**\*\*2AC\*\***

**T-Authority vs. Practice: 2AC**

**And, indefinite detention refers to detention without trial—means the plan functionally eliminates the president’s indefinite detention authority**

**US Legal No Date** "Indefinite Detention Law & Legal Definition" 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 seema to violate many national and international laws. It also violates human rights laws.

**A restriction on war powers authority limits Presidential discretion**

Jules **Lobel 8**, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, **the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war**—“limited in place, in objects, and in time.” 63 **When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations**. For example, **Congress authorized** President George H. W. **Bush to attack Iraq** in response to Iraq’s 1990 invasion of Kuwait, **but** it **confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions** directed to force Iraqi troops to leave Kuwait. **That restriction would not have permitted the President to march into Baghdad** after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

**Restriction means a limit and includes conditions on action**

**CAA 8**,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("**When a statutory term is not explicitly defined, we assume**, unless otherwise stated, **that the Legislature intended to accord the word its natural and obvious meaning**, which may be discerned from its dictionary definition."). P11 **The dictionary definition of "restriction" is "[a] limitation or qualification**." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "**limited" and "restricted" are considered synonyms.** See Webster's II New Collegiate Dictionary 946 (2001). **Under these** **commonly accepted definitions**, **Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement.** **Wagner was not only** [\*7] **statutorily required** **to install an ignition** **interlock device on all of the vehicles he operated,** A.R.S. § 28-1461(A)(1)(b), **but he** was also **prohibited from driving any vehicle that was not equipped with such a device**, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). **These limitations constituted a restriction** on Wagner's privilege to drive, **for he was unable to drive in circumstances which were otherwise available** to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

**We meet—release is a question of habeas, not immigration—their definition relies on a flawed district court decision**

**Vaughns 13** (Katherine, Professor of Law, University of Maryland, "Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11" Asian American Law Journal, Lexis)

As for Kiyemba, in the district court, the government asserted that the Executive may detain individuals pursuant to its inherent "wind-up" authority, the purported authority to detain individuals associated with a conflict for some period of time following the end of that conflict. n236 It then argued that Shaughnessy v. United States ex rel. Mezei n237 "provides a better read on the constitutional limits to detention than either Zadvydas or Clark." n238 Mezei is a case that involved "an alien immigrant permanently excluded from the United States on security grounds but stranded in his temporary haven on Ellis Island because other countries [would] not take him back." n239 The district court, reviewing the Uighurs' petitions, found several very important distinctions between Mezei and the petitions before the court: First, **Mezei was an immigration case; Kiyemba is not. Unlike in Mezei, the Uighurs are not seeking immigrant admission to the United** [\*41] **States**. n240 Second, **in Mezei, the lower court was not aware of the evidence against the petitioner's admission because it was confidential and undisclosed; in the case of the Uighurs, the government presented evidence supposedly "justifying" their detention, but "failed to meet its burden."** n241 Consequently, the court concluded - "drawing from the principles espoused in the Clark and Zadvydas cases and from the Executive's authority as Commander in Chief" - that the asserted constitutional authority to "wind up" matters administratively prior to release had ceased. n242 I agree. **Relying on Mezei, and** largely **ignoring Boumediene**, n243 **the D.C. Circuit Court of Appeals found that the district court lacked the requisite authority to order the government to admit the Uighurs into the continental U**nited **S**tates. **In so doing, the court refused to appreciate a key distinction: The habeas court would not be ordering the admission of the Uighurs into the U**nited **S**tates **under immigration law. Rather, their release is mandated by the constitutional guarantee of habeas relief,** particularly **as the Uighurs' plight was in no way of their own making.** n244 **In light of the foregoing, it is clear that, until the Supreme Court explicitly rules on the constitutional remedy available to such detainees** (as distinguished from the right to challenge the lawfulness of their detention, which was established by Boumediene), **the D.C. Circuit will continue to misguidedly apply immigration law to an issue plainly outside of its purview, with the effect of granting nearly unreviewable discretion to the Executive and therefore, leaving the Uighurs indefinitely and unlawfully detained at Guantanamo** Bay until the Executive is able to secure a relocation destination. **As stated in the Uighurs' certiorari petition, as a constitutional matter, "the President's discretionary release of a prisoner is no different from his discretionary imprisonment: each proceeds from unchecked power."** n245 **To** [\*42] **view the question of release as** based on sovereign prerogative in the administration of **immigration law, while viewing the question of imprisonment as** based **on constitutional authority is, put simply, senseless and without precedent**. It cannot be that the two inquiries are unrelated; they both undoubtedly implicate individual constitutional rights and the separation of powers. Having refused to resolve this matter, the Supreme Court has left the separation of powers out of balance and tilting dangerously toward unilateralism.

**Avoidance Doctrine CP: 2AC**

**Perm do the counterplan—we don’t spec grounds**

**Kloppenberg 94** (Lisa, Assistant Professor of Law, University of Oregon School of Law, September 1994, "AVOIDING CONSTITUTIONAL QUESTIONS" Boston College Law Review, Lexis)

Ackerman notes that Bickel's countermajoritarian difficulty "recalls the Old Court's long, and ultimately futile, judicial struggle against the New Deal." n192 By using the last resort rule frequently, the Court can live with a constitutional problem and let a solution simmer until widespread acceptance is at hand. n193 Bickel argued that **the avoidance doctrine**, by allowing the judiciary to render unpopular decisions cautiously, rather than suddenly or haphazardly, preserves judicial credibility and increases public acceptance of Court decisions. n194 The last resort rule allows judges to determine when widespread acceptance is at hand or when more simmering is necessary. But even if a judge is correct in her assessment that the public is not ready to accept an unpopular opinion, how long can a court justifiably avoid a constitutional problem by use of the last resort rule? Some scholars argue that preserving credibility or political capital should not concern the judicial branch. n195 Arguably, in addition to the [\*1045] duty to hear cases properly before them, federal courts have a duty to render an unpopular decision when adherence to the Constitution so demands. n196 The last resort rule, however, **does not require a court to refuse to decide a case; it requires a refusal to resolve the case on a constitutional ground.** As argued when considering the separation principle below, decisions of certain issues, particularly those involving non-majoritarian rights, may never find widespread acceptance. In fact, decision by a federal court on constitutional grounds may be necessary to foster acceptance of such rights. For example, unanimous constitutional interpretation by the Supreme Court and respectful tones in opinions are two methods of addressing viability concerns. n197 In any event, the dilemma of determining the appropriate moment for avoiding constitutional decision cannot always depend on waiting for a right time or receptive audience.

