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### 1

Indefinite detention is when a government detains without a trial

US Legal

Indefinite Detention Law & Legal Definition

<http://definitions.uslegal.com/i/indefinite-detention/>

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seems to violate many national and international laws. It also violates human rights laws. Indefinite detention is seen mainly in cases of suspected terrorists who are indefinitely detained. The Law Lords, Britain’s highest court, have held that the indefinite detention of foreign terrorism suspects is incompatible with the Human Rights Act and the European Convention on Human Rights. [Human Rights Watch] In the U.S., indefinite detention has been used to hold terror suspects. The case relating to the indefinite detention of Jose Padilla is one of the most highly publicized cases of indefinite detention in the U.S. In the U.S., indefinite detention is a highly controversial matter and is currently under review. Organizations such as International Red Cross and FIDH are of the opinion that U.S. detention of prisoners at Guantanamo Bay is not based on legal grounds. However, the American Civil Liberties Union is of the view that indefinite detention is permitted pursuant to section 412 of the USA Patriot Act.

#### Affirmative doesn’t restrict the authority to indefinitely detain, but rather what we can do once we indefinitely detain – that’s a distinction

#### Clear limits distinction – at best the aff is a restriction on commander in chief power which is LEGALLY and SUBSTANTIVELY distinct from the topic.

Heidt 2013

Stephen, PhD candidate Georgia State University, A Memorandum on the Topic Area, http://www.cedadebate.org/forum/index.php?topic=4846.0

To summarize: War powers are enumerated in Article 1 of the Constitution. Commander in Chief power is enumerated in Article 2. The framers of the Constitution kept the two entirely distinct, on purpose, as a means for resolving the tension between the danger that a strong president would risk dictatorship and the need for unfettered power of the executive to conduct and win war. The key constitutional controversy related to war power is NOT what weapons presidents get to use or how presidents get to pursue war. It is that presidents have continuously utilized a narrow constitutional exception (defense of the nation in crisis) to engage in “acts of war” without Congressional authorization. In fact, the Congress has only formally declared war 5 times in U.S. history while the president has authorized military force at least 200 times and, by some counts, over 300 times. This is the core war powers controversy – the very thing that led to the passage of the War Powers Resolution in 1973 and the controversy the community voted for. The topic paper overrides that distinction and the topic committee would be well to heed the distinction. This distinction, if held, means that the wildest fears of tiny, unpredictable affs can only exist in a world in which Commander in Chief power is selected as the topic. That is the power presidents enjoy for running an army.

#### Topic education – commander and chief powers are about HOW wars are fought whereas war powers are IF they are fought. The aff avoids the central clash of the topic where da and cp ground stems from.

#### Limits – commander in chief powers blow the barn door off, Heidt evidence says it creates tiny unpredictable affs.

#### Vote neg – reasonability is arbitrary and mandates judge intervention.

### 2

#### The United States President should issue an executive order restricting invasive body searches of Guantanamo Prisoners.

### 3

#### Court will uphold treaty power in Bond now but it’s close.

Greve 2013

Michael S., professor at George Mason University School of Law, Straight Up, With Multiple Twists: Bond v. United States, January 21 2013, http://www.libertylawsite.org/2013/01/21/straight-up-with-multiple-twists-bond-v-united-states/

In truth, you don’t have to read Missouri so broadly. The treaty at issue dealt with things that cross international and national borders. There was no daylight between the treaty and the implementing legislation. And the state’s federalism argument was, as Holmes noted, a “thin reed.” There, in a nutshell, you have “proper” bounds of the treaty power. (For more on this, see the exchange between Rick Pildes, Nick Rosenkranz and Ilya Somin on the volokhconspiracy.) Having articulated those bounds, you could then say—as the Bond cert petition argues—that at the very least, courts should read treaties and implementing statutes to avoid constitutional doubts. The exemption for “peaceful” uses indicates that Congress intended to combat the spread of chemical weapons and materials for war-like purposes, as opposed to arming criminal prosecutors with yet another all-purpose club. The argument is more difficult than one might think. The government’s ready reply is that you can’t use a constitutional avoidance canon to create doubt where none exists. Holland isn’t really an issue here because Congress didn’t do anything that it could not also do under the Commerce Clause. Congress in its infinite wisdom decided that it needed a closed and complete regulatory system, just as it does for purposes of, say, the Controlled Substances Act. Under that statute, the plants on your window sill are fair game for the feds, see Raich. Well then: so is the stuff under your kitchen sink. No point in speculating about the outcome. This much, one can say with a tolerable degree of confidence: The justices know this case. Four justices on one side or the other voted to grant because they want to get to the grand themes of Missouri, and they would not have done so if they weren’t reasonably sure of a fifth vote on the merits. The difficulty of obtaining at least an implicit “fifth” precommitment is to my mind the readiest explanation for the multiple relists. (If someone has a better guess, let’s hear it.) If that’s right, the briefing and argument task is to shake or hold that vote, however it cuts. One more point of near-certainty: whichever way the case goes, what the justices say along the way will shape the contours of treaty law and its constitutional boundaries for many, many years to come.

#### Aff is a massive change – kills court capital and will be ignored by the President.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties are key to cooperation on every issue – solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

### 4

The Court’s pursuing an incremental strategy in regards to War Powers now---the plan causes massive backlash and executive non-acquiescence

Neavl Devins 10, Goodrich Professor of Law and Professor of Government, College of William & Mary., Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, 12 U. Pa. J. Const. L. 491

