executive branch has sought to protect federal jurisdiction in two major ways. First, the executive branch has repeatedly opposed bills targeted at the Supreme Court's appellate review power or at federal jurisdiction over constitutional claims. n7 Notably, that has been true even when the President strongly disagreed with the federal courts' constitutional jurisprudence. For example, during the New Deal era, the Roosevelt Justice Department opposed efforts to eliminate the Supreme Court's appellate jurisdiction over constitutional claims. n8 Likewise, the Reagan Justice Department spoke out against proposals to strip federal jurisdiction over cases involving school prayer and abortion. n9 Other DOJ officials have similarly urged Congress to refrain from enacting jurisdiction-stripping proposals, at times expressly invoking the threat of a presidential veto. Although most jurisdiction-stripping bills have been defeated in the legislative process, some proposals to curb federal jurisdiction have, in recent decades, captured sufficient political support to gain the assent of both Congress and the President. But the executive branch has an additional constitutional tool to limit the impact of such laws: The DOJ controls the enforcement of most federal laws and can urge the federal judiciary to interpret those laws narrowly in order to preserve federal jurisdiction. That is the approach that recent Justice Departments have taken. Both the Clinton and the second Bush Administrations urged the courts to construe broadly worded jurisdiction-stripping statutes, like the Antiterrorism and Effective Death Penalty Act, so as to preserve jurisdiction over federal constitutional claims. n10 The federal courts, of course, could disregard these arguments and independently determine their jurisdiction. But, to the extent that the [\*254] courts are already inclined to interpret jurisdiction-stripping laws narrowly, the DOJ's arguments provide substantial reassurance that such constructions will have the support of a coequal branch of the federal government. And, in practice, the federal judiciary has proven quite receptive to the executive branch's efforts to preserve the scope of federal jurisdiction.

#### B. costs deter stripping

**Devins 6** (Neal, Professor of Law and Government – College of William & Mary,  May, 90 Minn. L. Rev. 1337, Lexis)  
Indeed, even if the social conservative agenda becomes the dominant agenda in Congress and the White House, there is good reason to think that elected officials would steer away from jurisdiction-stripping measures. [119](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n119) First, median voters  [\*1359]  have historically backed judicial independence. For example, although most Americans are disappointed with individual Supreme Court decisions, there is a "reservoir of support" for the power of the Court to independently interpret the Constitution. [120](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n120) Consequently, even though some Supreme Court decisions trigger a backlash by those who disagree with the Court's rulings, the American people nonetheless support judicial review and an independent judiciary. [121](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n121) Indeed, even President George W. Bush and Senate majority leader Bill Frist backed "judicial independence" after the federal courts refused to challenge state court factfinding in the Terri Schiavo case. [122](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n122) Second, there is an additional cost to lawmakers who want to countermand the courts through coercive court-curbing measures. Specifically, powerful interest groups sometimes see an independent judiciary as a way to protect the legislative deals they make. [123](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n123) In particular, interest groups who invest in the legislative process by securing legislation that favors their preferences may be at odds with the current legislature or executive (who may prefer judicial interpretations that undermine the original intent of the law). Court-curbing measures "that impair the functioning of the judiciary" are therefore disfavored because they "impose costs on all who use the courts, including various politically effective groups and indeed the beneficiaries of whatever legislation the current legislature has enacted." [124](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n124)

#### C. No Congressional backlash

Baum 3 (Lawrence, Professor of Political Science – Ohio State University, “The Supreme Court in American Politics”, Annual Review of Political Science, p. 173)

In recent years, some scholars with a strategic perspective have analyzed relationships between the Supreme Court and lower courts in formal terms, terms that facilitate comparison between implementation processes in the judiciary and hierarchical relationships in other settings (Kornhauser 1995, Hammond et al. 2001; see Brehm & Gates 1997, pp. 13–20). Especially important is collaborative work by Segal, Songer, and Cameron (Songer et al. 1994, 1995; Cameron et al. 2000), who have employed principal-agent theory to guide empirical studies of the relationship between the Supreme Court and federal courts of appeals. Even in this new wave of research, however, there has been little systematic comparison between courts and other policy enactors. The natural comparison is between the Supreme Court and Congress, each of which acts to shape administrative policy. It is reasonable to posit that Congress does better in getting what it wants from administrators, because its powers (especially fiscal) and its capacity to monitor the bureaucracy are appreciably stronger. The sequences of events that overcame school segregation and racial barriers to voting in the Deep South support that hypothesis. But it remains essentially untested, in part because good tests are difficult to design. Thus, we still know little about the relative success of implementation for legislative and judicial policies. Once we know more about the implementation of the Court’s decisions in absolute and relative terms, the most important question might well be why implementation is as successful as it is. The Court’s limited concrete powers would seem to aggravate the difficulties faced by all organizational leaders, so why do judges and administrators follow the Court’s lead so frequently? Within the judiciary, part of the answer undoubtedly lies in selection and socialization processes that enhance agreement about legal policy and acceptance of hierarchical authority. Even the Court’s limited powers may be sufficient to rein in administrators, especially in the era of broad legal mobilization that Epp has described: Groups that undertake litigation campaigns to achieve favorable precedents can also litigate against organizations that refuse to accept those precedents. Both judges and administrators may reduce their decision costs by using the Court’s legal rules as a guide. In any event, the relationship between the Court and policy makers who implement its policies may be an especially good subject for studies to probe the forces that reduce centrifugal tendencies in hierarchies. It is also worth asking why the Court fares so well in Congress. As noted above, few of the Court’s most controversial interventions in the past half century have been directly reversed. Nor has Congress enacted any of the numerous bills to remove the Court’s jurisdiction over areas in which the Court has aroused congressional anger. A large part of the explanation lies in the difficulty of enacting legislation in a process with so many veto points. That difficulty is especially great in an era like the current one, which lacks a strong or stable law-making majority. In such an era, interventions are likely to have significant support in government regardless of their ideological direction, and even decisions that strike down federal laws may enjoy majority support. The line of decisions since 1995 that has limited the regulatory power of the federal government (e.g., Alden v. Maine 1999, United States v. Morrison 2000) aconstitutes the most significant judicial attck on federal policy since the 1930s. But since 1995, Congress has had Republican majorities except for the bare Democratic Senate majority in 2001–2002. In that situation, any significant action to counter the Court’s policies has been exceedingly unlikely. Beyond the difficulty of enacting legislation, two other factors may come into play. First, Congress often adopts measures that limit the impact of a Court policy or that attack the policy symbolically, actions that suffice for members who want to vent their unhappiness with the Court or to claim credit with constituents who oppose the decision (see Keynes & Miller 1989). In response to Roe v. Wade (1973), for instance, Congress (often with presidential encouragement) has mandated various limits on federal funding of abortion. Two years after Miranda v. Arizona (1966), it enacted a statutory provision purportedly to supersede the Miranda rules in federal cases, a provision that federal prosecutors ignored and that the Court ultimately struck down in Dickerson v. United States (2000). Second, the Court may enjoy a degree of institutional deference in Congress, similar to that found in other relationships among the three branches but buttressed by the symbolic status of the Constitution itself. This deference tinges certain courses of action, such as restrictions on court jurisdiction, with illegitimacy. The failure of proposals to overturn the flag-burning decisions with a constitutional amendment, despite broad and deep public opposition to those decisions, reflects the symbolic power of the First Amendment. Congressional deference to the Court is not limitless, but in combination with other factors it may help to explain why the Court’s recent interventions and the Court itself have survived congressional scrutiny so well.

#### Reinhardt concludes aff – we control uniqueness – Reinhardt says if the court doesn’t assert itself its functionally stripping itself so the impact is non-unique –

#### he says that judicial review needs to be practiced anyway to PREVENT court stripping – the last line of the 1NC card is that judges SHOULD NOT shirk from resolving these questions – specific to detention – the aff solves the disad

#### No internal link – no reason this spills over

#### Indefinite detention undermines US efforts at global democracy

Neier 5 Aryeh Neier, President, Open Society Institute, March 11, 2005, www.humanrights.uconn.edu/rese\_papers/DemocracyHumanRightsANeier.pdf