**Doesn’t solve the aff—the avoidance doctrine is the epitome of deference**

**Roggensack 06** (The Honorable Patience Drake, justice of the Wisconsin Supreme Court, Spring 2006, "ELECTED TO DECIDE: IS THE DECISION-AVOIDANCE DOCTRINE OF GREAT WEIGHT DEFERENCE APPROPRIATE IN THIS COURT OF LAST RESORT?" Marquette Law Review, Lexis)

Over time, **the** Wisconsin **Supreme Court**, like many other appellate courts, **has created a number of decision-avoidance doctrines that**, when applied to cases under review, **prevent the court from reaching the merits of the legal questions presented. These doctrines are formalistic approaches to decision making that have been developed without persuasively explaining why their use** in each case where they are employed better **serves the public interest than** does **a well-reasoned opinion** that describes how the application of the law to the facts of the case or the interpretation of a statute causes the result reached. **As doctrines of judicial administration, they are refused** n27 **or employed** n28 **based solely on the choice of the court.** **Examples of** commonly applied decision-**avoidance doctrines are deferential standards of review** n29 and waiver. n30 There are times when decision-avoidance doctrines are employed to dispose of an ancillary issue presented by a case that the court accepted as a vehicle to address a different issue. n31 The use of such doctrines is more understandable there. However, decision-**avoidance doctrines are routinely applied to decide key issues for which judicial review was granted**. n32 **When** [\*546] they are **used in this fashion, the public is not provided with an appellate review that actually examines whether the law was correctly interpreted** or applied by the other tribunal. **What decision-avoidance doctrines accomplish is to relieve the court of the real work of judicial review**, what has been described as the "burden of reasoned decisionmaking." n33 Reasoned decision making requires an appellate court to understand the facts found, to assess the law that may be applied to those facts given the questions presented for review, and to explain why the application of the law to the facts produced the decision of the court. It is in explaining the "why" that an appellate court does its real work because it is that part of the decision that will best assist the public's understanding of its rights and responsibilities under the law. However, **when deferral to another tribunal on a question of law controls the decision** of the Wisconsin Supreme Court, **the court merely recites a mantra invoking some level of deference that is then used as a substitute for analyzing the merits of the legal question presented. There is no discussion of the facts** and how the relevant statutes bear on them. **There is no explanation** of why the agency decision accords with the intent of the legislature in enacting the law under consideration. Therefore, there is no reasoned decision about whether the law was correctly applied or interpreted. Indeed, some **writers who have examined** judicially created decision-**avoidance doctrines have stated that when "the scope of review is too limited, the right to review itself becomes meaningless."** n34

**Counterplan gets circumvented—avoidance doctrine means the court’s word isn’t final**

**Kloppenberg 94** (Lisa, Assistant Professor of Law, University of Oregon School of Law, September 1994, "AVOIDING CONSTITUTIONAL QUESTIONS" Boston College Law Review, Lexis)

The Court has often called judicial review of legislative acts the most important and delicate of its responsibilities. n159 The Court's characterization of judicial review of legislative acts as a "delica[te]" function, "particularly in view of possible consequences for others stemming also from constitutional roots," fundamentally justifies the general avoidance doctrine. n160 **An evaluation of the force of this assertion as a justification for avoiding constitutional questions must be linked to evaluation of a second justification offered for the avoidance doctrine, that such review is a "final" function. If the Court renders a final, binding conclusion as to constitutional interpretation each time it speaks on a constitutional issue, the arduous task of amending the Constitution may provide the only counter to the Court's ruling.** n161 **If**, however, **the Court acts as more or less an equal participant with other political actors in an ongoing dialogue, those other non-judicial actors can reinterpret and reapply a constitutional provision**.

**No court credibility net benefit**

**Kloppenberg 94** (Lisa, Assistant Professor of Law, University of Oregon School of Law, September 1994, "AVOIDING CONSTITUTIONAL QUESTIONS" Boston College Law Review, Lexis)

Even the initial assertion that judicial credibility is fragile is not without dissenters. **Two hundred years of history have disproved "predictions of doom -- that society could not accept a government where judges had discretion to choose constitutional values," including values involved in sensitive social issues such as desegregation and abortion.** n198 **Rather than fragile, judicial credibility can** just as persuasively **be characterized as robust, and the Supreme Court** arguably **has reached a historically unparalleled level of stature and importance**. n199 Of course, others might counter that the robust state of the Court's credibility derives from past prudence. At a minimum, **support for the last resort rule based on the judiciary's limited credibility should be questioned**. Although it is [\*1046] difficult to gauge the judiciary's credibility and viability empirically, **historical developments indicate that we do not need to take as sacred assertions that the judiciary's credibility and viability are fragile.** n200 **No link between avoiding decision of constitutional questions and judicial fragility has been proven**. For example, **imagine the reaction if Brown had been decided on a plausible non-constitutional ground. Suppose a federal funding statute could have been interpreted to require any state accepting federal aid to end public school segregation. If the Court required integration in the statutory rather than constitutional bases, it seems unlikely that the public reaction would focus on the ground for decision rather than the bottom-line integration outcome.**

**Our decision is necessary in the instance of the case**

**Kloppenberg 94** (Lisa, Assistant Professor of Law, University of Oregon School of Law, September 1994, "AVOIDING CONSTITUTIONAL QUESTIONS" Boston College Law Review, Lexis)

**Circumstances may arise**, however, **when a court should reach the constitutionality of a statute even though nonconstitutional grounds remain**. For example, **a court should reject the last resort rule if non-majority rights could only be effectively redressed by reaching the constitutional ground of decision in a particular case even if the constitutional ruling requires invalidating legislative or executive action**. Federalism concerns dictate a similar application of the last resort rule in order to afford appropriate deference to state law development and state court decisions. This Article concludes that while Pullman abstention n6 is an inappropriate application of the rule, at least one branch of the adequate and independent state ground doctrine demonstrates appropriate use of the rule.

**CP kills judicial independence**

**Kloppenberg 06** (Lisa, Dean and Professor of Law, Dayton School of Law, Summer 2006, "JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY: SEARCHING FOR THE RIGHT BALANCE: Does Avoiding Constitutional Questions Promote Judicial Independence?, Case Western Reserve Law Review, Lexis)

In many instances, there appears to be a great gulf between the justifications for avoidance (e.g., deference to other constitutional actors) and the actual effects of avoidance and judicial review. **Is avoidance truly promoting judicial independence? It is difficult to see how the Court's use of the canon** in the child pornography case, that is using the avoidance canon to rule at a sub-constitutional level rather than engage in direct lawsaying, **significantly enhances judicial independence**. Is it necessary to preserve judicial independence? Justice Breyer, mindful of the primacy of legislative decision-making, discussed [\*1041] the need for an independent judiciary recently. He asserted that emerging democratic societies see a need for an independent judiciary to help secure basic liberties. An independent judiciary may protect them by helping gradually to develop among citizens and legislators liberty-protecting habits based in part upon their expectation that liberty-infringing laws will turn out not to be laws. And such protection might seem particularly necessary in a new democracy or one with a highly diverse citizenry or sizeable minority groups. **That independent judiciary may also protect through the kind of force . . . that a court can bring to bear when, faced with a law that clearly violates a constitutional provision, that court says "no."** n34 In many ways, his advice is sound for preserving judicial independence in our democracy as well.

### Courts Solve: A2 “Rollback—Congress”

**Risk of backlash is low; (1) congressional supporters; (2) court will compromise**

Lawrence **Baum**, Professor, Constitutional Law, Ohio State University, THE SUPREME COURT, 19**81**, p. 205.