Congress, the President, and the Court. Throughout the enemy combatant litigation, Congress signaled to the Court that it would go along with whatever ruling the Court made in these cases. In other words, contrary to the portrayal by academics and the news media of the Supreme Court's willingness to stand up to Congress and the executive branch, lawmakers repeatedly stood behind Court rulings limiting elected branch power. At the same time, as I will detail in the next Part, the Court pursued an incremental strategy - declining to test the boundaries of lawmaker acquiescence and, instead, issuing decisions that it knew would be acceptable to lawmakers. n85¶ The 2004 rulings in Hamdi and Rasul triggered anything but a backlash. In the days following the decisions, no lawmaker spoke on the House or Senate floor about the decision, and only a handful issued [\*508] press releases about the cases. n86 And while eight members of Congress signed onto amicus briefs backing administration policy, n87 Congress did not seriously pursue legislative reform on this issue until the Supreme Court had agreed to hear the Hamdan case. n88¶ When Congress enacted the Detainee Treatment Act (DTA) in December 2005, "lawmakers made clear that they did not see the DTA as an attack on either the Court or an independent judiciary." n89 Most significant, even though the DTA placed limits on federal court consideration of enemy combatant habeas petitions, lawmakers nevertheless anticipated that the Supreme Court would decide the fate of the President's military tribunal initiative. Lawmakers deleted language in the original bill precluding federal court review of Hamdan and other pending cases. n90 Lawmakers, moreover, depicted themselves as working collegially with the Court; several Senators, for example, contended that the "Supreme Court has been shouting to us in Congress: Get involved," n91 and thereby depicted Rasul as a challenge [\*509] to Congress, n92 "asking the Senate and the House, do you intend for ... enemy combatants ... to challenge their detention [in federal courts] as if they were American citizens?" n93 Lawmakers also spoke of detainee habeas petitions as an "abuse[]" n94 of the federal courts, and warned that such petitions might unduly clog the courts, n95 thus "swamping the system" n96 with frivolous complaints. n97 Under this view, the DTA's cabining of federal court jurisdiction "respects" the Court's independence and its role in the detainee process. n98¶ Following Hamdan, lawmakers likewise did not challenge the Court's conclusions that the DTA did not retrospectively bar the Hamdan litigation and that the President could not unilaterally pursue his military tribunal policy. n99 Even though the Military Commissions Act (MCA) eliminates federal court jurisdiction over enemy combatant habeas petitions, lawmakers depicted themselves as working in tandem with the Court. Representative Duncan Hunter (R. Cal.), who introduced the legislation on the House floor, said during the debates that the bill was a response to the "mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists." n100 And DTA sponsor Lindsey Graham stated: "The Supreme Court has set the rules of the road and the [\*510] Congress and the president can drive to the destination together." n101 Even lawmakers who expressed disappointment in the Court's ruling did not criticize the Court. Senator Sessions (R. Ala.), for example, blamed Hamdan's lawyers for misleading the Court about the legislative history of the DTA. n102¶ Debates over the MCA habeas provision, moreover, reveal that lawmakers thought that the Supreme Court was responsible for assessing the reach of habeas protections. Fifty-one Senators (fifty Republicans and one Democrat) voted against a proposed amendment to provide habeas protections to Guantanamo detainees. Arguing that enemy combatants possessed no constitutional habeas rights, n103 these lawmakers contended that they could eliminate habeas claims without undermining judicial authority. One of the principal architects of the MCA, Senator Lindsey Graham, put it this way: Enemy combatants have "a statutory right of habeas ... . And if [the Supreme Court finds] there is a constitutional right of habeas corpus given to enemy combatants, that is ... totally different ... and it would change in many ways what I have said." n104 Forty-eight Senators (forty-three Democrats, four Republicans, and one Independent) argued that the habeas-stripping provision was unconstitutional, that the courts would "clean it up," n105 and that Congress therefore should fulfill its responsibility to protect "that great writ." n106¶ When the Supreme Court agreed to rule on the constitutionality of the MCA, the Congress no longer supported the MCA's habeas-stripping provisions. Democrats had gained control of both Houses of Congress. Not surprisingly, there was next-to-no lawmaker criticism of Boumediene. In the week following the decision, no member [\*511] of the House, and only two Senators, made critical comments about the decision on the House or the Senate floor. n107¶ \* \* \* Supreme Court enemy combatant decisions were not out-of-step with prevailing social and political forces. Academics (including prominent conservatives), the media (again including conservative newspapers), former judges, and bar groups had all lined up against the administration. Interest groups too opposed the administration (including some conservative groups). Over the course of the enemy combatant litigation, the American people increasingly opposed the Bush administration. This opposition, in part, was tied to policy missteps (some of which implicated enemy combatant policy-making). These missteps were highly visible and contributed to widespread opposition to the Bush administration. For its part, Congress did not question the Court's role in policing the administration's enemy combatant initiative. By the time the Court decided Boumediene, voter disapproval of the President had translated into widespread opposition to the administration's enemy combatant initiative; a Democratic Congress supported habeas protections for enemy combatants and presidential candidates John McCain and Barack Obama called for the closing of Guantanamo Bay.¶ In the next part of this Essay, I will discuss the incremental nature of the Court's decision making. This discussion will provide additional support for the claims made in this section. Specifically, I will show that each of the Court's decisions was in sync with changing attitudes towards the Bush administration. More than that, Part II will belie the myth that Court enemy combatant decisions were especially consequential. Unlike newspaper and academic commentary about these cases, Court decision making had only a modest impact. Correspondingly, the Court never issued a decision that risked its institutional capital; the Court knew that its decisions would be followed by elected officials and that its decisions would not ask elected officials to take actions that posed some national security risk. [\*512] ¶ II. Judicial Modesty or Judicial Hubris: Making Sense of the Enemy Combatant Cases ¶ From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113¶ Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.¶ [\*514] Small Steps: Hamdi and Rasul. These decisions were a minimalist opening volley in Court efforts to place judicial limits on the Bush administration. While rejecting claims of executive branch unilateralism in national security matters, the Court said next-to-nothing about how it would police the President's enemy combatant initiative. Rasul simply held that Guantanamo Bay was a "territory over which the United States exercises exclusive jurisdiction and control," and, consequently, that the President's enemy combatant initiative is subject to existing habeas corpus legislation. n122 This ruling "avoided any constitutional judgment" and offered no guidance on "what further proceedings may become necessary" after enemy combatants filed habeas corpus petitions. n123 Hamdi, although ruling that United States citizens have a constitutional right to challenge their detention as an enemy combatant, placed few meaningful limits on executive branch detentions. Noting that "enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive," the Court ruled both that hearsay evidence was admissible, and that "the Constitution would not be offended by a presumption in favor of the Government's evidence." n124¶ The Bush administration, as John Yoo put it, saw the limited reach of Hamdi and Rasul as creating an "opportunity" for the administration to regain control over its detention policy. n125 In particular, the administration asked Congress to enact legislation that would limit federal court review of enemy combatant claims. The administration also launched Combatant Status Review Tribunals (CSRT) as a more formal substitute for unilateral executive determinations of a detainee's enemy combatant status. n126 Capitalizing on Rasul's failure to consider the constitutional dimensions of enemy combatant claims, CSRTs largely operated as a rubber stamp of administration determinations. In 2006, ninety-nine out of 102 detainees brought before CSRTs were designated as enemy combatants. n127 The Justice Department reconvened CSRTs to reconsider the remaining three cases [\*515] and, ultimately, the remaining three were determined to be enemy combatants. n128¶ Hamdi and Rasul were both "narrow, incompletely theorized [minimalist] decisions." n129 And while newspapers and academics focused their attention on the Court's open-ended declaration that "a state of war is not a blank check for the President," n130 the decisions did not meaningfully limit the executive. Well aware that Congress and the American people supported the President's military commission initiative, n131 the Court understood that a sweeping denunciation of administration policies might trigger a fierce backlash. n132 Moreover, by ruling that Congress had authorized the President's power to detain enemy combatants (through its post-9/11 Authorization for the Use of Military Force Resolution), and by suggesting that the Court would make use of pro-government presumptions when reviewing military commission decision making, the Court formally took national security interests into account. n133 Actions taken by the executive in response to these rulings underscore that the Court's de minimis demands neither risked national security nor executive branch non-acquiescence.¶ None of this is to say that the 2004 decisions were without impact. Following Rasul, for example, the administration understood that it needed to make use of some type of military court review - a requirement that may have impacted the military's handling of enemy combatants. At the same time, the Court did not issue a potentially debilitating blow to the Bush administration by decisively and resoundingly rejecting key elements of the administration's legal policy. n134 Instead, the Court simply carved out space for itself to review administration policy-making - without setting meaningful boundaries on what the administration could or could not do.

#### Congress will backlash against the plan and cut judicial pay

Philip A. Talmadge 99, Justice, Washington State Supreme Court, Winter, Seattle University Law Review, 22 Seattle Univ. L. R. 695, p. 701-704

The doctrine of judicial restraint has been encrusted in recent years with considerable ideological cant of both the left and the right. 17 The ideological discussion highlights particular political issues of the day. Many conservatives decry judicial activism with respect to the courts' role in racial desegregation in America or [\*702] reproductive rights issues. 18 Liberals complain today of judicial activism in property and economic issues. 19 But this doctrine need not be the captive of the left or the right. The doctrine itself has become "political" largely because it is not susceptible to rigorous and predictable definition. That the courts are not entirely trusted by the partisan branches of government to announce constitutional principles is illustrated by recent Washington legislation. In 1997, a bill was introduced in the Washington State House of Representatives with thirty-three sponsors. The bill challenged the doctrine of judicial review: "The doctrine of judicial review that the courts have the sole and final say in interpreting the Constitution on behalf of all three branches of government has been subject to serious analysis and criticism by scholars, jurists, and others for almost two hundred years." 20 The legislation's apparent intent was to undercut the finality and authority of judicial review of constitutional questions by permitting the legislature to disagree with a judicial interpretation of the Washington Constitution and to submit the issue to the voters in a statewide referendum. 21 [\*703] The sense that the courts are too powerful sometimes conflicts with direction to judges from the partisan branches to state their views more publicly. In 1997, twenty-two sponsors introduced in the Washington State House of Representatives a measure urging the Supreme Court to amend Canon 7 of the Code of Judicial Conduct to afford judges and judicial candidates the right to "speak freely and without fear of governmental retaliation, on issues that are not then before the court." 22 The United States Congress has also raised serious questions about judicial performance through a different methodology. The United States Senate's recent glacial pace in confirming nominees to judicial vacancies increases judicial workloads and instills trepidation in the minds of the nominees. 23 In recent legislation, 24 Congress [\*704] sought to restrain "judicial activism" by denying judges cost-of-living salary adjustments and limiting federal court jurisdiction. Various versions of the legislation would deny federal courts the power to release federal prisoners because of bad prison conditions and establish special procedures to hear challenges to state initiative measures. In summary, these issues illustrate the need for the courts continually to revisit and review the core constitutional functions of the judiciary. 25 Within the constitutional sphere, however, the courts should be active and the other branches of government constrained not to act unconstitutionally. The judiciary cannot "restrain" itself from declaring the enactments of legislative bodies violative of constitutional norms. The courts must vigorously protect individuals, particularly minorities, from majoritarian tyranny. But this protective role does not allow the courts to "constitutionalize" every controversy. Judicial self-restraint lends support to the legitimacy of judicial independence. In our system of separation of powers, achievement of the necessary balance between a judiciary vigorous within its constitutional sphere and independent of the partisan branches of government, and a judiciary restrained in its inclination to right every wrong, is no easy task. That necessary balance is, however, the essence of ordered liberty in the American constitutional system. Likewise, the other branches of government must regard the authority and independence of the judiciary by respecting judicial review, properly funding the courts, and avoiding the imposition of nonjudicial duties or ever-escalating caseloads. The fulfillment of separation of powers is found in the principles of restraint employed in the federal and state court systems.