From the standpoint of the Arab intellectuals, they feel they have to separate themselves from United States policy in order to have credibility in their region. So, when the United States speaks in the name of democracy and human rights in justifying its policy in the Middle East, Arab intellectuals who are themselves committed to democracy and human rights run away as fast as they can. It tarnishes their effort. That is, I believe, one of the consequences of American military policy that is proving very destructive. The very terms democracy and human rights are increasingly associated in many parts of the world with American willingness to impose our government’s will by its superior force, and to act in a way that seems to disregard all international agreements and international conventions in the process of imposing its will. A second way that the Bush Administration’s policies have helped to give human rights a bad name has to do with our own practices since September 11, 2001. The United States always had something of a checkered record in promoting human rights internationally. There were parts of the world where we were very vigorous in promoting human rights, and there were parts of the world where we were allies of those who were abusing human rights. On balance, however, the United States was a force worldwide for the human rights cause, and part of that had to do with our own reputation as a government that was respectful of human rights. The United States’ own practices were widely admired worldwide, and those who criticized United States policy complained that we were willing to ally ourselves with governments that were not similarly respectful of human rights. The chapters in this volume by Carol Greenhouse and Neil Hicks expand on this point. What has happened since September 11, 2001, is that the image of the United States worldwide is now the image of a human rights violator, rather than the image of a respecter of human rights. Everywhere in the world people know about Guantanamo Bay, and Guatanamo has become a symbol of American policy. The idea that the United States would arbitrarily hold a large number of people in a legal black hole for a period of years with no access to attorneys, no access to families, and no charges, was beyond anything that anyone could have expected. Several other democratic countries have had terrorist problems. Britain has had the IRA, Spain has had the ETA, India has had terrorism related to Kashmir, Israel has had suicide bombing and other forms of terrorism. None of the democratic countries elsewhere in the world that have experienced terrorism did anything that is comparable to Guantanamo in the manner that they dealt with terrorism. There were delays in bringing detainees before judges in various places, and periods of time when they did not have access to lawyers and families, but Guantanamo exceeded what any other democratic government has done in dealing with those persons it accused of terrorism. Though the U.S. Supreme Court’s 2004 decisions in Padilla and Hamdi have now limited, to some degree, the extent of the arbitrariness with which the United States may hold prisoners at Guantanamo, most of the detainees there have not yet seen a lawyer, nor have they yet had contact with members of their families. The prolongation of detention without charges is likely to be a factor for a good while to come. In addition, of course, the Abu Ghraib scandal and the images that went around the world of American soldiers engaged in the intentional humiliation and torture of detainees is another part of America’s new image. The consequence is that when the United States now attempts to lecture other governments about human rights, the images that come to mind worldwide are the images from Abu Ghraib and the images from Guantanamo. The United States is seen as hypocritical in its advocacy of human rights. That perception of hypocrisy is another factor that tends to give the human rights cause, as espoused by the United States, a bad name.

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.

#### Obama has no political capital AND his capital is ineffective – he’s burned his cred with Congress and the GOP won’t cooperate on his agenda

Koffler 10/11/13 (Keith, editor of the website White House Dossier, "Obama’s crisis of credibility," http://dyn.politico.com/printstory.cfm?uuid=CFCD7934-C4A3-4CCC-8261-9038B7E1D759)

President Barack Obama is like a novice flier thrust into the cockpit of a 747. He’s pushing buttons, flipping switches and radioing air traffic control, but nothing’s happening. The plane is just slowly descending on its own, and while it may or may not crash, it at least doesn’t appear to be headed to any particularly useful destination.¶ Obama’s ineffectiveness, always a hallmark of his presidency, has reached a new cruising altitude this year. Not even a year into his second term, he looks like a lame duck and quacks like a lame duck. You guessed it — he’s a lame duck.¶ On the world stage, despite Obama’s exertions, Iran’s centrifuges are still spinning, the Israelis and Palestinians remain far apart, Bashar Assad is still in power, the Taliban are gaining strength and Iraq is gripped by renewed violence.¶ At home, none of Obama’s agenda has passed this year. Republicans aren’t bowing to him in the battle of the budget, and much of the GOP seems uninterested in House Speaker John Boehner’s vision of some new grand bargain with the president.¶ Obama has something worse on his hands than being hated. All presidents get hated. But Obama is being ignored. And that’s because he has no credibility.¶ A president enters office having earned a certain stock of political capital just for getting elected. He then spends it down, moving his agenda forward, until he collects a fresh supply by getting reelected.¶ But political capital is only the intangible substrate that gives a president his might. His presidency must also be nourished by credibility — a sense he can be trusted, relied upon and feared — to make things happen.¶ A president enters office with a measure of credibility. After all, he seemed at least trustworthy enough to get elected. But unlike political capital, credibility must be built in office. Otherwise, it is squandered.¶ Obama has used every credibility-busting method available to eviscerate any sense that he can be counted on. He’s dissimulated, proven his unreliability, ruled arbitrarily and turned the White House into a Chicago-style political boiler room. His credibility has been sapped with his political opponents, a public that thinks him incompetent, our allies, who don’t trust him, and, even worse, our enemies, who don’t fear him.¶ There’s not going to be any grand bargain on the budget this year. Republicans are not only miles from the president ideologically — they’re not going to trust him with holding up his end of the bargain. If they had a president they thought they could do business with, their spines might be weakening more quickly in the current budget impasse and they would be looking for an exit.

**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

**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 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.

#### Yellen nomination thumps the debt ceiling

Business Insider 10/9/13 ("ANALYST: Obama's Nomination Of Janet Yellen Right Now Could Make The Debt Ceiling Fight A Lot Messier," http://www.businessinsider.com/janet-yellen-nomination-debt-ceiling-fight-confirmation-2013-10#ixzz2hVx9mdOG)

President Barack Obama's nomination of Janet Yellen to chair the Federal Reserve could make a protracted fight over raising the nation's debt ceiling much more complicated, according to Chris Krueger, a D.C.-based analyst for Guggenheim Partners LLC.¶ Krueger wrote in a market commentary Wednesday that if the two sides do hash out a deal that would extend that extends government funding and borrowing authority for the next few weeks, Yellen's confirmation process would add another fiscal wrinkle into the fray. ¶ From the commentary:¶ The announcement last night that Obama would nominate Fed Vice Chair Janet Yellen to replace Fed Chair Ben Bernanke today at a 3 p.m. White House event has only complicated the remainder of the month and likely next. Yellen’s Banking Committee hearing probably would not be until the week of October 21st at the earliest with a Committee confirmation vote to follow. We believe that she will be narrowly confirmed, though the timing of this announcement is very strange.¶ Krueger thinks that Republicans will use the Yellen nomination during the shutdown and debt-ceiling debates to make it clear that Obama "owns" quantitative easing, the eventual taper, and more in monetary policy. He said that it's likely the two fiscal battles in Congress could last throughout Yellen's confirmation process.

**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”).

#### Obama has no political capital AND his capital is ineffective – he’s burned his cred with Congress and the GOP won’t cooperate on his agenda

Koffler 10/11/13 (Keith, editor of the website White House Dossier, "Obama’s crisis of credibility," http://dyn.politico.com/printstory.cfm?uuid=CFCD7934-C4A3-4CCC-8261-9038B7E1D759)

President Barack Obama is like a novice flier thrust into the cockpit of a 747. He’s pushing buttons, flipping switches and radioing air traffic control, but nothing’s happening. The plane is just slowly descending on its own, and while it may or may not crash, it at least doesn’t appear to be headed to any particularly useful destination.¶ Obama’s ineffectiveness, always a hallmark of his presidency, has reached a new cruising altitude this year. Not even a year into his second term, he looks like a lame duck and quacks like a lame duck. You guessed it — he’s a lame duck.¶ On the world stage, despite Obama’s exertions, Iran’s centrifuges are still spinning, the Israelis and Palestinians remain far apart, Bashar Assad is still in power, the Taliban are gaining strength and Iraq is gripped by renewed violence.¶ At home, none of Obama’s agenda has passed this year. Republicans aren’t bowing to him in the battle of the budget, and much of the GOP seems uninterested in House Speaker John Boehner’s vision of some new grand bargain with the president.¶ Obama has something worse on his hands than being hated. All presidents get hated. But Obama is being ignored. And that’s because he has no credibility.¶ A president enters office having earned a certain stock of political capital just for getting elected. He then spends it down, moving his agenda forward, until he collects a fresh supply by getting reelected.¶ But political capital is only the intangible substrate that gives a president his might. His presidency must also be nourished by credibility — a sense he can be trusted, relied upon and feared — to make things happen.¶ A president enters office with a measure of credibility. After all, he seemed at least trustworthy enough to get elected. But unlike political capital, credibility must be built in office. Otherwise, it is squandered.¶ Obama has used every credibility-busting method available to eviscerate any sense that he can be counted on. He’s dissimulated, proven his unreliability, ruled arbitrarily and turned the White House into a Chicago-style political boiler room. His credibility has been sapped with his political opponents, a public that thinks him incompetent, our allies, who don’t trust him, and, even worse, our enemies, who don’t fear him.¶ There’s not going to be any grand bargain on the budget this year. Republicans are not only miles from the president ideologically — they’re not going to trust him with holding up his end of the bargain. If they had a president they thought they could do business with, their spines might be weakening more quickly in the current budget impasse and they would be looking for an exit.