The answer seems to have several parts. To being with, **there always are a good many members of Congress who agree with the Court’s policies and lead its defense. Further, serious forms of attack against the Court, such as impeachment and reduction of jurisdiction seem illegitimate in many people’s minds. In part this is because most members of Congress believe that the Court should have some independence from other branches of government. This widespread perception of illegitimacy is a powerful weapon with which to defend the Court. Finally, when threatened with serious measures the Court sometimes has retreated to reduce the impetus for action. All of these factors can be seen at work in the failures of the most serious attacks on the Court in this century**. Roosevelt’s Court-packing plan was opposed strongly by conservatives who agreed with the Court’s attacks on New Deal legislation, and even some moderates and liberals were troubled by the extreme character of the proposed remedy. The Court itself helped to defuse the proposal with a new set of decisions that supported the New Deal. **A similar process has occurred in the attacks on the Court for its civil liberties policies over the past three decades, though the Court has not always retreated in the face of congressional criticism.**

### Defer Add-On: Chemical Soldiers 2AC

#### Military is developing chemical soldiers

Parasidis 12 (Efthimios, Assistant Professor of Law, Center for Health Law Studies, Saint Louis University School of Law, 2012, "Justice and Beneficence in Military Medicine and Research" Ohio State Law School, Lexis)

The United States military has a long and checkered history of experimental research involving human subjects. It has sponsored clandestine projects that examined if race influences one's susceptibility to mustard gas, n1 the extent to which radiation affects combat effectiveness, n2 and whether psychotropic drugs could be used to facilitate interrogations or develop chemical weapons. n3 In each of these experiments, the government deliberately violated legal requirements and ethical norms that govern human-subjects research and failed to provide adequate follow-up medical care or compensation for those who suffered adverse health effects. In defending its decisions, the government argued that the studies and research methods were necessary to further the strategic advantage of the United States. n4 The military's contemporary research program is motivated by the same rationale. As the U.S. Defense Advanced Research Projects Agency (DARPA) explains, its goal is to "create strategic surprise for U.S. adversaries by maintaining the technological superiority of the U.S. military." n5 Current research sponsored by DARPA and the U.S. Department of Defense (DoD) [\*725] aims to ensure that soldiers have "no physical, physiological, or cognitive limitations." n6 The research includes drugs that keep soldiers awake for seventy-two hours or more, a nutraceutical that fulfills a soldier's dietary needs for up to five days, a vaccine that eliminates intense pain within seconds, and sophisticated brain-to-computer interfaces. n7 The military's emphasis on neuroscience is particularly noteworthy, with recent annual appropriations of over $ 350 million for cognitive science research. n8 Projects include novel methods of scanning a soldier's brain to ascertain physical, intellectual, and emotional states, as well as the creation of electrodes that can be implanted into a soldier's brain for purposes of neuroanalysis and neurostimulation. n9 One of the goals of the research is to create a means by which a soldier's subjective experience can be relayed to a central command center, and, in turn, the command center can respond to the soldier's experience by stimulating brain function for both therapeutic and enhancement purposes. n10 For example, the electrodes can be used to activate brain function that can help heal an injury or keep a soldier alert during difficult moments. n11 Another goal is to create a "connected consciousness" whereby a soldier can interact with machines, access information from the Internet, or communicate with other humans via thought alone. n12

#### Chemical soldiers cause extinction and destroy value to life

Deubel 13 (Paula, Professor Gabriel has held positions at the Brookings Institution, the Army Intelligence School, the Center for the Study of Intelligence at the CIA, and at the Walter Reed Army Institute of Research, Department of Combat Psychiatry, in Washington. 3-25-13, "The Psychopath Wars: Soldiers of the Future?" Suite 101) suite101.com/article/the-psychopath-wars-soldiers-of-the-future-a366977 \*\*evidence is gender modified\*\*

According to Dr. Richard A. Gabriel in his fascinating book, No More Heroes, the sociopathic personality can keep his or her psyche intact even under extremely pathological conditions, while the sane will eventually break down under guilt, fear, or normal human repulsion. Chemical Soldiers Richard A. Gabriel (military historian, retired U.S. army officer and former professor at the U.S. Army War College) describes socio/psychopaths as people without conscience, intellectually aware of what harm they might do to another living being, but unable to experience corresponding emotions. This realization, Gabriel claims, has led the military establishments of the world to discover a drug banishing fear and emotion in the soldier by controlling ~~his~~ [their] brain chemistry. In order for soldiers to ideally function in modern war ~~he~~ [they] should first be reconstructed to become what could be defined as mentally ill. “We may be rushing headlong into a long, dark chemical night from which there will be no return,” warns Gabriel. If these efforts succeed (as it appears they can) a chemically induced zombie would be born, a psychopathic-type being who would function (at least temporarily) without any human compassion and whose moral conscience would not exist to take responsibility for his actions. “Man’s [Humankind’s] nature would be altered forever,” he adds, “and it would cost him his [us our] soul.” As incredible and futuristic as that sounds, the creation of such a drug is apparently already well underway in the world’s military research labs; Gabriel reports such research centers already exist in the United States, Russia, and Israel. Since all emotions are based in anxiety, it appears the eradication of it (perhaps through a variant of the anti-anxiety medication Busbirone) may create soldiers who become more efficient killing machines. Futuristic Warfare Gabriel writes further about the possible nightmarish future of modern warfare: “The standards of normal sane men will be eroded, and soldiers will no longer die for anything understandable or meaningful in human terms. They will simply die, and even their own comrades will be incapable of mourning their deaths […] The battlefields of the future will witness a clash of truly ignorant armies, armies ignorant of their own emotions and even of the reasons for which they fight.” (Operation Enduring Valor, Richard A. Gabriel) This would strip a person of his core identity and all of his humanity. Whether or not the soldier would knowingly take part in this experience is unknown, but during the 1991 Persian Gulf War, one could almost easily imagine that this conscience-killing pill had already been swallowed. Psychopathic Behavior During War During the 1991 Iraq war a pilot interviewed on European television callously remarked ambushing Iraqis was “like waiting for the cockroaches to come out so we could kill them." Other U.S. pilots compared killing human beings to “shooting turkey” or like “attacking a farm after someone had opened a sheep stall.” This same lack of empathy can be seen in Iraq’s Abu Graib prison scandal (2004) where U.S. soldiers were shown seemingly to enjoy torture, as well as more recent photos of military men posing with dead Afghans (first published in Germany's Der Spiegel magazine); more gruesome photos were later published in Rolling Stone before the U.S. Army censored all the remaining damning material from public view. No More Heroes warns that modern warfare will become increasingly difficult for sane men to endure. The combat punch of man’s weapons has increased over 600% since World War II. These weapons are highly technical. High Explosive Plastic Tracers (HEP-T) send fragments of metal through enemy tanks and into humans at speeds faster than the speed of sound. The Starlight Scope is able to differentiate between males and females by computing differences in body heat given off by pelvic areas. The Beehive artillery ammunition (filled with three-inch long nail-like steel needles) is capable of pinning victims to trees. The world has a nightmare arsenal of terrible weapons advanced beyond the evolution of our morality.