#### Adequate funding for the judiciary is key to the rule of law – it’s watched internationally

Testimony of Associate Justice Anthony M. Kennedy 7 before the United States Senate Committee on the Judiciary Judicial Security and Independence February 14, http://judiciary.senate.gov/testimony.cfm?id=2526&wit\_id=6070

The provision of judicial resources by Congress over the years is admirable in most respects. Your expeditious consideration of the pending court-security bill is just one example of your understanding of our needs. Our facilities have been, and are, the envy of the judiciaries of the several States and, indeed, of judges throughout the world. Our staff, our libraries, our electronic data systems, and our courthouses are excellent. These resources have been the special concern of Congress. Your interest, your oversight, and your understanding of our needs set a standard for our own States and for nations around the world. Just one example is the Federal Judicial Center. When visitors come to Washington, we recommend they observe it to learn how a successful judicial-education center functions. Those visitors are awed by what they see. As you know, the Center produces an elaborate series of programs for judicial education, under a small budget emphasizing turn-key projects. Around the world, the allocation of scarce resources to judiciaries is, to be candid, a tough sell. There are urgent demands for funds for defense; for roads and schools; for hospitals, doctors, and health care; and for basic utilities and necessities such as clean water. Even rich countries like our own find it hard to marshal the necessary resources for all these endeavors. What, then, is the reception an elected representative receives when he or she tells constituents the legislature has increased funding for judicial resources? The report, to be frank, is not likely to generate much excitement. Perhaps this is an educational failure on our part, for there is a proper response to this predictable public reaction. It is this: An efficient, highly qualified judiciary is part of the infrastructure necessary in any society that seeks to safeguard its freedom. A judiciary committed to excellence secures the Rule of Law; and the Rule of Law is a building block no less important to the advance of freedom and prosperity than infrastructure systems such as roads and utilities. Without a functioning, highly qualified, efficient judiciary, no nation can hope to guarantee its prosperity and secure the liberties of its people. The Committee knows that judges throughout the United States are increasingly concerned about the persisting low salary levels Congress authorizes for judicial service. Members of the federal judiciary consider the problem so acute that it has become a threat to judicial independence. This subject is a most delicate one and, indeed, is difficult for me to address. It is, however, an urgent matter requiring frank and open exchange of views. Please permit me to make some remarks on the subject.

#### That causes nuclear war [gender paraphrased].

Charles S. Rhyne 58, Founder and Senior Partner of Rhyne & Rhyne law firm. “Law Day Speech for Voice of America.” May 1, American Bar Association. http://www.abanet.org/publiced/lawday/rhyne58.html

In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The law we honor is the basis and foundation of our nation’s freedom and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that [hu]mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace or in modern war we will surely die together. History teachers that the rule of law has enabled [hu]mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations. The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons before the dreadful holocaust of nuclear war overtake our people.

### 5

#### Immigration is on top of the agenda---Obama is pushing and bipartisan support is building

Liasson-NPR-10/23/13

National Public Radio

HEADLINE: Obama Wants To Pivot To Immigration Reform, But Can It Work?

MELISSA BLOCK: It may be hard to believe, but the agenda here in Washington does include a few items beyond trading punches over the healthcare law and its troubled website. Near the top of the list is immigration reform. NPR national political correspondent Mara Liasson reports on the prospects for an overhaul of the nation's immigration laws. MARA LIASSON: At the Capitol this morning, a group of young undocumented immigrants who want to join the military called on Congress to pass an immigration bill that would include a path to citizenship for illegal aliens. UNIDENTIFIED MAN: We're here to tell Congress to let us serve, to let us serve in the only country that we know and we call home. MARA LIASSON: As soon as the shutdown standoff ended last week, President Obama said he too wants to return to immigration, one of his few remaining priorities that has even a chance of passage this term. BARACK OBAMA: We should finish the job of fixing our broken immigration system. There's already a broad coalition across American that's behind this effort of comprehensive immigration reform, from business leaders to faith leaders to law enforcement. MARA LIASSON: And unlike the healthcare law, the president's number one achievement in his first term, an immigration overhaul is actually popular with strong majorities across both parties. A comprehensive bill passed the Senate by a big bipartisan margin, but in the House there's been little movement. On Monday, at a Christian Science Monitor breakfast, Chamber of Commerce head Tom Donahue said the business community will push the House to take up the issue. TOM DONAHUE: The Chamber is keeping up the push for reform. It's an opportunity to show the world we can get a big thing done that we can all benefit from. MARA LIASSON: After the political damage the Republicans suffered from the shutdown, immigration reform advocates like Frank Sharry says it's in Republicans interests to work with the Senate on immigration. FRANK SHARRY: I think the pro-shutdown politics makes immigration reform more likely. There's a real demand within the Republican caucus from some that they can do more than shut down the government and threaten the world economy, and so those voices are saying, what can we do in a bipartisan basis that shows we can do big things? And immigration reform is the issue that's waiting to be grabbed by them.

#### The plan drains political capital and derails CIR

**Shane, Ohio State law school chair 2011**

(Peter, “ARTICLE: The Obama Administration and the Prospects for a Democratic Presidency in a Post-9/11 World”, 56 N.Y.L. Sch. L. Rev. 27, lexis, ldg)

The second is politics. With the country still grappling with the effects of a devastating recession, as well as the need for pressing action on healthcare, climate change, and immigration, the President might well want to avoid the appearance of diluting his focus. Moreover, since the Johnson administration, Republicans have consistently--and with some success--cowed the Democrats by portraying them as soft on national security issues. The partisan pushback against any Obama administration effort to reinvigorate the rule of law in the national security context is likely to be vicious, threatening to erode whatever modicum of goodwill might otherwise be available to accomplish seemingly more concrete and immediate objectives. This, of course, is not hypothetical. We can see it in Republican efforts to derail the closing of Guantanamo and in proposals to prohibit the trial of foreign terrorists in civilian courts n108--a practice that Republicans seemed happier to live with under George W. Bush. n109

#### CIR is key to cleantech

Plotkin 9--Norman C.,partner in the Jackson and Hertogs LLP, immigration law firm, "Time to plan for the H-1B visa filing deadline", Cleantech Forum, March 16th, <http://cleantech.com/news/4270/time-plan-h-1b-visa-filing-deadline>

Clean technology companies in the U.S. may find themselves in the unusual position of receiving federal stimulus funding while at the same time not being able to hire and retain key employees. The economic downturn has stopped many employers across all industries from making new hires, but cleantech companies are gearing up for even greater hiring to meet the challenges of our changing economy. However, many of the best potential hires will be foreign nationals who require employment authorization issued by U.S. Citizenship & Immigration Services (USCIS) to legally work in the U.S. Many times the most appropriate visa for these workers is the H-1B visa. The H-1B nonimmigrant visa is for highly skilled workers and is one of the few visas available to foreign scientists and engineers to work for U.S. companies. The predicament is that H-1B visas are not always available. Strict annual quotas have meant that many more H-1B visas have been requested in each of the last few years than available numbers. What this means for cleantech companies is that they in particular may be barred from hiring key personnel because of strict reductions in visa numbers. Since most cleantech companies are startups, they may not be prepared to deal with this hiring issue because they do not have the infrastructure in human resources to make them aware of the restrictions. For individuals who have not already been counted against the annual H-1B cap, there is only a short window in which to file H-1B visa petitions: between April 1 and 7, 2009. Given the relative youth of cleantech, cleantech companies are particularly vulnerable to being shut out by the H-1B cap. How many F-1 students (recent Masters and PhD candidates) has your company hired in the past year? If you even have one, you should be looking at a long term solution to keeping the F-1 student on board. What are your hiring needs going into the balance of the calendar year?