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

**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.

[CONTINUES]

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

Multiple controversial decisions coming now - docket proves

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

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

Not intrinsic – no reason a logical decision maker couldn’t do both

**Obama executive order solves**

**Weisenyhal 9/30/13** (Joe. Executive Editor for Business Insider, “It Increasingly Looks Like Obama Will Have To Raise The Debt Ceiling All By Himself,” <http://www.businessinsider.com/it-increasingly-looks-like-obama-will-have-to-raise-the-debt-ceiling-all-by-himself-2013-9>)

With no movement on either side and the debt ceiling fast approaching, there's increasing talk that the solution will be for Obama to issue an e**x**ecutive **o**rder and require the Treasury to continue paying U.S. debt holders even if the debt ceiling isn't raised.¶ Here's Greg Valliere at Potomac Research:¶ HOW DOES THIS END? What worries many clients we talk with is the absence of a clear end-game. We think three key elements will have to be part of the final outcome: First, a nasty signal from the stock market. Second, a daring move from Barack Obama to raise the debt ceiling by executive order if default appears to be imminent. Third, a capitulation by Boehner, ending the shut-down and debt crisis in an arrangement between a third of the House GOP and virtually all of the Democrats. ¶ Valliere isn't the only one seeing this outcome.¶ Here's David Kotok at Cumberland Advisors:¶ We expect this craziness to last into October and run up against the debt limit fight. In the final gasping throes of squabbling, **we expect** President Obama to use the President Clinton designed e**x**ecutive **o**rder strategy so that the US doesn’t default. There will then ensue a protracted court fight leading to a Supreme Court decision. The impasse may go that far. This is our American way. “Man Plans and God Laughs” says the Yiddish Proverb.¶ Indeed, back in 2011, Bill Clinton said he'd raise the debt ceiling by invoking the 14th Amendment rather than negotiate with the House GOP.¶ This time around, again, Clinton is advising Obama to **call the GOP's bluff.**

**Chinese property bubble will pop – decks the global economy**

**Colombo 9/27/13** (Jesse, Contributor @ Forbes, "Bubblecovery: Why Our Economic Recovery Is Actually An Illusion," http://www.forbes.com/sites/jessecolombo/2013/09/27/bubblecovery-why-our-economic-recovery-is-actually-an-illusion/)

As with the 2003-2007 Bubblecovery, I expect the current Bubblecovery to cause a **devastating economic crisis** when the post-2009 bubbles collectively pop. Unfortunately, the next bubble-induced crisis is likely to be even more severe than the last one because the global economy is in a much weaker state than it was in before the last crisis started.¶ This is an overview of the primary economic bubbles that I am warning about. I will be writing about each of these bubbles in much greater detail in coming posts.¶ China: In recent years, China has become notorious for building countless empty “ghost cities” and other wildly ambitious infrastructure projects for the sake of boosting economic growth. China’s frantic building activity is fueled by a multi-trillion dollar debt bubble **that will cause the country to replicate Japan’s experience after its bubble popped.**

**Japan economic collapse coming now – tax increases and decline in government bonds prove – decks the global econ**

**Holliday 10/4/13** (Katie, Writer @ CNBC, "SocGen: Don't let the shutdown distract you from Japan," http://www.cnbc.com/id/101086245)

While the U.S. government shutdown and impending debt-ceiling debate has investors transfixed, they need to keep an eye on developments in Japan, warns Societe Generale's strategist Albert Edwards.¶ Edwards said in a note that a recent decline in the benchmark 10-year Japanese government bond (JGB) yield below 0.65 percent - not far from all-time lows of 0.43 percent - **could be a worrying sign for Japan as well as global markets**. The benchmark 10-year yield was trading at 0.657 percent on Friday.¶ "We believe it is always worth keeping a close eye on events in Japan, not just for its own sake, but for what that might mean for the wider global economy and markets," said Edwards.¶ Japan is the world's third-largest economy and is home to one of the one of the world's biggest government bond markets. What happens in the JGB market can have wider implications for global markets.¶ This year, Japanese policy makers have embarked on an ambitious attempt to revitalize its beleaguered economy through aggressive monetary easing, fiscal stimulus and structural reform. So far, the policies have given Japan a boost. The economy grew at a healthy annualized rate of 3.8 percent in the second quarter of this year, following 4.1 percent growth in the first quarter.¶ However, Edwards said the decline in bond yields could be a sign that Prime Minister Shinzo Abe's decision to push through with a planned sales tax hike is a repeat of past mistakes.¶ This week Abe confirmed that the scheduled tax hike, which will see the consumption tax rise from 5 to 8 percent in April. The last time the tax was hiked in 1997 it was blamed for pushing Japan back into a recession.¶ "The recent decision to press ahead with the rise in the consumption tax from 5% to 8% in April next year is seen by many as **a major policy error,**" he said.¶ The JGB bond rally could have broader implications for the rest of Asia, emerging markets and U.S. Treasurys, added Edwards.¶ If the BOJ undertakes more monetary stimulus to offset the impact of the sales tax on the economy, it could weaken the yen and subsequently lead to strength in other Asian currencies, **hurting the global economic recovery** and depressing U.S. bond yields, said Edwards.¶ "In my view we are quickening the pace towards losing control of both the Japanese currency and inflation," said Edwards.

**No internal link – any fight would happen after the debt ceiling had been resolved**

**Terror Massively turns the DA**

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

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

**No pol cap now – Syria, Snowden, weak econ, health care uncertainty, bombings all tank his popularity and clout with Congress**

**CNN 9/27/13** ("Obama's Support Slips; Controversies, Sluggish Economy Cited," http://www.ozarksfirst.com/story/obamas-support-slips-controversies-sluggish-economy-cited/d/story/yvahHcmFK0K6RGTbdfCHKQ)

WASHINGTON, D.C. -- As he battles with congressional Republicans over the budget and the debt ceiling, and as a key component of his health care law kicks in, new polling suggests that President Barack Obama's standing among Americans continues to deteriorate.¶ The president's approval rating stands at 45%, according to a CNN average of four national polls conducted over the past week and a half. And a CNN Poll of Polls compiled and released Thursday also indicates that Obama's disapproval rating at 49%.¶ In the afterglow of his re-election and second inauguration, the percentage of those approving of Obama's job performance hovered in the low 50s as the year began, according to CNN Poll of Poll averages.¶ But his numbers slipped to the upper 40s by spring and now have edged down to the mid 40s. At the same time, his disapproval numbers have edged up from the low 40s to right around the 50% mark.¶ Anxiety and skepticism over the Affordable Care Act, better known as Obamacare, continuing concerns over the sluggish economy, and a drop in the president's approval on foreign policy -- once his ace in the hole -- **all appear to be contributing to the slide** of Obama's general approval rating.¶ "Not a precipitous drop, but more like a continued erosion in the president's numbers," says CNN Chief Political Correspondent Candy Crowley. "The Boston Marathon bombings, Edward Snowden's 'big brother' revelations, the 'non-coup' in Egypt, the 'now we bomb, now we don't' policy in Syria, an economic recovery that remains disappointing, the uncertainty of how/what will change under the new health care system, shall I go on?"¶ "It **all adds up** to an awful lot of uncertainty and unfairly or not, uncertainty tends to breed lower poll numbers for the guy in charge," added Crowley, anchor of CNN's "State of the Union."¶ Besides being the main indicator of a president's standing with the public, a presidential **approval rating is a good gauge of his clout in dealing with Congress**.

**Boehner's capital - not Obama's - is key**

**Page 10/5/13** (Clarence, Chicago Tribune, "GOP vs. GOP is the real fiscal fight," http://articles.chicagotribune.com/2013-10-05/news/ct-oped-1006-page-20131005\_1\_government-shutdown-gop-vs-obamacare)

The real battle in Congress these days is **not** between the two parties but between two factions in the GOP. Boehner's way out may be the "grand bargain" that he and Obama tried to put together earlier, before the tea partyers got in the way. Now **Boehner has some leverage**. Our fiscal future depends on how he uses it.

PC false – particularly for Obama **– their ev doesn’t assume 2010 midterm and many studies**

**Edwards, 12** (George C., Distinguished Professor of Political Science at Texas A&M University. editor of Presidential Studies Quarterly and holds the George and Julia Blucher Jordan Chair in Presidential Studies in the Bush School, *Overreach: Leadership in the Obama Presidency*, p. 1-2)

In 2008, America suffered from war and economic crisis. Partisan polarization was extraordinarily high while faith in government was exceptionally low. In such times, the reflexive call is for new—and better—leadership, especially in the White House. Barack Obama answered the call, presenting himself as a transformational leader who would fundamentally change the policy and the politics of America. Even though both the public and commentators are frequently disillusioned with the performance of individual presidents and recognize that stalemate is common in the political system, Americans eagerly accept what appears to be the promise of presidential leadership to renew their faith in the potential of the presidency. Many Americans enthusiastically embraced Obama’s candidacy and worked tirelessly to put him in the White House. Once there, the new president and his supporters shared an exuberant optimism about the changes he would bring to the country. There is little question that Obama was sincere in wanting to bring about change. So were his followers. Yet a year into his administration, many were frustrated—and surprised—by the widespread resistance to his major policy proposals. The public was typically unresponsive to the president’s calls for support. Partisan polarization and congressional gridlock did not disappear. As a result, the promised transformation in energy, environmental, immigration, and other policies did not occur. When the president succeeded on health care reform, it was the result of old-fashioned party leadership, ramming the bill through Congress on a party line vote. Even worse, from the Democrats’ perspective, the 2010 midterm elections were a stunning defeat for the president’s party that would undermine the administration’s ability to govern in the succeeding years. How could this bright, articulate, decent, and knowledgeable new president have such a difficult time attaining his goals? Did the president fumble the ball, making tactical errors in his attempts to govern? Although no president is perfect, the Obama White House has not been severely mismanaged, politically insensitive, or prone to making avoidable mistakes. Ineffective implementation of a strategy is not the explanation for the lack of progress in transforming policy and politics. Instead, the problem was in the strategies themselves—in the belief that they could succeed. A common premise underlying the widespread emphasis on political leadership as the wellspring of change is that some leaders have the capability to transform policy by reshaping the influences on it. As we will see, the Obama White House believed in the power of the **bully pulpit**. The president and his advisors felt that he could persuade the public to support his program. They also believed that the president could obtain bipartisan support in Congress through efforts to engage the opposition. As a result of these premises, the White House felt comfortable advancing an extraordinarily large and expensive agenda. These premises were faulty, however. There is **not a single systematic study** that demonstrates that presidents can reliably move others to support them. Equally important, we now have a **substantial literature** showing that presidents typically fail at persuasion.1 In ἀe Strategic President, I challenged the conventional understanding of presidential leadership, arguing that presidential power is not the power to persuade. Presidents cannot reshape the contours of the political landscape to pave the way for change by establishing an agenda and persuading the public, Congress, and others to support their policies.2 The point is not that presidents do not matter. Of course they do. The question is how they matter—how do they bring about change? The answer I offer is that successful presidents facilitate change by recognizing opportunities in their environments and fashioning strategies and tactics to exploit them. In other words, presidents who are successful in obtaining support for their agendas have to evaluate the opportunities for change in their environments carefully and orchestrate existing and potential support skillfully.3