### Defer Add-On: Environment 2AC

#### Deference allows the military to destroy the environment

John S. Applegate, Professor @ Indiana Law School, Ecology Law Quarterly, 1999

The defense establishment is not exempted from any of the major environmental laws (in fact, when Congress directly addresses the question, it uniformly includes defense activities), but federal courts have allowed it to behave as though it were exempt (pp. 16-19). This is the aspect of the intersection of the environment and national security that Dycus finds most troubling. The excessive deference given by the federal judiciary to claims of defense necessity is a recurrent theme in National Defense and the Environment (e.g., pp. 16-19, 60, 72, 154-58), and it drives Dycus' central proposal for reform. He argues that the courts should require consistently defense agencies to follow existing environmental rules and procedures to the same extent as private entities. Procedural approaches to environmental regulation, like NEPA, will fail unless the actions in question receive careful judicial scrutiny and unless there is a credible threat that the activity will be halted if the procedures are not followed. Moreover, uncritical deference undermines the thorough and public examination of the competing claims that form the substantive content of a procedural approach like NEPA.

### Lawfare 2AC

**States choose to follow LOAC based on a system of incentives – studies prove that solves violence**

**Prorock and Appel ’13** (Alyssa, and Benjamin, Department of Political Science, Michigan State University, “Compliance with International Humanitarian Law: Democratic Third Parties and Civilian Targeting in Interstate War,” Journal of Conflict Resolution 00(0) 1-28)

**Coercion is a strategy of statecraft involving the threat or use of positive inducements and negative sanctions to alter a target state’s behavior**. It influences the decision making of governments by altering the payoffs of pursuing various policies. Recent studies demonstrate, for example, that third-party states have used the carrot of preferential trade agreements (PTAs) to induce better human rights outcomes in target states (Hafner-Burton 2005, 2009), while the World Bank has withheld aid to states with poor human rights records as a form of coercive punishment (Lebovic and Voeten 2009). **We focus theoretically and empirically on the expectation of coercion**. As Thompson (2009) argues, **coercion has already failed once an actor has to carry through on its coercive threat. Thus, an accurate understanding of coercion’s impact must account for the expectation rather than the implementation of overt penalties or benefits. It follows that leaders likely incorporate the expected reactions of third parties into their decision making when they weigh the costs/benefits of complying with international law** (Goodliffe and Hawkins 2009; Goodliffe et al. 2012). Because governments care about the ‘‘economic, security, and political goods their network partners provide, **they anticipate likely reactions of their partners and behave in ways they expect their partners will approve’’** (Goodliffe et al. 2012, 132).8 **Anticipated positive third-party reactions for compliance increase the expected payoffs for adhering to legal obligations**, while anticipated negative responses to violation decrease the expected payoffs for that course of action. **Coercion succeeds, therefore, when states comply with the law because the expected reactions of third parties alter payoffs such that compliance has a higher utility than violating the law**. Based on this logic, we focus on the conditions under which states expect third parties to engage in coercive statecraft. We identify when combatant states will anticipate coercion and when that expectation will alter payoffs sufficiently to induce compliance with the law. **While a growing body of literature recognizes that international coercion can induce compliance and contribute to international cooperation more generally** (Goldsmith and Posner 2005; Hafner-Burton 2005; Thompson 2009; Von Stein 2010), **many scholars remain skeptical** about coercion’s effectiveness as an enforcement mechanism. Skeptics argue that coercion is costly to implement; third parties value the economic, political, and military ties they share with target states and may suffer along with the target from cutting those ties. This may undermine the credibility of coercive threats and a third party’s ability to induce compliance through this enforcement mechanism. **While acknowledging this critique of coercion, we argue that it can act as an effective enforcement mechanism under certain conditions. Specifically, successful coercion requires that third parties have (1) the incentive to commit to and implement their coercive threats and (2) sufficient leverage over target states in order to meaningfully alter payoffs for compliance.** This suggests that only some third parties can engage in successful coercion and that it is necessary to identify the specific conditions under which third parties can generate credible coercive threats to enforce compliance with international humanitarian law. In the following sections, we argue that third-party states are most likely to effectively use coercion to alter the behavior of combatants when they have both the willingness and opportunity to coerce (e.g., Most and Starr 1989; Siverson and Starr 1990; Starr 1978). Willingness: Clarity, Democracy, and the Salience of International Humanitarian Law **Enforcement through the coercion mechanism is only likely when at least one third-party state has a substantial enough interest in another party’s compliance** that it is willing to act (Von Stein 2010). Third-party willingness, in turn, depends upon two conditions: (**1) legal principles must be clearly defined, making violations easily identifiable and (2) third parties must regard the legal obligation as highly salient**. First, scholars have long recognized that there is significant variation in the precision and clarity of legal rules, and that clarity contributes to compliance with the law (e.g., Abbott et al. 2000; Huth, Croco, and Appel 2011; Morrow 2007; Wallace 2013**). Precise rules increase the effectiveness of the law by narrowing the range of possible interpretations and allowing all states to clearly identify acceptable versus unacceptable conduct. By clearly proscribing unacceptable behavior, clear legal obligations allow states to more precisely respond to compliant versus noncompliant behavior. In contrast, ambiguous legal principles often lead to multiple interpretations among relevant actors, impeding a convergence of expectations** and increasing uncertainty about the payoffs for violating (complying with) the law. **Thus, the clarity of the law shapes states’ expectations by allowing them to predict the reactions of other states with greater confidence. In particular, they can expect greater cooperation and rewards following compliance and more punishment and sanctions for violating the law when legal obligations are clearly defined. While some bodies of law are imprecise, international humanitarian law establishes a comprehensive code of conduct regarding the intentional targeting of noncombatants during war** (e.g., Murphy 2006; Shaw 2003). Starting with the 1899 and 1907 Hague Conventions and continuing through the 1949 Geneva Convention (Protocol IV), the law clearly prohibits the intentional targeting of noncombatants in war. **This clarity allows international humanitarian law to serve as a “bright line” that coordinates the expectations of both war combatants and third parties (Morrow 2007). By creating a common set of standards, it reduces uncertainty, narrowing the range of interpretations of the law and allowing both combatants and third parties to readily recognize violations of these standards**. Third parties are, as a result, more likely to expend resources to punish conduct that transgresses legal standards or to support behavior in accordance with them. **This, in turn, alters the expectations of war combatants who can expect greater support for abiding by the law and greater punishment for violating it when the clarity condition is met.**

**International Norms and HR good – prevents liberal democracies from sliding into totalitarianism by eliminating instances of exclusion**

**Heins, Professor PolSci Concordia, ‘5** (Volker, “Giorgio Agamben and the Current State of Affairs in Humanitarian Law and Human Rights Policy” German Law Journal, Vol 6 No 5)