#### Clean tech leadership solves warming and multiple great power wars

Klarevas 9 –Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” <http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html>

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its global primacy for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to outmaneuver potential great power rivals seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and global stability. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously providing it with means of leverage that can be employed to keep potential foes in check. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent - and the best approach for achieving this is to promote a national strategy of greengemony.

### Framing

#### Existential risks come first- they are not unknowable or unsolvable. Refusing to consider dooms us to inevitable failure because our collective efforts are limited by finite time and resources.

Bostrum, Philosophy prof at Oxford, 02 (Nick, Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards, Published in the Journal of Evolution and Technology, Vol. 9, No. 1 (2002), http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[2] At any given time we must use our best current subjective estimate of what the objective risk factors are.[3] A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century. The special nature of the challenges posed by existential risks is illustrated by the following points: · Our approach to existential risks cannot be one of trial-and-error. There is no opportunity to learn from errors. The reactive approach – see what happens, limit damages, and learn from experience – is unworkable. Rather, we must take a proactive approach. This requires foresight to anticipate new types of threats and a willingness to take decisive preventive action and to bear the costs (moral and economic) of such actions. · We cannot necessarily rely on the institutions, moral norms, social attitudes or national security policies that developed from our experience with managing other sorts of risks. Existential risks are a different kind of beast. We might find it hard to take them as seriously as we should simply because we have never yet witnessed such disasters.[5] Our collective fear-response is likely ill calibrated to the magnitude of threat. · Reductions in existential risks are global public goods [13] and may therefore be undersupplied by the market [14]. Existential risks are a menace for everybody and may require acting on the international plane. Respect for national sovereignty is not a legitimate excuse for failing to take countermeasures against a major existential risk. · If we take into account the welfare of future generations, the harm done by existential risks is multiplied by another factor, the size of which depends on whether and how much we discount future benefits [15,16]. In view of its undeniable importance, it is surprising how little systematic work has been done in this area. Part of the explanation may be that many of the gravest risks stem (as we shall see) from anticipated future technologies that we have only recently begun to understand. Another part of the explanation may be the unavoidably interdisciplinary and speculative nature of the subject. And in part the neglect may also be attributable to an aversion against thinking seriously about a depressing topic. The point, however, is not to wallow in gloom and doom but simply to take a sober look at what could go wrong so we can create responsible strategies for improving our chances of survival. In order to do that, we need to know where to focus our efforts.

#### Their critique of probability is backwards—even small chances of existential risks CAUSE not STOP action because of the magnitude of the impact.

Bostrum, Philosophy prof at Oxford, 02 (Nick, Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards, Published in the Journal of Evolution and Technology, Vol. 9, No. 1 (2002), http://www.nickbostrom.com/existential/risks.html)

In combination, these indirect arguments add important constraints to those we can glean from the direct consideration of various technological risks, although there is not room here to elaborate on the details. But the balance of evidence is such that it would appear unreasonable not to assign a substantial probability to the hypothesis that an existential disaster will do us in. My subjective opinion is that setting this probability lower than 25% would be misguided, and the best estimate may be considerably higher. But even if the probability were much smaller (say, ~1%) the subject matter would still merit very serious attention because of how much is at stake.

#### Utilitarianism is key---calculative thought is key to make objective decisions, prevents dogmatism

Whitman 7 (Jeffery, Prof of Philosophy, Religion, and Classical Studies Susquehanna University, “Just War Theory and the War on Terrorism A Utilitarian Perspective,” http://www.mesharpe.com/PIN/05Whitman.pdf)

Nonetheless, many argue that utilitarianism suffers from a multitude of sins and is thus an inappropriate basis for morality in general, let alone for moral judgments concerning war. For example, the coldly calculating nature of utilitarian thinking, along with its emphasis solely on the consequences of actions, tends to ignore other equally (or perhaps more important) aspects of moral value and the moral life. The lost values include certain absolutist moral principles (e.g., respect for persons as such, human rights, our moral integrity), the felt connections to friends and family that motivate much of human morality, the intentions of the moral agent despite the outcome of his or her actions, and higher, aesthetic values that may have no or minimal utility. These criticisms are important and serious criticisms of utilitarianism, but they are criticisms that seem more appropriate to utilitarianism as a personal moral code than as a moral framework for public policy. And when the subject is just war theory, especially as it concerns decisions about war made by states, the perceived weaknesses of utilitarianism as a private morality actually turn into strengths (Goodin 1995, 8–11).16 The impersonal nature of utilitarianism, while it may not be appropriate when dealing with, for example, the everyday moral dilemmas of family life, seems entirely appropriate in the public policy arena, because it guarantees a measure of impartiality. In just war theory, this impartiality seems crucial so as not to overinflate the dangers to one’s own country when contemplating resort to war, or give preference to one’s own side when applying the laws of war as they pertain to “protected persons,” just to give a few examples.17 As for the coldly calculating “sin” of utilitarianism, it becomes a virtue insofar as it enjoins public officials not to allow their hearts to rule their heads. Having attained victory in a war, a nation might issue a public outcry for onerous compensation or revenge against the former enemy. And while government officials may be sympathetic to such sentiments, they must overcome these natural feelings of the public through the application of “coldly calculating” reason if they are to attain the goal of a better state of peace, as jus post bellum principles dictate. Furthermore, while we may wish that officials would aim carefully at the production of public good, the results are all that we are really interested in from a public policy perspective. Motives and intentions seem superfluous. Perhaps President George H.W. Bush’s primary motive for going to war against Saddam Hussein in the 1991 Gulf War was to protect the oil interests of multinational corporations, and he and his administration had little interest in restoring the sovereignty of Kuwait. Nonetheless, the Gulf War has been largely judged to have been morally justified because it was a response to the aggression of Iraq and had the effect of restoring Kuwaiti sovereignty, regardless of the Bush administration’s “real” intentions. Additionally, as this example also illustrates, what officials do in the public realm may be the product of a number of different intentions, some more noble than others. In the end, however, the only thing we can morally judge is the outcome of the policy decisions. Motivations and intentions are subject to endless speculation and may even be falsely recalled and reported. Utilitarianism operating at the public policy level recognizes this problem and correctly discounts the motives and intentions of policymakers in favor of results. So it is true that the consequentialism of utilitarianism means that the focus of decision-making is on results and not on absolutist moral principles. When it comes to public policy decisions, however, this focus seems entirely correct, rather than a weakness. In making decisions for the greater public good, officials may be morally obligated to violate seemingly inviolate moral principles and “dirty their hands.” Hard as this choice may be, it is a choice officials are expected to make. “Doing right though the heavens may fall is not (nowadays anyway) a particularly attractive posture for public officials to adopt” (Goodin 1995, 10). Even Walzer (2000), a strong advocate of a human rights perspective on just war theory, recognizes that there may be instances in war (what he labels a “supreme emergency”) where the rights of innocent people may be violated in the service of the public good (chap. 16).18

### Solvency

#### Can’t solve – numerous other cases of detainees being tortured or abused – plan won’t spill over to them and won’t solve them, means they can’t access their impacts

#### Circumvention- the court would side with the executive if they were to challenge the plan.

Pushaw 11, Pepperdine University School of Law James Wilson endowed professor, 2011

(Robert, 39 Pepp. L. Rev. 173, “SYMPOSIUM: SUPREME MISTAKES: Explaining Korematsu: A Response to Dean Chemerinsky” Lexis)