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

**Obama’s closing of the war monuments thumps the DA**

**Parker 10/4/13** (Kathleen, Syndicated Columnist @ Wash Post, "A monumental mistake," http://www.washingtonpost.com/opinions/kathleen-parker-obamas-monumental-mistake-in-the-shutdown/2013/10/04/82f735bc-2d22-11e3-8ade-a1f23cda135e\_story.html)

Then again, ridiculous is perhaps too generous a word. Closing the monuments, especially the World War II Memorial, can be reduced, fittingly, to a single syllable: **Dumb.** It is fitting because the seated patron of the Mall, Abraham Lincoln, was famously monosyllabic. In trivia you can use, more than 70 percent of the words in the Gettysburg Address are of one syllable.¶ In more recent history, when a group of World War II veterans recently faced barriers blocking entry to the memorial — an open space requiring not so much as an attendant — these elderly warriors took a page from their Normandy playbook and stormed the barricades.¶ Can there be an image more inspiring than members of this venerable club, whose living roll declines each day by about 640, pushing their way through flimsy, useless, pointless barriers to roam among pillars erected to their heroism? What was Washington thinking?¶ Dumb, dumb, dumb.¶ President Obama, whose grandfather was a World War II veteran, might have known better. We may have to close down the government, he could have said, but don’t touch the monuments.¶ Instead, the Office of Management and Budget ordered the barricades.¶ That’ll show ’em.¶ Among the many reasons this was so clumsy, one stands out starkly: It isn’t as though the WWII guys can always come back another day. All are in their late 80s and early 90s, and time is of the essence. Moreover, most plan these trips well in advance and at considerable expense.¶ Thanks to the monument liberators, Washington officials were forced to rethink their decision and removed the barriers. The American People are now free to roam their public spaces that remember sacrifices beyond most imaginations.¶ Optically, symbolically and every other way, this seems too little too late. Shutting out veterans from their memorial touchstone was more than a bad call, a lapse of judgment, a mere moment of tone-deafness. In reality, it may have been the tidy effort of a box-checking bureaucrat, but it reeked of the small work of a petty bully.¶ Ditto the closing of the D-Day cemetery in Normandy, France, where more than 9,000 Americans are buried. And this is the president who recently declared that The American People are not political pawns to be used to score political points?¶ Barack Obama must have been an inkling in the prescient mind of H.L. Mencken when the curmudgeon from whom all op-eds flow once described democracy as “the theory that the common people know what they want, and deserve to get it good and hard.”¶ While one may sympathize with Obama’s contempt for his congressional adversaries, **he may have cut off his own nose with an unforced error of magnified proportions**. Spite is unbecoming a president, as Richard Nixon proved in another era of national disruption. But beyond personality, it is baffling to imagine anyone thinking that the way to winning hearts and minds is by disrespecting the nation’s most beloved demographic.¶ I’ve often lamented the prospect of a world without my parents’ generation, not because they were perfect but because these mothers and fathers take with them a national treasure — their personal experiences and memories of the Great Depression and World War II and the lessons of sacrifice, thrift, courage and duty that defined them.¶ In their place, we have a bickering, twittering, snarling, snarky, toxic public square that has **contaminated** even our highest offices. How surreal it must seem to our oldest and wisest citizens to witness the breaking bad of America.

Vote no – plan’s been introduced so backlash is inevitable

**FERC nomination thumps Obama’s agenda**

**Dixon 10/1/13** (Darius Dixon, Politico, “Obama FERC nominee Ron Binz withdraws amid coal pushback”, <http://www.politico.com/story/2013/10/ron-binz-ferc-nominee-withdraws-name-97623.html>, October 1, 2013)

President Barack Obama’s nominee to lead the Federal Energy Regulatory Commission abandoned his quest Tuesday, complaining that the fight over his **confirmation had become a “blood sport”** for partisan attacks and opponents backed by the coal industry. The collapse of Ron Binz’s nomination to lead the little-known agency **was a stunning setback for Obama**, who had succeeded in winning Senate confirmations for far more controversial nominees at Environmental Protection Agency, the Pentagon and the Labor Department. Continue Reading The consultant and career energy regulator had won over supporters from the green energy world — some of whom took the unusual step of hiring a public relations firm to advance his cause. But Binz said he couldn’t overcome a **furious opposition campaign** in which his record was “spun and respun” to make him appear biased against fossil fuels. “The caricature that they created had nothing to do with who I am and nothing to do with what I might’ve brought to FERC. It was just a blood sport,” Binz told POLITICO in his first extensive interview since Obama nominated him in June. “I came to Washington with this 35-year career behind me only to encounter a fictional Ron Binz, a fictional character that I didn’t recognize and I would never even support,” he added. Conservative and libertarian groups celebrated Binz’s withdrawal **as a setback for Obama’s** climate **agenda**, while his supporters lamented that partisan bickering had defeated a qualified candidate.

**Shutdown fight thumps the DA**

**CBS News 10/5/13** ("Government shutdown drags on; Congress to take Sunday off," http://www.cbsnews.com/8301-250\_162-57606174/government-shutdown-drags-on-congress-to-take-sunday-off/)

With much of the federal government shut down for the fifth day, Congress **has its hands full** trying to reach an agreement on reopening the government, but one brief spot of compromise emerged on Friday, with Republicans and Democrats both voicing support for a proposal to restore back pay to federal employees who have been furloughed during the shutdown.¶ ¶ The House will vote Saturday on the measure before recessing until Monday. The vote is expected to pass with bipartisan support. Senate Democratic leaders have not commented publicly on the proposal, but the White House has signaled its strong support.¶ "Federal workers keep the Nation safe and secure and provide vital services that support the economic security of American families," a statement from the White House read. "The Administration appreciates that the Congress is acting promptly to move this bipartisan legislation and looks forward to the bill's swift passage."¶ Restoring back pay to federal workers is "something Congresses have done every time there's been a shutdown, and it's something bipartisan majorities support," White House spokesman Jay Carney added on Friday.¶ Given the administration's aversion to other bills that would address some of the impacts of the shutdown without reopening the entire government - an aversion that has been supported strongly by Senate Democrats - it is likely that the bill will clear the Senate as well and head to the president's desk.¶ Unfortunately, that is where the bipartisan agreement ends, for the most part.¶ The parties remain as far apart on Saturday as they have been for much of the week, with Democrats in the House and Senate calling for a "clean" bill to reopen the government with no strings attached, and Republicans demanding some kind of concession from Democrats on Obamacare before they consent to end the shutdown.

PC low and fails for fiscal fights

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

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

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.

McConnell primary challenge will prevent a deal

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

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

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

**Fed Reserve and private sector fill in to solve impact**

**Henry 13** (Emil, former assistant Treasury secretary, January 21st, 2013, “Amid the Debt-Ceiling Debate, Overblown Fears of Default,” <http://online.wsj.com/article/SB10001424127887323442804578235970716809666.html>)

These concerns can be largely addressed by legislation or pre-emptive action by the private sector. For example, the first line of defense against default of interest or principal on our debt is legislation, such as that proposed in the Full Faith and Credit Act of 2011 by Sen. Pat Toomey (R., Pa.), which prioritizes payments of interest and principal before other government expenditures. We can afford this commitment because interest payments for 2013 are projected by the Congressional Budget Office to be 7% of tax receipts, **meaning 93% of the government's revenues can be deployed elsewhere**. Even with this legislation, however, there is further risk of principal default. Namely, once the ceiling is hit, the government will still need to issue new Treasury debt to retire maturing debt—and in large quantities. In 2013, the Treasury will need to issue about $3 trillion to refund maturing securities. A failed auction or the mass refusal of investors to roll over T-bills (a "buyer's strike") might trigger a default. Yet if the Treasury found itself in the highly unlikely position where no amount of interest-rate increase could create a clearing price for a successful auction, Congress always has the ability to raise the ceiling at any time and for any amount. And, as a last resort, if Congress were recalcitrant in such a difficult circumstance, **the Federal Reserve would be well within its mandate to intervene to provide liquidity by purchasing securities.** The Fed has purchased some $2 trillion of Treasury securities since the financial crisis began in 2007, and it owns more than a trillion dollars in non-Treasury securities that could be partially monetized. Treasury Secretary Timothy Geithner has warned of another form of technical default saying legislation would "not protect from nonpayment the other obligations of the United States, such as military and civilian salaries, tax refunds, contractual payments to individuals and businesses for services and goods, and many others" whose nonpayment would compromise the government's credit-worthiness. To this I suggest an ancient remedy: Figure it out, just as the private sector does when times are difficult. Rationalize bloated agencies. Eliminate duplicative programs. Reduce salaries. Initiate a hiring freeze. Negotiate with vendors to make payments over time. And if these are not workable solutions as Mr. Geithner implies, then he or his successor should come before Congress and explain why they are not. Republicans will listen. They too have no interest in an economic Armageddon. Regarding Social Security payments, there are typically timing differences between the receipt of tax revenues and the payment of entitlement expenses implying the potential for delayed checks. Legislation could allow for temporary increases in the debt ceiling to cover these timing differences and prevent delay. Some Wall Street firms warn of entangling complexities in the market for Treasury securities. They worry that the heightened risk of default will cause funds to divest themselves of Treasurys in such scale as to create mass dislocation. They also worry that the $4 trillion "repo" market, where Treasurys are the preferred collateral, would see rates rise to the extent Treasurys are seen as more risky. Banks might then redeploy capital away from lending to support the additional margin required by the market, thus hurting the economy. These may be reasonable concerns but House Republicans should recognize them as worries of an establishment with, first and foremost, a bottom line to protect. In the summer of 2011, amid great uncertainty over the debt ceiling and ultimately a downgrade by Standard & Poor's to AA+ from AAA, there was similar fear and divestitures of Treasurys, but markets functioned nonetheless. Interest rates even declined as the market continued to adorn U.S. Treasurys with the halo of being safe relative to other sovereign debt.