According to this basic Principle of Distinction, modern **humanitarian action is directed towards those who are caught up in violent conflicts without possessing any strategic value for the respective warring parties. Does this imply that classic humanitarianism** and its legal expressions **reduce the lives of noncombatants to the "bare life" of nameless individuals** beyond the protection of any legal order? I would rather argue that **humanitarianism is itself an order-making activity. Its goal is not the preservation of life reduced to a bare natural fact, but conversely the protection of civilians and thereby the protection of elementary standards of civilization which prevent the exclusion of individuals from any legal and moral order**. The same holds true for human rights, of course. **Agamben fails to appreciate the fact that human rights laws are not about some cadaveric "bare life", but about the protection of moral agency**.33 **His sweeping critique also lacks any sense for essential distinctions**. It may be legitimate to see "bare life" as a juridical fiction nurtured by the modern state, which claims the right to derogate from otherwise binding norms in times of war and emergency, and to kill individuals, if necessary, outside the law in a mode of "effective factuality."34 **Agamben asserts that sovereignty** understood in this manner **continues to function in the same way since the seventeenth century and regardless of the democratic or dictatorial structure of the state in question. This claim remains unilluminated by the wealth of evidence that shows how the humanitarian motive not only shapes the mandate of a host state and nonstate agencies, but also serves to restrict the operational freedom of military commanders in democracies, who can- not act with impunity and who do not wage war in a lawless state of nature**.35 Furthermore, **Agamben ignores the crisis of humanitarianism that emerged as a result of the totalitarian degeneration of modern states in the twentieth century. States cannot always be assumed to follow a rational self-interest which informs them that there is no point in killing others indiscriminately**. The Nazi episode in European history has shown that sometimes leaders do not spare the weak and the sick, but take extra care not to let them escape, even if they are handicapped, very old or very young. **Classic humanitarianism depends on the existence of an international society whose members feel bound by a basic set of rules regarding the use of violence**—rules which the ICRC itself helped to institutionalize. Conversely, classic humanitarianism becomes dysfunctional when states place no value at all on their international reputation and see harming the lives of defenseless individuals not as useless and cruel, but as part of their very mission.36 The founders of the ICRC defined war as an anthropological constant that produced a continuous stream of new victims with the predictable regularity and unavoidability of floods or volcanic eruptions. Newer organizations, by contrast, have framed conditions of massive social suffering as a consequence of largely avoidable political mistakes. The humanitarian movement becomes political, to paraphrase Carl Schmitt,37 in so far as it orients itself to humanitarian states of emergency, the causes of which are located no longer in nature, but in society and politics. Consequently, **the founding generation of the new humanitarian organizations have freed themselves from the ideals of apolitical philanthropy and chosen as their new models historical figures like** the Swedish diplomat Raoul **Wallenberg, who saved thou- sands of Jews during the Second World War.**38 In a different fashion than Agamben imagines, **the primary concern in the field of humanitarian intervention and human rights politics today is not the protection of bare life, but rather the rehabilitation of the lived life of citizens who suffer**, for in- stance, from conditions such as post-traumatic stress disorder. At the same time, there is a field of activity emerging beneath the threshold of the bare life. In the United States, in particular, pathologists working in conjunction with human rights organizations have discovered the importance of corpses and corporal remains now that it is possible to identify reliable evidence for war crimes from exhumed bod- ies.39

**Global violence decreasing – civilization has become more moral**

**Pinker**, Johnstone Family Professor at Harvard University, **‘7** (Steven, March 19, “A History of Violence” The New Republic, lexis)