As our debate over Korematsu illustrates, Dean Chemerinsky and I have adopted quite different approaches to constitutional law. He believes that the Court should use the Constitution instrumentally to identify and protect rights that embody liberal ideals of social and moral justice. By contrast, I adhere to a "Neo-Federalist" methodology, which seeks to restrain the Justices' discretion by requiring them to (1) formulate rules of law that are rooted in the Constitution's language, structure, history, and early precedent; and (2) apply such rules without regard to whether they conform to the Justices' ideology or politics. I believe that a Neo-Federalist perspective would clarify and improve almost all areas of constitutional law. One notable exception is judicial review of the exercise of war powers. Although my textual and historical approach provides some valuable insights on this subject, I readily confess that it does not yield workable legal principles that can be applied consistently and apolitically. Indeed, I have concluded that this problem is intractable because each military situation is unique and raises myriad legal, political, and pragmatic considerations that resist facile lawyerly categorization and analysis. It is against this backdrop that I have examined Dean Chemerinsky's seemingly irrefutable argument that Korematsu is one of the worst decisions in American history. My modest purpose has been to explain, not defend, Korematsu. I have tried to show that this case follows a historical pattern in which the Court treats constitutional rights and liberties with far less respect during military crises. The Justices have always properly recognized that the Constitution commits all war powers to the political branches, which have a paramount duty to protect national security. Even when the assertion of those powers allegedly violates individual rights, the Court has tended to defer to the President's judgment that a particular action is militarily necessary, which rests upon the expert advice of his executive subordinates who have [\*196] processed huge amounts of information. Furthermore, the Court often has no realistic option but to yield to a strong President who enjoys popular and congressional support when he makes such decisions. Thus, Korematsu is not an aberration, but rather followed precedent set during the Civil War (such as The Prize Cases and Vallandigham) and World War I. 144 My study of history convinces me that it is simply wishful thinking to hope that the Court will avoid similar decisions in the future.

# 2NC

## t

### 2NC – Overview (CinC)

#### The distinction is meaningful and grounded in the literature – the aff kills limits.

Heidt 2013

Stephen, PhD candidate Georgia State University, A Memorandum on the Topic Area, http://www.cedadebate.org/forum/index.php?topic=4846.0

As Gerald Astor declared, “the once fine line between the power to declare war and the authority to conduct that war has been smudged, if not erased” (Presidents at War, Hoboken, NJ: Wiley, 2006, 16). The debate community should treat this as the core controversy because it is a controversy that matters. Since World War II, presidents have used military force without Congressional authorization in: Korea, Cuba, Vietnam, Iran, Lebanon, Syria, Grenada, Kuwait, Iraq, Panama, Somalia, Bosnia, the Sudan, Libya, and likely many more (El Salvador, Nicaragua, etc). The president now possesses the unfettered ability to use military force wherever he chooses for an almost indefinite period of time because Congress has abdicated any role in restricting presidential action. Voting for restrict presidential war power establishes a very narrow topic – commander in chief blows the lid off that restriction. Those of us with gray in our hair may recall the restricting commander in chief power means anything from Congressional control over the president’s medical staff (Kansas) to Congressional control over media pools in wartime (a Bill Newnam Special) and everything in between. Modern versions of the parameters of that type of topic are elaborated in the topic paper when, for example, the authors isolate drones as a core controversy invoking the “president’s legal authority to conduct the war on terror.” This is nonsense for two reasons. First, the AUMF granted the president all the legal authority necessary and, second, the CONDUCT of the war is power reserved for the commander in chief and does not fall under the purview of Congressional war declaration power. There are no constitutional questions related to drone use aside from use on American citizens (without due process). This gross error in the topic paper reflects one of the downsides of using sources like the Idaho Statesman to comment on constitutional issues. The topic paper is correct, however, that Affs could restrict presidential actions to target U.S. citizens, but even that might not be topical if the topic is written as restrict/reduce presidential war power since this goes to a “use” issue and not a “power” issue (and, at best, reflects a violation of the Constitutional order and not an expansion of the Constitutional order – one could argue that ending violations is not a restriction in presidential war power since the president never had the power to act in the first place).

#### Precision key – if we have to debate a legal topic we might as well do it right. They explode limits.

Fenster-Attorney-12

The Great War Powers Misconstruction

<http://jnslp.com/wp-content/uploads/2012/01/The-Great-Powers-Misconstruction.pdf>

There is no such thing as “war powers.” The Constitution does not speak in any such terms. Rather, on no other subject is the Constitution more explicit (apart from the conditions of office) than on the subject of the establishment and management of the military. It is a gross mischaracterization to refer to the powers to establish and to manage the military as “war powers” because they extend to every aspect of the creation, dissolution, financing, regulation and operation of the military. The far better term for these powers, found only in Article I, would be the “Military Establishment Powers” (MEP), and that is the term that will be used here. It is true that the President is designated by the Constitution as the Commander in Chief, but he is vested with no identified powers in that capacity, and, as will be noted, none can be implied or deemed inherent.

### T

### Authority not Policy

#### A. Interpretation-Authority is solely a question of jurisdiction-topical affirmatives can only change jurisdiction not policy questions.

Dictionary.com

http://dictionary.reference.com/browse/authority

au·thor·i·ty [uh-thawr-i-tee, uh-thor-] Show IPA

noun, plural au·thor·i·ties.

1.

the power to determine, adjudicate, or otherwise settle issues or disputes; jurisdiction; the right to control, command, or determine.

2.

a power or right delegated or given; authorization: Who has the authority to grant permission?

## Risk

### a2 Calculation Bad --- General Ans

#### ---Calculation is good --- It’s critical to the survival of the Other.

Campbell 1999

David, professor of international politics at the University of Newcastle, MORAL SPACES: RETHINKING ETHICS AND WORLD POLITICS, pg. 56

Levinas has also argued for a politics that respects a double injunction. When asked "Is not ethical obligation to the other a purely negative ideal, impossible to realize in our everyday being-in-the-world," which is governed by "ontological drives and practices"; and "Is ethics practicable in human society as we know it? Or is it merely an invitation to apolitical acquiescence?" Levinas's response was that "of course we inhabit an ontological world of technological mastery and political self-preservation. Indeed, without these political and technological structures of organization we would not be able to feed mankind. This is the greatest paradox of human existence: we must use the ontological for the sake of the other, to ensure the survival of the other we must resort to the technico-political systems of means and ends."

#### Prediction forces theoretical context shifts, resolves complexity. Key to policy relevance, they leave prediction to the DOD.

Ward et al 2012

Michael D., Political Science Professor @ Duke, LEARNING FROM THE PAST AND STEPPING INTO THE FUTURE: THE NEXT GENERATION OF CRISIS PREDICTION, Working Paper, December 4 2012, http://mdwardlab.com/sites/default/files/FORECASTING1212\_0.pdf