The GOP will attach Keystone to any debt deal – tanks passage

**Washington Times 9-19** [“Keystone XL debate resurfaces, gets entangled in debt-ceiling battle”, September 19th, 2013, <http://www.washingtontimes.com/news/2013/sep/19/keystone-xl-debate-entangled-debt-ceiling-battle/>, Chetan]

The Keystone XL pipeline has been knocked out of the headlines in recent weeks, **but debate over the project found new life on Capitol Hill this week.**¶A key House subcommittee held a hearing Thursday to mark the fifth anniversary of energy giant TransCanada’s first application to build the $7 billion pipeline, which would carry Canadian oil sands south through the U.S. heartland to refineries on the Gulf Coast.¶ **Further bringing it into the spotlight**, congressional **Republicans plan to tie Keystone approval** — a decision President Obama has avoided for the entirety of his time in office — **to** a measure **raising the nation’s debt ceiling**, a move that pushes the White House to accept the project as part of a larger fiscal compromise.¶ **Keystone remains a hot-button issue in Washington** and across the nation, with supporters arguing it’s a safe way to create thousands of jobs while also promoting North American energy independence. Its critics, including some congressional Democrats, think it would be environmentally disastrous and would greatly contribute to global warming.

Gun control push thumps the DA

**Wolfgang 9/16/13** (Ben, Wash Times, "Obama, Feinstein reignite fight for gun control after Navy Yard shooting," http://www.washingtontimes.com/news/2013/sep/16/navy-yard-shooting-revives-gun-control-fight/?page=all#pagebreak)

Just hours after the deadly shooting rampage at the Washington Navy Yard, gun control advocates tried to **reignite the national debate** over gun laws that had only just subsided.¶ Sen. Dianne Feinstein, California Democrat and a longtime gun control advocate, denounced “the litany of massacres” over the past few years and asked rhetorically, “When will enough be enough?”¶ PHOTOS: Chaos amid shooting rampage at Washington Navy Yard¶ Mrs. Feinstein, who was first thrust into the national spotlight as president of the San Francisco Board of Supervisors announcing the shooting deaths of Mayor George Moscone and Supervisor Harvey Milk, said, “Congress must stop shirking its responsibility and resume a thoughtful debate on gun violence in this country. We must do more to stop this endless loss of life.”¶ President Obama was one of the first to link Monday’s incident to the larger issue of gun violence and the legislative effort to curb it, though he did so without explicitly calling, as he has done repeatedly, for gun control measures.¶ “So we are confronting yet another mass shooting, and today it happened on a military installation in our nation’s capital,” Mr. Obama said as he opened an economic speech at the White House.¶ “Obviously, we’re going to be investigating thoroughly what happened, as we do so many of these shootings, sadly, that have happened, and do everything that we can to prevent them,” the president said.¶ The National Rifle Association had no comment on Monday, and pro-gun groups generally take the stance that days of particularly shocking crimes are not the time to discuss policy. Popular conservative blogger and former CNN commentator Erick Erickson admonished the rush to politicize the shooting, saying “seriously people, grow up.”¶ “I would not dare step in the way of America’s national pastime of bitching about the politics of everything on Twitter, but there has to be a better time for it than as the temperature of bodies on the ground in the Navy Yard are not even yet cold,” he said. “If you don’t have the judgment and good sense to understand that now is not the time to say it, you have no capacity to understand why.”¶ SEE ALSO: SHAPIRO: Norton’s ‘safest city’ comment about D.C. not supported by facts¶ But Mr. Obama’s words were echoed by Dr. Janis Orlowski, chief medical officer at MedStar Washington Hospital Center, where three of the shooting victims were being treated.¶ At the end of a televised medical briefing on the survivors’ conditions, Dr. Orlowski contrasted trauma from accidental shootings and what she called “something evil in our society that we as Americans have to work to try and eradicate.”¶ “But there’s something wrong here when we have these multiple shootings. … There is something wrong, and the only thing that I can say is we have to work together to get rid of it. I would like you to put my trauma center out of business,” she said, her voice weakening from emotion. “We just cannot have, you know, one more shooting with, you know, so many people killed. We’ve got to figure this out. We’ve got to be able to help each other.”¶ At least 12 people were killed in Monday’s attack; an investigation by local, federal and military authorities is ongoing. The FBI on Monday afternoon identified the gunman as Aaron Alexis, who reportedly worked at the Naval Air Station Joint Reserve Base in Fort Worth, Texas.¶ The 34-year-old was killed inside the Navy Yard facility, but not before inflicting the kind of carnage that immediately evoked memories of other recent mass shootings such as those in Newtown, Conn., and Aurora, Colo.¶ Mass shootings happen periodically, but the Newtown massacre, which claimed the lives of 20 elementary school children, seemed to be a last straw for Mr. Obama, some lawmakers and other high-profile gun control proponents such as New York City Mayor Michael R. Bloomberg.¶ In the aftermath of the December tragedy, the president immediately called on lawmakers to take action to reduce gun violence. The effort **met stiff resistance** from the National Rifle Association and other groups. Many congressional Republicans and red-state Democrats also opposed tight gun restrictions.¶ In the end, Sens. Joe Manchin III, West Virginia Democrat, and Patrick J. Toomey, Pennsylvania Republican, emerged with a bill that would have greatly expanded background checks for all firearms purchases. In April, the bill was killed in the Senate by a 54-46 vote, six short of the 60 needed to proceed and stopping, for all practical purposes, any movement toward federal gun control legislation.¶ Making efforts even more daunting, two Democratic state senators were ousted from office in a recall election that centered on support for gun crackdowns in Colorado, including a ban on high-capacity magazines.¶ Still, the White House **continues to prod Congress** to tackle the issue.

----

EPA regs thump

**WT 9/20 --** Washington Times, EPA coal rules tighter than expected, will fuel backlash in Congress, 2013, Ben Wolfgang, www.washingtontimes.com/news/2013/sep/20/epa-coal-rules-tighter-expected-will-fuel-backlash/

The **E**nvironmental **P**rotection **A**gency’s dramatic new power plant emissions standards already have touched off a **firestorm** within the coal industry and on Capitol Hill, with top Republicans promising to **fight tooth-and-nail against** President **Obama’**s climate-change agenda.¶ The EPA, the leading actor in the White House’s ambitious global-warming initiative, released the limits on Friday. Hopes that they’d be much less stringent than previous proposals proved to be misplaced.¶ Coal-state lawmakers from both parties are promising to push back.¶ “The president is leading a war on coal and what that really means for Kentucky families is a war on jobs. And the announcement by the EPA is another back door attempt by President Obama to fulfill his long-term commitment to shut down our nation’s coal mines,” said Senate Minority Leader Mitch McConnell, Kentucky Republican.

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

**Jones, 9-13**-’13 (Sarah, “Another Obama Success That Republicans Can’t Handle As Deficit Shrinks to 5 Year Low” Politics USA, http://www.politicususa.com/2013/09/13/republicans-threaten-raise-debt-ceiling-deficit-smallest-years.html)

Republicans are threatening not to raise the debt ceiling unless funding for Obamacare is delayed. The thing is, the Tea Party was none-too-pleased with this debt ceiling appeasement because it was only a trick. You see, Republicans were going to crash the economy just to appease the Tea Party and conservative donors who want Obamacare destroyed. But Republicans knew that they could not destroy ObamaCare — thus, they are going to destroy the economy just to save their own face. Yes, even talking about not raising the debt ceiling creates instability and chaos, neither of which are good for the market. But the last time Republicans did this, it cost us an estimated 18.9 billion dollars. So their argument is that they are going to hold the debt ceiling hostage at a time when the deficit is at a five year low, because they lack the courage to explain to their base and their funders that the ObamaCare fight is over.