In sixteenth-century Paris, a popular form of entertainment was cat-burning, in which a cat was hoisted in a sling on a stage and slowly lowered into a fire. According to historian Norman Davies, "[T]he spectators, including kings and queens, shrieked with laughter as the animals, howling with pain, were singed, roasted, and finally carbonized." Today, such sadism would be unthinkable in most of the world. This change in sensibilities is just one example of perhaps the most important and most underappreciated trend in the human saga: **Violence has been in decline over long stretches of history,** and today **we are** probably **living in the most peaceful moment of our species' time on earth**. In the decade of Darfur and Iraq, and shortly after the century of Stalin, Hitler, and Mao, **the claim that violence has been diminishing may seem** somewhere between **hallucinatory** and obscene. **Yet recent studies** that seek to quantify the historical ebb and flow of violence **point to exactly that conclusion**. Some of the evidence has been under our nose all along. Conventional history has long shown that, in many ways, **we have been getting kinder and gentler. Cruelty as entertainment, human sacrifice to indulge superstition**, slavery as a labor-saving device, conquest as the mission statement of government, **genocide as a means of acquiring real estate, torture and mutilation as routine punishment**, the death penalty for misdemeanors and differences of opinion, **assassination as** the mechanism of **political succession, rape as the spoils of war**, pogroms as outlets for frustration, homicide as the major form of conflict resolution--**all were unexceptionable features of life for most of human history. But, today, they are rare to nonexistent in the West, far less common elsewhere than they used to be**, concealed when they do occur, **and widely condemned when they are brought to light.** At one time, these facts were widely appreciated. They were the source of notions like progress, civilization, and man's rise from savagery and barbarism. Recently, however, **those ideas have come to sound corny, even dangerous. They seem to demonize people in other times and places,** license colonial conquest and other foreign adventures, and conceal the crimes of our own societies. The doctrine of the noble savage--the idea that humans are peaceable by nature and corrupted by modern institutions--pops up frequently in the writing of public intellectuals like Jose Ortega y Gasset ("War is not an instinct but an invention"), Stephen Jay Gould ("Homo sapiens is not an evil or destructive species"), and Ashley Montagu ("Biological studies lend support to the ethic of universal brotherhood"). But, now that social scientists have started to count bodies in different historical periods, they have discovered that the romantic theory gets it backward: **Far from causing us to become more violent, something in modernity and its cultural institutions has made us nobler**. To be sure, any attempt to document changes in violence must be soaked in uncertainty. In much of the world, the distant past was a tree falling in the forest with no one to hear it, and, even for events in the historical record, statistics are spotty until recent periods. Long-term trends can be discerned only by smoothing out zigzags and spikes of horrific bloodletting. And the choice to focus on relative rather than absolute numbers brings up the moral imponderable of whether it is worse for 50 percent of a population of 100 to be killed or 1 percent in a population of one billion. Yet, despite these caveats, a picture is taking shape. **The decline of violence is** a fractal phenomenon, **visible at the scale of** millennia, centuries, decades, and **years. It applies over several orders of magnitude of violence, from genocide to war to rioting to homicide to the treatment of children and animals**. And it appears to be a worldwide trend, though not a homogeneous one. The leading edge has been in Western societies, especially England and Holland, and there seems to have been a tipping point at the onset of the Age of Reason in the early seventeenth century. At the widest-angle view, one can see a whopping difference across the millennia that separate us from our pre-state ancestors. Contra leftist anthropologists who celebrate the noble savage, **quantitative body-counts--such as the proportion of prehistoric skeletons with axemarks and embedded arrowheads** or the proportion of men in a contemporary foraging tribe who die at the hands of other men--**suggest that pre-state societies were far more violent than our own.** It is true that raids and battles killed a tiny percentage of the numbers that die in modern warfare. But**, in tribal violence, the clashes are more frequent, the percentage of men in the population who fight is greater, and the rates of death per battle are higher.** According to anthropologists like Lawrence Keeley, Stephen LeBlanc, Phillip Walker, and Bruce Knauft, these factors combine to yield population-wide rates of death in tribal warfare that dwarf those of modern times. If the wars of the twentieth century had killed the same proportion of the population that die in the wars of a typical tribal society, there would have been two billion deaths, not 100 million. Political correctness from the other end of the ideological spectrum has also distorted many people's conception of violence in early civilizations--namely, those featured in the Bible. This supposed source of moral values contains many celebrations of genocide, in which the Hebrews, egged on by God, slaughter every last resident of an invaded city. **The Bible also prescribes death by stoning as the penalty for a long list of nonviolent infractions, including idolatry, blasphemy, homosexuality, adultery, disrespecting one's parents, and picking up sticks on the Sabbath.** The Hebrews, of course, were no more murderous than other tribes; one also finds frequent boasts of torture and genocide in the early histories of the Hindus, Christians, Muslims, and Chinese. At the century scale, it is hard to find quantitative studies of deaths in warfare spanning medieval and modern times. Several historians have suggested that there has been an increase in the number of recorded wars across the centuries to the present, but, as political scientist James Payne has noted, this may show only that "the Associated Press is a more comprehensive source of information about battles around the world than were sixteenth-century monks." **Social histories of the West provide evidence of numerous barbaric practices that became obsolete in the last five centuries, such as slavery, amputation, blinding, branding, flaying, disembowelment, burning at the stake, breaking on the wheel, and so on.** Meanwhile, for another kind of violence--homicide--the data are abundant and striking. The criminologist Manuel Eisner has assembled hundreds of homicide estimates from Western European localities that kept records at some point between 1200 and the mid-1990s. **In every country** he **analyzed, murder rates declined steeply**--for example, from 24 homicides per 100,000 Englishmen in the fourteenth century to 0.6 per 100,000 by the early 1960s. On the scale of decades, comprehensive data again paint a shockingly happy picture: **Global violence has fallen steadily since the middle of the twentieth century**. According to the Human Security Brief 2006, **the number of battle deaths in interstate wars has declined from more than 65,000** per year in the 1950s **to less than 2,000** per year in this decade. In Western Europe and the Americas, **the second half of the century saw a steep decline in the number of wars, military coups, and deadly ethnic riots**. Zooming in by a further power of ten exposes yet another reduction. **After the cold war, every part of the world saw a steep drop-off in state-based conflicts, and those that do occur are more likely to end in negotiated settlements** rather than being fought to the bitter end. Meanwhile, according to political scientist Barbara Harff, between 1989 and 2005 the number of campaigns of mass killing of civilians decreased by 90 percent. The decline of killing and cruelty poses several challenges to our ability to make sense of the world. To begin with, **how could so many people be so wrong** about something so important? Partly, it's because of a cognitive illusion: We estimate the probability of an event from how easy it is to recall examples. Scenes of carnage are more likely to be relayed to our living rooms and burned into our memories than footage of people dying of old age. Partly, **it's an intellectual culture that is loath to admit that there could be anything good about the institutions of civilization and Western society**. Partly, it's the incentive structure of the activism and opinion markets: **No one ever attracted followers** and donations **by announcing that things keep getting better.** And part of the explanation lies in the phenomenon itself. **The decline of violent behavior has been paralleled by a decline in attitudes that tolerate or glorify violence,** and often the attitudes are in the lead. As deplorable as they are, **the abuses at Abu Ghraib and the lethal injections of a few murderers in Texas are mild by the standards of atrocities in human history. But, from a contemporary vantage point, we see them as signs of how low our behavior can sink, not of how high our standards have risen.** The other major challenge posed by the decline of violence is how to explain it. A force that pushes in the same direction across many epochs, continents, and scales of social organization mocks our standard tools of causal explanation. The usual suspects--guns, drugs, the press, American culture--aren't nearly up to the job. Nor could it possibly be explained by evolution in the biologist's sense: Even if the meek could inherit the earth, natural selection could not favor the genes for meekness quickly enough. In any case, **human nature has** not changed so much as to have **lost its taste for violence.** Social psychologists find that at least 80 percent of people have fantasized about killing someone they don't like. And modern humans still take pleasure in viewing violence, if we are to judge by the popularity of murder mysteries, Shakespearean dramas, Mel Gibson movies, video games, and hockey. What has changed, of course, is people's willingness to act on these fantasies. The sociologist Norbert Elias suggested that **European modernity accelerated a "civilizing process" marked by increases in self-control, long-term planning, and sensitivity to the thoughts and feelings of others.** These are precisely the functions that today's cognitive neuroscientists attribute to the prefrontal cortex. But this only raises the question of why humans have increasingly exercised that part of their brains. No one knows why our behavior has come under the control of the better angels of our nature, but there are four plausible suggestions. The first is that Hobbes got it right. Life in a state of nature is nasty, brutish, and short, not because of a primal thirst for blood but because of the inescapable logic of anarchy. Any beings with a modicum of self-interest may be tempted to invade their neighbors to steal their resources. The resulting fear of attack will tempt the neighbors to strike first in preemptive self-defense, which will in turn tempt the first group to strike against them preemptively, and so on. This danger can be defused by a policy of deterrence--don't strike first, retaliate if struck--but, to guarantee its credibility, parties must avenge all insults and settle all scores, leading to cycles of bloody vendetta. These **tragedies can be averted by a state with a monopoly on violence, because it can inflict disinterested penalties that eliminate the incentives for aggression, thereby defusing anxieties about preemptive attack and obviating the need to maintain a hair-trigger propensity for retaliation.** Indeed, Eisner and Elias attribute the decline in European homicide to the transition from knightly warrior societies to the centralized governments of early modernity. And, today**, violence continues to fester in zones of anarchy**, such as frontier regions, failed states, collapsed empires, and territories contested by mafias, gangs, and other dealers of contraband. Payne suggests another possibility: that the critical variable in the indulgence of violence is an overarching sense that life is cheap. When pain and early death are everyday features of one's own life, one feels fewer compunctions about inflicting them on others. As technology and economic efficiency lengthen and improve our lives, we place a higher value on life in general. A third theory, championed by Robert Wright, invokes the logic of **non-zero-sum games**: scenarios **in which two agents can each come out ahead if they cooperate, such as trading goods,** dividing up labor, or sharing the peace dividend that **comes from laying down** their **arms**. As people acquire know-how that they can share cheaply with others and develop technologies that allow them to spread their goods and ideas over larger territories at lower cost, their incentive to cooperate steadily increases, because other people become more valuable alive than dead. Then there is the scenario sketched by philosopher Peter Singer. Evolution, he suggests, bequeathed people a small kernel of empathy, which by default they apply only within a narrow circle of friends and relations. Over the millennia, people's moral circles have expanded to encompass larger and larger polities: the clan, the tribe, the nation, both sexes, other races, and even animals. The circle may have been pushed outward by expanding networks of reciprocity, a la Wright, but it might also be inflated by the inexorable logic of the golden rule: **The more one knows and thinks about other living things, the harder it is to privilege one's own interests over theirs.** The empathy escalator may also be powered by cosmopolitanism, in which journalism, memoir, and realistic fiction make the inner lives of other people, and the contingent nature of one's own station, more palpable--the feeling that "there but for fortune go I." Whatever its causes, **the decline of violence has profound implications. It is not a license for complacency**: We enjoy the peace we find today because people in past generations were appalled by the violence in their time and worked to end it, and so we should work to end the appalling violence in our time. Nor is it necessarily grounds for optimism about the immediate future, since the world has never before had national leaders who combine pre-modern sensibilities with modern weapons. But **the phenomenon does force us to rethink our understanding of violence.** Man's inhumanity to man has long been a subject for moralization. With the knowledge that something has driven it dramatically down, we can also treat it as a matter of cause and effect**. Instead of asking, "Why is there war?" we might ask, "Why is there peace?" From the likelihood that states will commit genocide to the way that people treat cats, we must have been doing something right.** And it would be nice to know what, exactly, it is.