Prediction also creates particular incentives which are may be useful for political science as a whole. Because true out-of-sample prediction could involve a shifting context, it requires integrated theories to be successful. When conducting all analyses ex post, the researcher will choose the theory she thinks is most likely to apply, often focusing on the novel or unusual. For example, parts of the Arab Spring were organized by social media, hence many commentators focused on this novel tool as an explanation for the success of the revolution. However, there were a host of other factors that made revolutions in Arab world highly likely. High unemployment, low growth rates, aging dictators, and religious divisions are long-standing explanations for popular uprisings that were all present in this context. When creating predictions, it becomes much harder to inadvertently select advantageous models for a particular context. The choices between competing models have to be \endogenized" in the model in order to have a durable and portable tool for prediction. This requirement{that we delimit the context in which our theory applies{makes our understanding and use of theory more precise. Making models portable across time also brings our focus to what societies have in common, leading us toward a more systematic understanding of social processes. 1.3. Policy relevance. Developing theoretically motivated, cross-validated models can make our findings more accessible to a wider audience. Sharing the knowledge generated by our research is an important part of the enterprise. In addition, the practice of generating these predictions, for researchers, gives us a reminder of and an answer to the often embarrasing question, \so what?" Predictions bind our independent variables to outcomes in a concrete way, bringing clarity, both to ourselves and to others, as to the mechanisms in our models. Current events make predictions of civil con ict even more desirable. The Arab Spring and its aftermath, continuing violence in Afghanistan, and sudden agreements between Georgia and Russia always raise the same question: could we have predicted these events to prepare for or even influence their emergence? Our profession struggles to do so. There are, of course, many who are interested in generating a predictive, analytical social science in the policy realm. During the Vietnam war, Je ry S. Milstein, a new Ph.D. from Stanford University, conducted quantitative and simulation studies that were among the rst-ever, real predictions in the discipline of international relations. 12 These were aimed at elucidating the dynamics of the then ongoing con ict in South East Asia. Robert McNamara, the US Secretary of Defense, was promoting a systems analytic perspective which suggested that a war of attrition would allow the US to outlast the Viet Cong. Milstein's analysis was the first (outside of the DoD) to illustrate that the dynamics were likely to turn out differently. Since Milstein's early work, there have been a variety of reports within the policy community to craft accurate predictive models that can guide policy. 13 This article is a reminder that despite every crisis's unique features, we, as a discipline, should strive for the main prize: the identification of general mechanisms that allow us to make predictions about future events. In fact, the ability to predict future crises can be understood as the gold standard to scientifically advance the study of conflict, peace, and crises. The goal is to have something as theoretically sound as the Fearon & Laitin models that can also actually explain the data that have not yet been collected; namely, the future.

## Xo

### 2NC Perm-Do CP-Judicial

#### It’s a severance permutation

#### A. It severs judicial restrictions

Singer 7 (Jana, Professor of Law, University of Maryland School of Law, SYMPOSIUM A HAMDAN QUARTET: FOUR ESSAYS ON ASPECTS OF HAMDAN V. RUMSFELD: HAMDAN AS AN ASSERTION OF JUDICIAL POWER, Maryland Law Review 2007 66 Md. L. Rev. 759)

n25. See, e.g., Dep't of the Navy v. Egan, 484 U.S. 518, 530 (1988) (noting the reluctance of courts "to intrude upon the authority of the Executive in military and national security affairs"); see also Katyal, supra note 1, at 84 (noting that "in war powers cases, the passive virtues operate at their height to defer adjudication, sometimes even indefinitely"); Harold Hongju Koh, Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair, 97 Yale L.J. 1255, 1313-17 (1988) (discussing the Court's use of justiciability doctrines to refuse to hear challenges to the President's authority in cases involving foreign affairs); Gregory E. Maggs, The Rehnquist Court's Noninterference with the Guardians of National Security, 74 Geo. Wash. L. Rev. 1122, 1124-38 (2006) (discussing the Rehnquist Court's general policy of nonintervention in cases concerning actions of governmental agencies and political entities in national security matters); Peter E. Quint, Reflections on the Separation of Powers and Judicial Review at the End of the Reagan Era, 57 Geo. Wash. L. Rev. 427, 433-34 (1989) (discussing the use of the political question doctrine as a means to avoid judicial restrictions on presidential power in cases involving military force).

### 2NC Rollback

#### ---Strong presumption against Congressional or Judicial interference-no rollback

Mayer-prof political science, Wisconsin-1

Kenneth, “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 26, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power) CBC

Similarly, the judiciary can overturn executive actions but must wait for controversies to come to it, and definitive resolution can take years. Moreover, even after the judicial decision, enforcement is a matter for the president. The president's ability to win by default is, like his residual authority, reinforced by judicial doctrines that make it more difficult to challenge presidential action. The so-called Chevron rule determines how judges referee presidential-legislative disputes over statutory interpretation, and the rule provides clear advantages to the president. In Chevron U.S. A v. National Resources Defense Council, 467 U.S. 837 (1984), the Supreme Court ruled that an agency interpretation of a statute is “controlling unless Congress has spoken to the ‘precise question at issue.’” [119](http://www.questiaschool.com/read/103283206) Once the president, through the executive branch, has interpreted a statute, Congress can only override that determination through narrow, explicit legislation on the exact point in question. This requirement places a heavy burden on Congress in confronting unilateral presidential action, given that body's collective nature and inherent bias toward not changing the status quo.

#### Only Congressional moves to reclaim war power authority triggers the DA

**Howell, Chicago American politics professor, 9-3-13**

(William, “All Syria Policy Is Local”, [www.foreignpolicy.com/articles/2013/09/03/all\_syria\_policy\_is\_local\_obama\_congress?page=full](http://www.foreignpolicy.com/articles/2013/09/03/all_syria_policy_is_local_obama_congress?page=full), ldg)

From a political standpoint, seeking congressional approval for a limited military strike against the Syrian regime, as President Barack Obama on Saturday announced he would do, made lots of sense. And let's be clear, this call has everything to do with political considerations, and close to nothing to do with a newfound commitment to constitutional fidelity. The first reason is eminently local. Obama has proved perfectly willing to exercise military force without an express authorization, as he did in Libya -just as he has expanded and drawn down military forces in Afghanistan, withdrawn from Iraq, significantly expanded the use of drone strikes, and waged a largely clandestine war on terrorism with little congressional involvement. The totality of Obama's record, which future presidents may selectively cite as precedent, hardly aligns with a plain reading of the war powers described in the first two articles of the constitution. Obama isn't new in this regard. Not since World War II has Congress declared a formal war. And since at least the Korean War, which President Harry Truman conveniently called a "police action," commanders-in-chief have waged all sorts of wars -small and large -without Congress's prior approval. Contemporary debates about Congress's constitutional obligations on matters involving war have lost a good deal of their luster. Constitutional law professors continue to rail against the gross imbalances of power that characterize our politics, and members of whichever party happens to be in opposition can be counted on to decry the abuses of war powers propagated by the president. But these criticisms -no matter their interpretative validity -rarely gain serious political traction. Too often they appear as arguments of convenience, duly cited in the lead-up to war, but serving primarily as footnotes rather than banner headlines in the larger case against military action. Obama's recent decision to seek congressional approval is not going to upend a half-century of practice that has shifted the grounds of military decision-making decisively in the president's favor, any more than it is going to imbue the ample war powers outlined in Article I with newfound relevance and meaning. For that to happen, Congress itself must claim for itself its constitutional powers regarding war. Obama did not seek Congress's approval because on that Friday stroll on the White House lawn he suddenly remembered his Con Law teaching notes from his University of Chicago days. He did so for political reasons. Or more exactly, he did so to force members of Congress to go on the record today in order to mute their criticisms tomorrow. And let's be clear, Congress -for all its dysfunction and gridlock -still has the capacity to kick up a good dust storm over the human and financial costs of military operations. Constitutional musings from Capitol Hill -of the sort a handful of Democrats and Republicans engaged in this past week -rarely back the president into a political corner. The mere prospect of members of Congress casting a bright light on the human tolls of war, however, will catch any president's attention. Through hearings, public speeches, investigations, and floor debates, members of Congress can fix the media's attention -and with it, the public's -on the costs of war, which can have political repercussions both at home and abroad. Think, then, about the stated reasons for some kind of military action in Syria. No one is under the illusion that a short, targeted strike is going to overturn the Assad regime and promptly restore some semblance of peace in the region. In the short term, the strike might actually exacerbate and prolong the conflict, making the eventual outcome even more uncertain. And even the best-planned, most-considered military action won't go exactly according to plan. Mishaps can occur, innocent lives may be lost, terrorists may be emboldened, and anti-American protests in the region will likely flare even hotter than they currently are. The core argument for a military strike, however, centers on the importance of strengthening international norms and laws on chemical and biological weapons, with the hope of deterring their future deployment. The Assad regime must be punished for having used chemical weapons, the argument goes, lest the next autocrat in power considering a similar course of action think he can do so with impunity. But herein lies the quandary. The most significant reasons for military action are abstract, largely hidden, and temporally distant. The potential downsides, though, are tangible, visible, and immediate. And in a domestic political world driven by visual imagery and the shortest of time horizons, it is reckless to pursue this sort of military action without some kind of political cover. Were Obama to proceed without congressional authorization, he would invite House Republicans to make all sorts of hay about his misguided, reckless foreign policy. But by putting the issue before Congress, these same Republicans either must explain why the use of chemical weapons against one's people does not warrant some kind of military intervention; or they must concede that some form of exacting punishment is needed. Both options present many of the same risks for members of Congress as they do for the president. But crucially, if they come around to supporting some form of military action -and they just might -members of Congress will have an awfully difficult time criticizing the president for the fallout. Will the decision on Saturday hamstring the president in the final few years of his term? I doubt it. Having gone to Congress on this crisis, must he do so on every future one? No. Consistency is hardly the hallmark of modern presidents in any policy domain, and certainly not military affairs. Sometimes presidents seek Congress's approval for military action, other times they request support for a military action that is already up and running, and occasionally they reject the need for any congressional consent at all. And for good or ill, it is virtually impossible to discern any clear principle that justifies their choices. The particulars of every specific crisis -its urgency, perceived threat to national interests, connection to related foreign policy developments, and what not -can be expected to furnish the president with ample justification for pursuing whichever route he would like. Like jurists who find in the facts of a particular dispute all the reasons they need for ignoring inconvenient prior case law, presidents can characterize contemporary military challenges in ways that render past ones largely irrelevant. Partisans and political commentators will point out the inconsistencies, but their objections are likely to be drowned out in rush to war. Obama's decision does not usher in a new era of presidential power, nor does it permanently remake the way we as a nation go to war. It reflects a temporary political calculation -and in my view, the right one -of a president in a particularly tough spot. Faced with a larger war he doesn't want, an immediate crisis with few good options, and yet a moral responsibility to act, he is justifiably expanding the circle of decision-makers. But don't count on it to remain open for especially long.