### Prez Powers DA – 2AC

#### 1. No link – plan only affects one issue that is not central to Obama’s presidential powers – your evidence is about armed forces

#### 3. Syria thumps

**Nather & Palmer, 9/1** (David Nather, masters degree in Poly Sci from George Washington University and senior policy reporter at POLITICO Pro, Anna Palmer, senior Washington correspondent for POLITICO, "Bushies fear Obama weakening presidency", 9/1/13, [www.politico.com/story/2013/09/bushies-fear-obama-weakening-presidency-96143.html?hp=t1\_3](http://www.politico.com/story/2013/09/bushies-fear-obama-weakening-presidency-96143.html?hp=t1_3))

President Barack Obama just turned decades of debate over presidential war powers on its head.¶ Until Saturday, when Obama went to Congress to ask for permission to strike Syria, the power to launch military action had been strongly in the hands of the commander in chief. Even the 1973[War Powers Resolution](http://avalon.law.yale.edu/20th_century/warpower.asp) allows bombs to start falling before the president has to ask Congress for long-term approval.¶ For three decades after Watergate, conservatives like Dick Cheney and those of his ilk sought to increase executive branch power that they felt had been eroded by liberal congressional reformers. George W. Bush’s legal team crafted controversial opinions that emboldened the White House on a wide range of national security areas, from interrogation to surveillance.¶ That makes the move by Obama to hand a piece of the messy situation in Syria to Congress a clear step in the other direction — an abdication of power to Congress at a moment when he has no good solutions.¶ And even if Obama ultimately balks at Congress if they vote down his ask, prominent conservatives who fueled the expansion of presidential power — especially Bush administration alums — are beside themselves, arguing that Obama has weakened the presidency.¶ John Yoo, who wrote the legal opinions that justified the Bush administration’s interrogation tactics with sweeping views of executive power, says Obama has undermined the quick-strike ability that gives presidents much of their power in dealing with military threats.

#### 6. Fisa thumps

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

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

#### 6. Limits on prez powers solve global nuclear war

Sloane 08

[Robert, Associate Professor of Law, Boston University School of Law, THE SCOPE OF EXECUTIVE POWER IN THE TWENTYFIRST CENTURY: AN INTRODUCTION, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SLOANE.pdf>]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland’s sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations – a power which does not require as a basis for its exercise an act of Congress,”52 has been (correctly, in my view) criticized on a host of grounds.53 But in practice, in part for institutional and structural reasons,54 it accurately reflects the general preeminence of the President in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say – with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945,55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art.56 Many states took note, for example, when in the 2002 National Security Strategy of the United States (“NSS”), President Bush asserted that the United States had the right under international law to engage in preventive wars of self-defense.57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS’s robust claims of a right to engage in preventive wars of self-defense.58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as “rogue states,” such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan.59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a rogue regime asserting a right to engage in preventive war; the deterioration of international human rights norms against practices like torture, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but the practical ability of future Presidents to exercise that power both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### 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.

**Taiwan-China relations higher than ever**

**Cole 12** -- Taipei-based journalist who focuses on military issues in Northeast Asia and in the Taiwan Strait (J. Michael, 9/3, "Taiwan Hedges its Bets on China," http://thediplomat.com/flashpoints-blog/2012/09/03/taiwan-hedges-its-bets-against-china/)

**By a number of yardsticks**, relations in the Taiwan Strait today are the best they’ve been in years**, if not ever**. But if a report released by Taiwan’s Ministry of National Defense (MND) on Friday is any indication, Taiwanese government officials don’t appear to be convinced that such détente will last for very long. Without doubt, the pace of normalization in relations between Taiwan and China, especially at the economic level, has **accelerated dramatically** since Ma Ying-jeou of the Chinese Nationalist Party (KMT) was elected in 2008, a process that is expected to continue with Ma securing a second four-year term in January. In addition to the landmark Economic Cooperation Framework Agreement (ECFA) signed in June 2010, the governments on both sides have inked at least 16 agreements touching on various aspects of cross-strait relations, including an agreement reached on Friday that will allow banks in Taiwan to clear renminbi transactions, a move that obviates the need for converting the currency into U.S. dollars before a transaction can be made. Beyond trade, visits to Taiwan by Chinese officials have become almost routine, a limited number of Chinese can now study at Taiwan’s universities, Chinese tourism to the island has boomed, and joint exercises by the countries’ respective coast guards are now held every other year since 2010, mostly for the purpose of sea-rescue operations in the waters off Taiwan’s Kinmen and China’s Xiamen.

### Def 2AC

#### No link – plan only affects one issue that is not central to Obama’s presidential powers – your evidence is about armed forces

#### Judicial deference ensures extinction

**Kellman 89** (Barry, Professor – Depaul University, Duke Law Journal, December, Lexis)

**In this era of thermonuclear weapons, America must uphold its historical commitment to be a nation of law**. Our strength grows from the resolve to subject military force to constitutional authority. **Especially in these times when weapons proliferation can lead to** nuclear winter**,** when weapons production can cause cancer, when soldiers die unnecessarily in the name of readiness: **those who control military force must be held accountable under law**. As the Supreme Court recognized a generation ago, the Founders envisioned the army as a necessary institution, but one dangerous to liberty if not confined within its essential bounds. Their fears were rooted in history. They knew that ancient republics had been overthrown by their military leaders. . . .. . . We cannot close our eyes to the fact that today the peoples of many nations are ruled by the military. We should not break faith with this Nation's tradition of keeping military power subservient to civilian authority, a tradition which we believe is firmly embodied in the Constitution. 1 Our fears may be rooted in more recent history. During the decade of history's largest peacetime military expansion (1979-1989), more than 17,000 service personnel were killed in training accidents. 2 In the same period, virtually every facility in the nuclear bomb complex has been revealed to be contaminated with radioactive and poisonous materials; the clean-up costs are projected to exceed $ 100 billion. 3 Headlines of fatal B-1B bomber crashes, 4 the downing of an Iranian passenger plane, 5 the Navy's frequent accidents 6 including the fatal crash of a fighter plane into a Georgia apartment complex, 7 remind Americans that a tragic price is paid to support the military establishment. Other commentaries may distinguish between the specific losses that might have been preventable and those which were the random consequence of what is undeniably a dangerous military program. This Article can only repeat the questions of the parents of those who have died: "Is the military accountable to anyone? Why is it allowed to keep making the same mistakes? How many more lives must be lost to senseless accidents?" 8 This Article describes a judicial concession of the law's domain, ironically impelled by concerns for "national security." In three recent controversies involving weapons testing, the judiciary has disallowed tort accountability for serious and unwarranted injuries. In United States v. Stanley, 9 the Supreme Court ruled that an Army sergeant, unknowingly drugged with LSD by the Central Intelligence Agency, could not pursue a claim for deprivation of his constitutional rights. In Allen v. United States, 10 civilian victims of atmospheric atomic testing were denied a right of tort recovery against the government officials who managed and performed the tests. Finally, in Boyle v. United Technologies, 11 the Supreme Court ruled that private weapons manufacturers enjoy immunity from product liability actions alleging design defects. A critical analysis of these decisions reveals that the judiciary, notably the Rehnquist Court, has abdicated its responsibility to review civil matters involving the military security establishment. Standing at the vanguard of "national security" law, 13 these three decisions elevate the task of preparing for war to a level beyond legal accountability. They suggest that determinations of both the ends and the means of national security are inherently above the law and hence unreviewable regardless of the legal rights transgressed by these determinations. This conclusion signals a dangerous abdication of judicial responsibility. The very underpinnings of constitutional governance are threatened by those who contend that the rule of law weakens the execution of military policy. Their argument -- that because our adversaries are not restricted by our Constitution, we should become more like our adversaries to secure ourselves -- cannot be sustained if our tradition of adherence to the rule of law is to be maintained. To the contrary, the judiciary must be willing to demand adherence to legal principles by assessing responsibility for weapons decisions. This Article posits that judicial abdication in this field is not compelled and certainly is not desirable. **The legal system can provide a useful check against dangerous military action**, more so than these three opinions would suggest. **The judiciary must rigorously scrutinize military decisions if our 18th century dream of a nation founded in musket smoke is to remain recognizable in a millennium ushered in under the** mushroom cloud of thermonuclear holocaust.

#### No deference 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

#### Court expertise is sufficient—their link is blown out of proportion

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

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

### Executive CP – 2AC

#### Perm – do both

#### XO links to politics – your link is based off of GOP backlash, woud still happen

#### Obama literally tried to the do the CP and Congress rolled it back

WSJ 10, Congress Bars Gitmo Transfers, online.wsj.com/article/SB10001424052748704774604576036520690885858.html

Congress on Wednesday passed legislation that would effectively bar the transfer of Guantanamo detainees to the U.S. for trial, rejecting pleas from Obama administration officials who called the move unwise.¶ A defense authorization bill passed by the House and Senate included the language on the offshore prison, which President Barack Obama tried unsuccessfully to close in his first year in office.¶ The measure for fiscal year 2011 blocks the Department of Defense from using any money to move Guantanamo prisoners to the U.S. for any reason. It also says the Pentagon can't spend money on any U.S. facility aimed at housing detainees moved from Guantanamo, in a slap at the administration's study of building such a facility in Illinois.¶ The Guantanamo ban was originally included in a broad appropriations bill earlier this month in the House, which died for unrelated reasons. At the time, Attorney General Eric Holder sent a letter to congressional leaders calling the ban "an extreme and risky encroachment on the authority of the executive branch to determine when and where to prosecute terrorist suspects."¶ Republicans and some Democrats say the prison at Guantanamo Bay, Cuba, which the government has spent millions of dollars upgrading, is the most secure place to keep terror suspects.¶ By banning transfers to the U.S., Congress is blocking trials of detainees in U.S. civilian courts. Proponents of the ban say military tribunals, not civilian courts, are the proper forum for bringing to justice suspects accused of trying to attack the U.S.¶ Those contentions grew stronger last month when a New York federal jury acquitted a former Guantanamo detainee of all but one count in the 1998 bombings of U.S. embassies in Africa. The defendant, Ahmed Ghailani, still faces 20 years to life in prison.¶ [2justice]¶ ERIC HOLDER¶ Mr. Obama originally pledged to close the prison by January 2010. That goal has foundered amid congressional opposition, and some 174 detainees remain at Guantanamo.¶ At a news conference Wednesday, the president expressed renewed desire to close Guantanamo, saying it has "become a symbol" and a recruiting tool for "al Qaeda and jihadists." "That's what closing Guantanamo is about," he said, adding: "I think we can do just as good of a job housing [detainees] somewhere else.