### Politics DA: 2AC

**Obama lacks the clout to pass any legislation OR he will just XO it**

**The Scotsman 2/2** <http://www.scotsman.com/news/george-kerevan-cause-for-concern-over-obama-1-3289491>

What do the polls tell us? Currently **42 per cent of Americans approve of** how Mr **Obama** is doing his job. **That compares with an average of 47 per cent for** all **presidents in their second January after re-election**. That hardly suggests a complete meltdown in public support and it is a lot better than Richard Nixon (27 per cent). But it is well down on Lyndon B Johnson (60), Ronald Reagan (64) and Bill Clinton (61), **suggesting** Mr **Obama remains a** **divisive figure rather than a unifying one**. In fact, his job rating is only a whisker better than George W Bush at 43 per cent.¶ **Without popular backing, and with his** **Olympian inability to schmooze** self-important **members of Congress**, Mr **Obama now** **lacks the necessary clout to get any legislation of significance passed before his term is up**. In that sense **he is a lame duck**. **But by the US system, a president has widespread executive powers**. The brunt of Mr **Obama**’s State of the Union speech was to spell out that he **intends to use those executive powers to the full**. That’s just where problems could arise.

**Immigration pounds**

**Daily Press, 2/6** (U-T San Diego, “Immigration reform is due,” Feb 6th, 2014, http://www.vvdailypress.com/articles/reform-44880-year-immigration.html)//HAL

**Immigration reform is back on the table**, **revived by President Obama in his State of the Union address and by House Republicans who last year sat on the landmark reform package passed by the Senate**, but **who have now drafted a set of principles for what they would accept**. Proponents of reform are cautiously optimistic. But there is still a mountain to climb if anything is to be enacted in this pivotal congressional election year. “**Let’s get immigration reform done this year,” Obama implored** in his speech. “It’s time.” But there are lawmakers in the president’s own party who for perverse reasons don’t want immigration reform this year. They want to be able to mobilize Latino voters for Democrats in the congressional elections this fall by again beating Republicans over the head for inaction. And there are influential Republicans who think the GOP now has the political momentum, largely because of the Obamacare rollout debacle and the president’s sliding popularity. But many House Republicans are also concerned about plummeting Latino support for the GOP. Turning that around was a key topic for their three-day retreat on Maryland’s Eastern Shore. The statement of principles developed there marks positive movement. The stumbling block is the thorny question of a path to citizenship for the 11 million unauthorized immigrants in the country. The comprehensive package passed by the Democraticcontrolled Senate would allow unauthorized immigrants to seek citizenship after 13 years if other requirements were met. The new GOP principles support citizenship only for the socalled “dreamers” — immigrants brought into the country illegally as children. There are other differences, chief among them border security and whether reform should be enacted in a single comprehensive bill or in separate pieces of legislation, as House Republicans prefer. Unauthorized immigrants who have lived here for years, paid taxes and have no criminal record ought to have a path to citizenship. That is the best way to assimilate immigrants, legal or undocumented, into the mainstream society. And the nation should not have millions of people established in law as second-class residents. But this issue should not be a legislationkiller in the House if an otherwise strong package of reforms can be passed. A **House-Senate conference committee would negotiate final provisions. That’s a mountain of ifs. But it is probably the only issue of substance that Congress can complete this year. And it is time.**

**Obama Gitmo push thumps**

Josh **Lederman**, “Obama Looks Ahead to 2014 after Finishing 2013 Business,” HUFFINGTON POST, **12—27**—13, <http://www.huffingtonpost.com/2013/12/27/obama-2014_n_4507493.html>, accessed 12-30-13.

And **2014 may provide a final chance for Obama to push to close** the U.S. prison at **Guantanam**o Bay, Cuba, **an effort that Congress has blocked** through restrictions on transferring detainees. In a statement after he signed the defense bill Thursday, **Obama** praised Congress for removing some of those restrictions in the bill, but he **called for further steps to lift constraints, including a ban on transf**erring detainee**s** to the U.S. for imprisonment, trial or medical emergencies.

**"I** oppose these provisions, as I have in years past, and **will continue to work with the Congress to remove these restrictions," Obama said,** adding that some of the remaining restrictions, in some circumstances, "would violate constitutional separation of powers principles."

#### Court don’t link—gitmo-specific

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

**Obama is irrelevant—interim agreement success is key to sanctions**

Patricia **Zengerle**, **1/13**/14, Iran deal progress dampens push for new U.S. sanctions bill, www.reuters.com/article/2014/01/14/us-iran-nuclear-congress-idUSBREA0D02T20140114?feedType=RSS&feedName=topNews&utm\_source=dlvr.it&utm\_medium=twitter&dlvrit=992637