# 1NR

### Overview

Renewable transition is critical to wean the US off oil, otherwise great power conflicts over finite resources and climate change are inevitable, those risk extinction, so does warming

Cummins and Allen 10 (Ronnie, Int’l Dir. – Organic Consumers Association, and Will, Policy Advisor – Organic Consumers Association, “Climate Catastrophe: Surviving the 21st Century”, 2-14, <http://www.commondreams.org/view/2010/02/14-6>)

The hour is late. Leading climate scientists such as James Hansen are literally shouting at the top of their lungs that the world needs to reduce emissions by 20-40% as soon as possible, and 80-90% by the year 2050, if we are to avoid climate chaos, crop failures, endless wars, melting of the polar icecaps, and a disastrous rise in ocean levels. Either we radically reduce CO2 and carbon dioxide equivalent (CO2e, which includes all GHGs, not just CO2) pollutants (currently at 390 parts per million and rising 2 ppm per year) to 350 ppm, including agriculture-derived methane and nitrous oxide pollution, or else survival for the present and future generations is in jeopardy. As scientists warned at Copenhagen, business as usual and a corresponding 7-8.6 degree Fahrenheit rise in global temperatures means that the carrying capacity of the Earth in 2100 will be reduced to one billion people. Under this hellish scenario, billions will die of thirst, cold, heat, disease, war, and starvation. If the U.S. significantly reduces greenhouse gas emissions, other countries will follow. One hopeful sign is the recent EPA announcement that it intends to regulate greenhouse gases as pollutants under the Clean Air Act. Unfortunately we are going to have to put tremendous pressure on elected public officials to force the EPA to crack down on GHG polluters (including industrial farms and food processors). Public pressure is especially critical since "just say no" Congressmen-both Democrats and Republicans-along with agribusiness, real estate developers, the construction industry, and the fossil fuel lobby appear determined to maintain "business as usual."

#### Low probability of an existential risk outweighs the magnitude of any non-existential risk

**Bostrom**, professor of philosophy at Oxford, July **2005** (Nick, Transcribed from by Packer, 4:38-6:12 of the talk at http://www.ted.com/index.php/talks/view/id/44, accessed 10/20/07)

Now if we think about what just reducing the probability of human extinction by just one percentage point. Not very much. So that’s equivalent to 60 million lives saved, if we just count currently living people. The current generation. One percent of six billion people is equivalent to 60 million. So that’s a large number. If we were to take into account future generations that will never come into existence if we blow ourselves up then the figure becomes astronomical. If we could you know eventually colonize a chunk of the universe the virgo supercluster maybe it will take us a hundred million years to get there but if we go extinct we never will. Then even a one percentage point reduction in the extinction risk could be equivalent to this astronomical number 10 to the power of 32 so if you take into account future generations as much as our own every other moral imperative or philanthropic cause just becomes irrelevant. The only thing you should focus on would be to reduce existential risk, because even the tiniest decrease in existential risk would just overwhelm any other benefit you could hope to achieve. Even if you just look at the current people and ignore the potential that would be lost if we went extinct it should still be a high priority.

### Uniqueness

### 2NC Must Read-U-IL

#### Uniqueness and Internal Link-Obama has switched strategies on immigration and is willing to negotiate with House republicans---Limited time of the docket means Obama must stay focused and leverage his political capital to secure a comprehensive set of reforms.

Los Angeles Times 10/25/13

HEADLINE: Obama softens tone on border reform;

He indicates that he would consider a package of smaller GOP bills that include a path to citizenship.

After months of insisting the House should take up the comprehensive immigration bill that passed the Senate in June, President Obama changed tactics Thursday and said he might consider GOP proposals to overhaul separate parts of the immigration system. The White House is hoping that public anger at the 16-day government shutdown has so badly damaged the GOP that House Republican leaders will consider immigration reform as a way to improve their popularity with moderate voters. Obama's aides also are intent on showing the president is willing to compromise, partly to counter GOP charges that he was inflexible during the bitter shutdown standoff. In remarks at the White House, Obama hinted that he was no longer tied to the Senate bill, the elaborate product of months of intense bipartisan negotiations, to achieve what he has called a major priority for his second term. Obama instead signaled that he might consider a package of smaller bills, if necessary, as long as they provide a path to citizenship for the estimated 11 million people in the country without legal status. "If House Republicans have new and different additional ideas on how we should move forward, then we want to hear them. I'll be listening," Obama told several dozen pro-reform activists from labor, business and religious groups. White House spokesman Jay Carney echoed the shift, telling reporters there are "a variety of ways that you can reach the ultimate goal" of a bill that Obama could sign into law. "The House's approach will be up to the House," Carney said. "There is a comprehensive bill the House Democrats have put together that is similar to the Senate bill and reflects the president's principles. But the means by which we arrive at our destination is in some ways of course up to the lawmakers who control the houses of Congress." The White House effort to resuscitate a bill that seemed all but dead in the House before the shutdown still faces steep and perhaps insurmountable odds. But the jockeying Thursday raised at least some hope that compromise remains possible. "I hope President Obama meant what he said today about listening to new and different ideas presented by House Republicans," House Judiciary Committee Chairman Robert W. Goodlatte (R-Va.) said in a statement. "The president should work with Congress, including House Republicans, to achieve immigration reform, and not against us." In recent weeks, GOP leaders have worked behind the scenes to craft legislative proposals that might pass muster with rank-and-file Republicans and -- if joined with a legalization program -- could appeal to the White House. Majority Leader Eric Cantor and other House Republicans have met in small groups to write bills that would change parts of the immigration system. GOP proposals include adding high-tech visas, revamping farm and low-skilled immigrant labor programs, and ramping up border security. "I expect us to move forward this year in trying to address reform and what is broken about our system," Cantor said on the House floor Wednesday. Whether the House will go as far as the Senate, and include a 13-year pathway to citizenship for qualified immigrants, is far from clear. Republicans seemed unwilling to accept the entire Senate bill, which includes $46 billion over 10 years for extra border security and other programs, as well as numerous legal reforms. On Thursday, House Speaker John A. Boehner's office said the House would not consider "massive, Obamacare-style legislation that no one understands," referring to the Senate bill. "Instead, the House is committed to a common-sense, step-by-step approach that gives Americans confidence that reform is done the right way." In his comments Thursday, Obama offered some unsolicited advice to House Republicans, who took the brunt of the blame for the bruising budget and debt battles of recent weeks. "Good policy is good politics in this instance," Obama said. "If folks are really that consumed with the politics of fixing our broken immigration system, they should take a closer look at the polls, because the American people support this." Outside analysts and advocates say Obama needs to gain support from House Republicans who might be tempted to support immigration reform but are wary of supporting a bill he has embraced. Simply urging the House to pass the Senate bill may antagonize them. "He has zero credibility," said Rep. Mario Diaz-Balart (R-Fla.), who has worked for months on a House bill that would increase border security and make it possible for some immigrants without legal status to pay a penalty and eventually apply for legal status. "If he wants to be helpful on immigration reform, he has to do what he has been doing for the past five years, which is nothing." Rep. Luis V. Gutierrez (D-Ill.), who asked the president in a meeting at the White House earlier this year to step back from negotiations in Congress for fear his involvement would spook Republicans, thought Obama struck the right tone Thursday. "He didn't say, 'It's my way or the highway,' " said Gutierrez, who is involved in discussions with House Republicans on immigration proposals. Gutierrez wants Obama to step up his involvement in crafting a deal, including bringing together both sides for a face-to-face meeting. "Camp David is a nice place in the fall," Gutierrez said. The bigger problem may be time. The House is only in session for five more weeks before the Christmas break. With other business stacked up due to the government shutdown, that leaves scant floor time to debate and pass a complex package of proposals. Motorola Solutions Inc. Chairman Greg Brown, who heads the Business Roundtable Select Committee on Comprehensive Immigration Reform, saw room for compromise. "We agree with Speaker Boehner and the president that the time is now to fix our broken immigration system," he said in a statement. "Our economy needs a boost, and immigration reform will help." Frank Sharry, the head of America's Voice, an immigration reform advocacy group, said he thought the president's comments "signaled openness."