#### Court action is key to Solve Terror –

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

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

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

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

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

#### Doesn’t solve Venezuela – signals of judicial independence are uniquely key to Venezuelan stability because they prevent overcentralization of Maduro’s power – that’s Yammamoto

### HR DA

Drones are alt cause

HR Won’t tank relations – terrorism and other factors outweigh

## 1AR

### K

**Detention = bare life**

**Schatz and Horst 7** (Christopher and Noah, Assistant Federal Public Defender in the Federal Public Defender’s Office for the District of Oregon + a Law Clerk in the Federal Public Defender’s Office for the District of Oregon, "WILL JUSTICE DELAYED BE JUSTICE DENIED? CRISIS JURISPRUDENCE, THE GUANTÁNAMO DETAINEES, AND THE IMPERILED ROLE OF HABEAS CORPUS IN CURBING ABUSIVE GOVERNMENT DETENTION," http://law.lclark.edu/live/files/9557-lcb113art1schatzpdf)

Beginning in 2002, as a result of military and intelligence activities ¶ conducted in Afghanistan and elsewhere against the perpetrators of the ¶ September 11 attack and their supporters, American military personnel began ¶ to take custody of individuals, both on and off the battlefield, who were ¶ subsequently classified as enemy combatants. Many of these detainees were ¶ soon transported out of the military’s theater of operation to a hastily ¶ constructed detention facility located at the Guantánamo Bay Naval Base in ¶ Cuba.4¶ Jettisoning jus in bello principles of international humanitarian law ¶ governing the treatment of people captured during an armed conflict, the Bush ¶ Administration declared that the war on terror required a “new paradigm,” and ¶ that individuals detained at Guantánamo Bay and other so called “black sites” ¶ were “unlawful combatants” who would not be treated as prisoners of war ¶ under the Third Geneva Convention.5¶ Nor, in the Bush Administration’s view, ¶ did the detainees qualify for the minimum humanitarian requirements ¶ established by Common Article Three of the Geneva Conventions.6¶ Furthermore, in addition to concocting legal rationalizations for legitimating ¶ torture on a scale and to a degree never before countenanced by United States¶ government policy,7¶ Justice Department lawyers also theorized that habeas ¶ corpus would not be available to the Guantánamo Bay detainees because they ¶ are aliens held outside of the sovereign territory of the United States.8¶ As Commander in Chief, the Bush Administration continues to assert that ¶ the President has a constitutionally based entitlement to **wield total power** over ¶ the Guantánamo Bay detainees—a use of sovereign power for which the ¶ President is **not accountable** to any other governing body or agency, domestic ¶ or international. If the Bush Administration’s position prevails, the detainees ¶ will be barred from claiming a right to relief under any body of law. In effect, ¶ **the detainees will be reduced to an ontological state of human being** that has ¶ not been present in the West **since the Nazi extermination camps** of the ¶ holocaust—they will have been rendered completely devoid of legal identity. ¶ Like the occupants of the Nazi concentration camps, although biologically ¶ alive, the Guantánamo Bay detainees will be legally dead.9¶ 9¶ Concerning the normalization of the state of exception that the Nazi concentration ¶ camps represented, Giorgio Agamben writes: ¶ Whoever entered the camp moved in a zone of indistinction between outside and inside, ¶ exception and rule, licit and illicit, in which the very concepts of subjective right and ¶ juridical protection no longer made any sense. What is more, if the person entering the ¶ camp was a Jew, he had already been deprived of his rights as a citizen by the ¶ Nuremberg laws and was subsequently completely denationalized at the time of the ¶ Final Solution. Insofar as its inhabitants were stripped of every political status and ¶ wholly reduced to bare life, the camp was also **the most absolute biopolitical space ever** ¶ **to have been realized**, in which power confronts nothing but pure life, without any ¶ mediation. ¶ GIORGIO AGAMBEN, HOMO SACER 170–71 (Daniel Heller-Roazen trans., Stanford Univ. ¶ Press 1998). The space of the concentration camp is one in which the juridico-political ¶ identity of a certain group of people is **reduced solely to that of being “the Other**.” The ¶ Guantánamo Bay facility where the detainees are held cannot be characterized as either a ¶ penal or a detention facility, because in those custodial environments the inmates retain some ¶ modicum of rights. The only nomination for that facility which accurately describes the ¶ political-legal status of the Guantánamo Bay detainees **is that of “concentration camp**.”

**No prior questions**

**Owen 02** David Owen, 2 Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not **undermine** the point that, for a certain class of problems, rational choice theory may **provide the best account available to us.** In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the **most important** kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, **it cultivates a theory-driven rather than problem-driven approach to IR.** Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous **grip on** the **action,** event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a **reductionist program’** in that it ‘dictates always opting for the description that calls for the explanation that flows from the **preferred model** or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, **this is to misunderstand the enterprise of science** since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, **not to be prejudged** before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of **generality over** that of **empirical validity.** The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and **prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right**, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially **vicious circle arises.**

**roleplaying is good**

**Joyner, 99** (Christopher C., Professor of International Law at Georgetown, “Teaching International Law”, 5 Ilsa. J. Int’l & Comp. L. 377, Lexis)

Use of the **debate can be an effective pedagogical tool** for education in the social sciences. Debates, like other **role-playing simulations, help students understand different perspectives on a policy issue by adopting a perspective as their own. But,** unlike other simulation games, **debates do not require that a student participate directly** in order to realize the benefit of the game. Instead of developing policy alternatives and experiencing the consequences of different choices in a traditional role-playing game, **debates present** the **alternatives** and consequences **in a formal**, rhetorical **fashion** before a judgmental audience. **Having the** class **audience serve as jury helps each student develop a well-thought-out opinion** on the issue **by providing contrasting** facts and **views and enabling** audience **members to pose challenges to each** debating **team**. These **debates ask** undergraduate **students to examine** the international legal **implications of various** United States foreign **policy actions.** Their chief tasks are to assess the aims of the policy in question, determine their relevance to United States national interests, ascertain what legal principles are involved, and conclude how the United States policy in question squares with relevant principles of international law. **Debate questions are formulated as resolutions**, along the lines of: "Resolved: The United States should deny most-favored-nation status to China on human rights grounds;" or "Resolved: The United States should resort to military force to ensure inspection of Iraq's possible nuclear, chemical and biological weapons facilities;" or "Resolved: The United States' invasion of Grenada in 1983 was a lawful use of force;" or "Resolved: The United States should kill Saddam Hussein." **In addressing both sides** of these legal propositions, **the student debaters must consult** the **vast literature** of international law, especially the nearly 100 professional law-school-sponsored international law journals now being published in the United States. This literature furnishes an incredibly rich body of legal analysis that often treats topics affecting United States foreign policy, as well as other more esoteric international legal subjects. Although most of these journals are accessible in good law schools, they are largely unknown to the political science community specializing in international relations, much less to the average undergraduate. **By assessing** the role of international law in **United States** foreign **policy**- making, **students realize that United States actions do not always measure up to** international legal **expectations**; that at times, international legal strictures get compromised for the sake of perceived national interests, and that concepts and principles of international law, like domestic law, can be interpreted and twisted in order to justify United States policy in various international circumstances. In this way, **the debate format gives students the benefits ascribed to simulations** and other action learning techniques, **in that it makes them become actively engaged with their subjects, and not be mere passive consumers. Rather than spectators, students become** legal **advocates**, **observing, reacting to, and structuring political** and legal **perceptions to fit the merits of their case.** The debate exercises carry several specific educational objectives. First, **students** on each team must work together to refine a cogent argument that compellingly asserts their legal position on a foreign policy issue confronting the United States. In this way, they **gain greater insight into the real-world** legal **dilemmas faced by policy makers.** Second, as they work with other members of their team, they realize the complexities of applying and implementing international law, and the difficulty of bridging the gaps between United States policy and international legal principles, either by reworking the former or creatively reinterpreting the latter. Finally, **research** for the debates **forces students to become familiarized with contemporary issues** on the United States foreign policy agenda and the role that international law plays in formulating and executing these policies. n8 The **debate** thus **becomes an excellent vehicle for pushing students beyond stale arguments** over principles **into the real world of policy analysis**, political critique, and legal defense.

### Politics

**Plan’s announced in June**

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

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

**Vote happens BEFORE the decision is released – normal means**

**Mondak, 92** [Jeffery J., assistant professor of political science @ the University of Pittsburgh. “Institutional legitimacy, policy legitimacy, and the Supreme Court.” American Politics Quarterly, Vol. 20, No. 4, Lexis]

A second concern is how the Court responds to its institutional limits. Specifically, **strategy within the Court can be considered from the context of legitimacy.** For example, **what tactics may the Court employ to reduce the erosion of political capital? By releasing controversial rulings at the end of a term**, for instance, **the Court may afford itself a healing period, a time to repair damaged credibility prior to the next round of efforts at conferring policy legitimacy**. This suggests a third issue, the manner in which institutional approval is replenished. Does institutional support return to some equilibrium once dispute surrounding a particular ruling fades, or must the Court release popular edicts to offset the effects of its controversial actions?

**Courts shield**

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

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

**Stealth avoids the link**

**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”).

**Plan’s announced in June – especially if they win their link**

**US Courts 13** (United States Courts, “U.S. Supreme Court Procedures”, Accessed 2/18/2013, http://www.uscourts.gov/EducationalResources/ConstitutionResources/SeparationOfPowers/USSupremeCourtProcedures.aspx)

All **opinions of the Court are, typically**, be **handed down by** the last day of the Court's term (the day inlate June/early July when the Court recesses for the summer). With the exception of this deadline, there are no rules concerning when decisions must be released. Typically, decisions that are unanimous are released sooner than those that have concurring and dissenting opinions. **While some unanimous decisions are handed down as early as** December, some **controversial opinions, even if heard in October, may not be handed down until the last day of the term.** A majority of Justices must agree to all of the contents of the Court's opinion before it is publicly delivered. Justices do this by "signing onto" the opinion. The Justice in charge of writing the opinion must be careful to take into consideration the comments and concerns of the others who voted in the majority. If this does not happen, there may not be enough Justices to maintain the majority. On rare occasions in close cases, a dissenting opinion later becomes the majority opinion because one or more Justices switches their votes after reading the drafts of the majority and dissenting opinions. No opinion is considered the official opinion of the Court until it is delivered in open Court (or at least made available to the public). On days when the Court is hearing oral arguments, decisions may be handed down before the arguments are heard. **During the months of May and June**, **the Court meets** at 10 a.m. **every Monday to release opinions**. **During the last week of the term, additional days may be designated as "opinion days."**

**Announcement takes a month, at the very least**

**Encarta 6** (Microsoft Encarta, “Supreme Court of the United States”, [http://encarta.msn.com/encyclopedia\_76157 4302\_3/Supreme\_Court\_of\_the\_United\_States.html](http://encarta.msn.com/encyclopedia_761574302_3/Supreme_Court_of_the_United_States.html))

**Once the Court reaches a tentative decision, there remains the important task of writing an explanation of the legal reasoning behind the ruling**. This document, known as the majority opinion, establishes the law on the issue in question, so **justices take considerable care in drafting them**. If the chief justice sides with the majority of justices in voting on a particular case, the chief justice can then assume responsibility for the task of writing the Court’s majority opinion, or assign the task to another of the justices in the majority. If one or more justices disagree with the Court’s decision, they may write a dissenting opinion that explains their views of the case and the law. If the chief justice sides with the dissenting minority, then the most senior justice in the majority writes the majority opinion or assigns the task to another of the justices in the majority. The justices often ask their clerks to prepare the first drafts of their opinions. This practice, Chief Justice William Rehnquist wrote, “may undoubtedly and with some reason cause raised eyebrows in the legal profession and outside of it.” But as Rehnquist explained, the “law clerk is not off on a frolic of his own, but is instead engaged in a highly structured task which has been largely mapped out for him by the conference discussion and my suggestions to him.” Few drafts escape heavy editing and revisions by the justices. **Justices may take weeks or even months to complete their opinions**, and votes may change during this period. **The justices circulate drafts** of the opinions and sometimes write memos to explain their views. Dissenting justices sometimes decide to go along with the majority, and justices initially in the majority may decide to support the dissenting view. In some cases enough justices change their votes that an opinion that began as the Court’s majority opinion becomes a dissenting opinion. Because the justices can and often do change their votes right up until the moment the decision is publicly announced, there is often a considerable amount of discussion and negotiation to shape the direction, tone, and analysis of the Court’s opinion.

**Obama executive order solves**

**Weisenyhal 9/30/13** (Joe. Executive Editor for Business Insider, “It Increasingly Looks Like Obama Will Have To Raise The Debt Ceiling All By Himself,” <http://www.businessinsider.com/it-increasingly-looks-like-obama-will-have-to-raise-the-debt-ceiling-all-by-himself-2013-9>)

**With** no movement on either side and **the debt ceiling fast approaching, there's increasing talk that the solution will be for Obama to issue an executive order and require the Treasury to continue paying U.S. debt holders** even if the debt ceiling isn't raised. **Here's** Greg **Valliere** at Potomac Research: HOW DOES THIS END? What worries many clients we talk with is the absence of a clear end-game. We think three key elements will have to be part of **the final outcome:** First, a nasty signal from the stock market. Second, **a daring move from** Barack **Obama to raise the debt ceiling by executive order if default appears** to be **imminent**. Third, a capitulation by Boehner, ending the shut-down and debt crisis in an arrangement between a third of the House GOP and virtually all of the Democrats. **Valliere isn't the only one** seeing this outcome. **Here's** David **Kotok** at Cumberland Advisors: We expect this craziness to last into October and run up against the debt limit fight**. In the final gasping throes of squabbling, we expect** President **Obama to use the** President **Clinton designed executive order strategy so that the US doesn’t default.** There will then ensue a protracted court fight leading to a Supreme Court decision. The impasse may go that far. This is our American way. “Man Plans and God Laughs” says the Yiddish Proverb. Indeed, back in 2011, Bill Clinton said he'd raise the debt ceiling by invoking the 14th Amendment rather than negotiate with the House GOP. This time around, again, **Clinton is advising Obama to call the GOP's bluff.**

**Obama will unilaterally resolve the crisis if Congress fails---game theory proves**

**IHT 10/4/13** (International Herald Tribune, 10/4/13 edition, “White House has options if impasse arises on debt ceiling,” p. lexis)

As a result, **economists and investors have** quietly **begun to explore** the **options the White House might have in the event Congress fails to act**. **The most widely discussed strategy would be** for President Barack Obama **to invoke authority under the 14th Amendment** and essentially order the federal government to keep borrowing, an option that was endorsed by former President Bill Clinton during an earlier debt standoff in 2011. And in recent days, prominent Democrats like Senator Max Baucus, chairman of the Senate Finance Committee, and Representative Nancy Pelosi, the House minority leader, have urged the White House to seriously consider such a route, even if it might provoke a threat of impeachment from House Republicans and ultimately require the Supreme Court to rule on its legitimacy. **Other** potential **October surprises range from** the logistically forbidding, like **prioritizing payments, issuing i.o.u.'s or selling off gold** and other assets, **to** more fanciful ideas, like **minting a trillion-dollar platinum coin**. So far, **administration officials** **have continued to insist that there is no plausible alternative to congressional action** on the debt limit. In December 2012, Jay Carney, the White House spokesman, flatly renounced the 14th Amendment option, saying: ''I can say that this administration does not believe that the 14th Amendment gives the president the power to ignore the debt ceiling - period.'' And on Wednesday, a senior administration lawyer said that remained the administration's view. Still, some **observers outside government** in Washington and on Wall Street, **citing an approach resembling game theory**, **suggest** that **the president's position** **is** **more tactical than fundamental**, **since raising the possibility of a way out for the White House** like the constitutional gambit **would take the heat off Republicans in Congress to act** on their own before the Oct. 17 deadline. **''If a default is imminent,** the option of **raising the debt limit by executive fiat has to be on the table**,'' said Greg Valliere, chief political strategist at Potomac Research. ''Desperate times require desperate measures.'' Some professional investors echoed **his view**, which **is a reason Wall Street remains hopeful** that the economic and financial disaster a government default could usher in will be avoided. ''At the end of the day **if there is no action and the U**nited **S**tates **has a default looming,** I think President **Obama can issue an executive order authorizing the Treasury secretary to make payments**,'' said David Kotok, chief investment officer of Cumberland Advisors in Sarasota, Florida, which has just over $2 billion under management. **''There's always been** **more flexibility in the hands of Treasury than they've acknowledged**.'' According to some legal theorists, **the president could essentially ignore the debt limit imposed by Congress**, because the 14th Amendment states that the ''validity of the public debt of the United States, authorized by law,'' including debts like pensions and bounties to suppress insurrections, ''shall not be questioned.''

**He’ll do what has to be done**

**Drum, 9/25/13** – Kevin, “If We Reach the Debt Limit, Obama Will Probably Just Break Through It Anyway”, http://www.motherjones.com/kevin-drum/2013/09/obama-debt-ceiling-bond-auction

But if the debt ceiling showdown lasts more than a couple of weeks, **it's likely that President Obama will simply order the Treasury to start auctioning bonds regardless**. **Maybe under the authority of the 14th Amendment, maybe under his authority as commander-in-chief.** **Maybe he'll declare a state of emergency of some kind**. Who knows? But **eventually this is how things will work out,** **with Obama acting because he has to, and because he knows that courts will be loathe to intervene in a political dispute between the executive and legislative branches.**