### U-Will Pass

#### \*\*\*Post shut-down politics substantially increase chances of passage-tea party influence on immigration has been marginalized

Creamer-Senior Strategist for Americans United for Change-10/25/13

http://www.huffingtonpost.com/robert-creamer/four-reasons-why-shutdown\_b\_4162829.html

Yesterday, President Obama renewed his own push for passage of comprehensive immigration reform with a pathway to citizenship. Portions of the pundit class continue to believe the immigration reform is barely hanging on life support. In fact, in the post-shutdown political environment, there are four major reasons to believe that the odds of Congressional passage of immigration reform have actually substantially increased: Reason #1. The extreme Tea Party wing of the Republican Party has been marginalized. That is particularly true when it comes to the efficacy of their political judgment. For those Republicans who want to keep the Republican Party in the majority - or who occupy marginal seats and hope to be reelected -- it's a safe bet that fewer and fewer are taking political advice from the likes of Ted Cruz. The Republican Party brand has sunk to all-time lows. In a post-shutdown Washington Post-ABC News poll, the percentage of voters holding unfavorable views of the Republican Party jumped to 67 percent. Fifty-two percent of the voters hold the GOP responsible for the shutdown, compared with only 31 percent who hold President Obama responsible. And, of course, far from achieving their stated goal of defunding ObamaCare, they basically got nothing in exchange for spending massive amounts of the Party's political capital. Increasingly, many Republicans have come to the view that taking political advice from the Tea Party crowd is like taking investment advice from Bernie Madoff. And many Republicans are coming to realize that hard-core opponents of immigration reform like Congressmen Steve King and Louie Gohmert are just not attractive to swing voters - especially not to suburban women.The fear of being tainted by the Tea Party has grown among moderate Republicans and those in marginal districts. All of that has lessened the extremist clout within the GOP House caucus. And it should also be acknowledged that the "shutdown the government - to hell with the debt ceiling" crowd is not entirely the same as the "round up all the immigrants" gang. Immigration reform has a good deal of support among Evangelical activists that might share Tea Party tendencies on other issues. That's also true among a growing group of economic libertarians. The business community provides most of the money to fuel the Republican political machine. And the business community - which very much wants comprehensive immigration reform (along with the Labor movement) - is furious with the Tea Party wing and is more ready than ever to challenge them - especially on immigration. Yesterday's Wall Street Journal reports that: Some big-money Republican donors, frustrated by their party's handling of the standoff over the debt ceiling and government shutdown, are stepping up their warnings to GOP leaders that they risk long-term damage to the party if they fail to pass immigration legislation. Some donors say they are withholding political contributions from members of Congress who don't support action on immigration, and many are calling top House leaders. Their hope is that the party can gain ground with Hispanic voters, make needed changes in immigration policy and offset some of the damage that polls show it is taking for the shutdown.

### 1NR A2: No Link – D.C Circuit

#### 4. The detention decisions just validated the political status quo – they didn’t change executive behavior

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 35-36)

By 2006, the Bush administration had lost a great deal of credibility both at home and (especially) abroad, in part because of setbacks in Iraq, in part because of scandals, such as Abu Ghraib, and in part because of spectacular incompetence in the management of Hurricane Katrina. Moreover, with the passage of time and the absence of new terrorist attacks in the homeland, the sense of threat waned. Predictably, the judges reasserted themselves. In Hamdan v. Rumsfeld44 in 2006, the Court held that the administration’s military commissions set up to try alleged enemy combatants for war crimes violated relevant statutes and treaties. When Congress reacted by passing the Military Commissions Act in 2006, the Court went on to hold in 2008, in Boumediene v. Bush, that the statute violated the Suspension Clause of the Constitution by denying habeas corpus to detainees at Guantánamo Bay. Even in these cases, however, the Court did not actually order anyone released; in both cases, the result was simply more legal process. There remain sharp pragmatic limits on what courts are willing to do when faced with executive claims of security needs.

1. Those limits are underscored by recent systematic studies of the post-Boumediene litigation, in which Guantanamo detainees have brought habeas corpus petitions in federal court in the hopes of obtaining release.45 Although there are various ways to interpret the data, we will recount some undisputed points: Overall, “less than four percent of releases from [Guantanamo] have followed a judicial order of release”.46 These numbers may understate the in terrorem effect of judicial oversight, which might cause the government to release detainees in anticipation of litigation; but that hypothesis is belied by the low variation in the rate of releases over time, whose apparent insensitivity to the course of litigation in the courts suggests that the prime motor is internal bureaucratic imperatives rather than legal considerations or fear of judicial oversight.47 Moreover, the 4% figure may actually overstate the effect of judicial oversight, because in some fraction of that subset of cases the government would have released the detainee anyway, when the bureaucratic wheels stopped spinning. It seems safe to conclude that the overwhelming supermajority of releases occur because the government has no interest in holding individuals who are unlikely to be a threat, or because the government incurs political costs from holding detainees, or because the government happens to strike a deal with a foreign nation who will accept the detainee. Judicial oversight is a sideshow. Even in the cases in which the judges “order release,” the actual orders – with only two exceptions as of December 31, 2009—have turned out to be merely hortatory. The judges urge the government to negotiate with foreign nations to find a country willing to accept the detainee at issue,48 but stop short of ordering that the detainee be immediately allowed to walk through the gates of Guantanamo. The judges, leery of the political and policy consequences of ordering possible terrorists to be released, almost always pull their punches at the last second, despite what the headlines report.
2. Releases from Guantanamo slowed dramatically after 2008, when Boumediene was decided and President Obama was elected.49 This may be because the government has already released most of the harmless detainees, and is now down to the hard core of the dangerous. At the same time, however, the number of detainees at the government’s facility in Bagram, Afghanistan has swelled. An alternative (and not necessarily inconsistent) hypothesis, then, is that Obama is not seriously constrained by what the judges are doing, but does face political imperatives to be tough on terrorism, resulting in fewer releases at Guantanamo and new detentions elsewhere. As we discuss in later chapters, presidents have more political freedom to act on their off-side. A conservative president like Nixon can strike a deal with Red China, while a liberal president like Obama can expand detention at Bagram while brushing aside complaints from civil-libertarian elites, whose carping gets no traction with the general public so long as detention is ordered by a president perceived in some general way to be sensitive to claims of liberty. On this hypothesis, the pattern of executive detention, over time, is fundamentally driven by political imperatives, not judicial orders or legal norms.