President Barack **Obama is more likely to win his battle with the U.S. Congress to keep new sanctions on Iran at bay now that world powers and Tehran have made a new advance in talks** to curb the Islamic Republic's nuclear program. Despite strong support for a bill in the Senate to slap new sanctions on the Islamic Republic, analysts, lawmakers and congressional aides said on Monday that **the agreement to begin implementing a nuclear deal on January 20 makes it harder for sanctions supporters to attract more backers.** Senator Richard Blumenthal, a Connecticut Democrat, was one of several of the 59 co-sponsors who said there is no clamor for a vote any time soon. "I want to talk to some of my colleagues. I'm encouraged and heartened by the apparent progress and certainly the last thing I want to do is impede that progress. But at the same time, sanctions are what has brought the Iranians to the table," he told reporters. Sixteen of Obama's fellow Democrats are among the co-sponsors of the measure requiring further cuts in Iran's oil exports if Tehran backs away from the interim agreement, despite Iran warning that it would back away from the negotiating table if any new sanctions measure passed. The current list of supporters is close to the 60 needed to pass most legislation in the 100-member Senate. But 67 votes would be required to overcome a veto, which Obama has threatened as he tries to reach a wider agreement with Iran to prevent it from developing an atomic bomb. "The prospects for a diplomatic solution could implode if Iran leaves the table or if Iran responds with their own provocative actions," said Colin Kahl, who served as a Middle East expert at the Pentagon until 2011 and now teaches security studies at Georgetown University. "Even if neither happens, Iran's moderate negotiators would likely harden their negotiating positions in the next phase to guard their right flank at home against inevitable charges of American 'bad faith,' making a final compromise harder to achieve," he said. The bill in the Senate would cut Iran's oil exports to almost zero two years after enactment, place penalties on other industries and reduce Obama's power to issue a waiver on Iran sanctions, if Iran were to break the interim deal. Supporters say it is necessary to pass a bill now rather than wait to see if Iran complies with the agreement in order to pressure Tehran to negotiate in good faith and not to keep developing nuclear weapons while talks continue. "If the Iranians have their way, they'll drag it out forever," Arizona Senator John McCain, a Republican co-sponsor of the measure, told reporters. Iranian officials say their nuclear program is peaceful. Democratic Senator Robert Menendez of New Jersey and Republican Mark Kirk of Illinois, the measure's lead sponsors, are trying to attract more supporters, hoping to pressure Senate Majority Leader Harry Reid to allow a vote on the legislation. Pro-Israel lobbying groups, convinced that Iran cannot be trusted, are also pushing lawmakers to sign on in the hope of increasing the pressure on Reid, a Nevada Democrat, to let the bill move ahead. But there is no guarantee that all the senators who co-sponsored the sanctions move would actually vote for any final bill, and even less that Democrats would override a veto by a president from their own party. Backers of the sanctions bill said they could force Reid's hand by putting a hold on nominations by the administration - such as dozens pending for State Department positions. But Senate leadership aides - including Republicans - acknowledge that the chamber's rules give Reid enough leeway to block any action. DEMOCRATS IN LINE **Stopping** - or delaying - **new sanctions is** also **made easier because there is a strong core of lawmakers - including senior Democrats - who strongly oppose them**. Ten powerful committee chairs signed a letter in December opposing the new sanctions, and none of those 10 has changed position. An aide to Menendez, who is chairman of the Senate Foreign Relations Committee, said there had been no indication by Monday on when the sanctions bill might come to the floor. Analysts said there had been real concern about a delay in implementing the interim agreement reached in Geneva between Iran and the so-called P5+1 powers in November. But **Sunday's announcement of the start date eases** those **fears**. **"It shows that they are moving ahead, and what that means is that Iran's not delaying**, which was a fear," said Michael Adler, an expert on Iran at the Wilson Center think tank in Washington.

#### The decision won’t be announced till spring, after the DA

SCOTUS 12 (Supreme Court of the United States, 7/25/2012 “The Court and Its Procedures,”

http://www.supremecourt.gov/about/procedures.aspx, Accessed 7/25/2012, rwg)

The Court maintains this schedule each Term until all cases ready for submission have been heard and decided. In May and June the Court sits only to announce orders and opinions. The Court recesses at the end of June, but the work of the Justices is unceasing. During the summer they continue to analyze new petitions for review, consider motions and applications, and must make preparations for cases scheduled for fall argument.

**Politics DA: A2 “Losers Lose”**

**War power fights inevitable but Obama stays out**

**Brown 1-19** (Hayes, “How Two Senators Want To Change The Way The U.S. Wages War,” <http://thinkprogress.org/security/2014/01/19/3182921/senators-want-change-wages-war/>, CMR)

**In the aftermath of** last year’s aborted military campaign against **Syria, two senators want to rewrite the rules that have** — in theory at least — **governed the way the U**nited **S**tates **has used military force** for the last forty years. Following the chemical attack in Syria that killed hundreds, the United States for a time seemed on the verge of launching military action against Syria to punish its unleashing of such deadly weapons. That original determination to retaliate against **Syria** for crossing President Obama’s so-called “red-line” in turn **launched a debate over** whether **the president** had the **authority** to take such action without Congressional approval. That’s where the recently introduced War Powers Consultation Act comes in. **The new legislation** — which Sens. Tim Kaine (D-VA) and John McCain (R-AZ) introduced on Thursday — **would** replace the War Powers Act of 1973 in its entirely, enacting a new set of rules to, in the senators belief, better **keep the president accountable** when it comes to the use of force. Rather than only having to notify Congress after launching military action, Kaine and McCain want the force presidents to consult with legislators prior to sending U.S. soldiers, sailors, and pilots into harm’s way. Under current law, the president has to notify Congress whenever placing forces in areas where “imminent” hostilities are likely, and is given a sixty-day window to conduct the operation absent Congressional approval and another thirty-days allotted towards withdrawal. **The new proposal would reduce** that **autonomy**, **requiring the Executive** Branch **to “consult with Congress before ordering deployment into** a ‘significant armed **conflict**,’ or, combat operations lasting, or expected to last, more than seven days.” That provision would exclude humanitarian missions and covert operations, and the initial consultation could be deferred in time of emergency, but must take place within three days after. The legislation would also raise a new joint committee composed of the heads of the Armed Services, Foreign Relations, Intelligence, and Appropriations in both Houses of Congress “to ensure there is a timely exchange of views between the legislative and executive branches, not just notification by the executive.” Finally, the law, if passed and signed, would require a vote in Congress in support of or against any military operation within 30 days. “Under the Act, all Members of Congress would eventually be asked to vote on decisions of war in order to ensure a deliberate public discussion in the full view of the American public, increasing the knowledge of the population and the accountability of our elected officials,” a press release announcing the legislation reads. “I came to the Senate … with a number of passions and things I hoped to do, but I think I only came with one obsession, and this is that obsession,” Kaine said on the Senate floor when introducing the bill. “I do not think there is anything more important than — than the Senate and Congress can do than to be on the board on decisions about whether or not we initiate military action, because if we don’t, we are asking young men and women to fight and potentially give their lives, with us not having done the hard work of creating the political consensus to support them.” For now, **the White House has yet to take a public stance on** **how it views** McCain and Kaine’s **legislation**. “The Administration is reviewing the legislation and we will continue to work closely with Congress on matters associated with the use of U.S. military force,” National Security Council spokesperson Caitlin Hayden said in an email to ThinkProgress. Neither senator’s office responded to inquires as to whether the White House was consulted in drafting the bil.

### Israel--Lashout—1NC

#### US constrains Israeli lashout

Mitchell G. Bard (Executive Director of American – Israeli Cooperative Enterprise AICE and one of the leading authorities on US Middle East Policy. He haw written 18 books. PhD.). “Will Israel Survive.” 2007. p 229

American Jews sometimes fear the United States could one day turn against Israel because of the bias of the media, the prevalence of anti-Israel professors on college campuses, or the changing demographics of the electorate. The truth, however, is that Americans and Israelis are closely inter-twined on so many levels that the special relationship should endure. For Israel, the strength of the alliance provides security. Israelis know their ally will maintain its commitment and be limited in its ability to apply pressure to force them into actions they oppose. Still, no prime minister wants strained relations with Israel's closest friend and the world's most powerful nation, so Israel inevitably bends to the will of the president.

### Legitimacy DA: 2AC

#### Legitimacy isn’t tied to individual decisions

Ura 13 (Joseph Daniel, Ph.D. Political Science, University of North Carolina at Chapel Hill (2006). Assistant Professor Department of Political Science Texas A&M, 6-20-13, "Supreme Court Decisions in Favor of Gay Marriage Would Not Go ‘Too Far, Too Fast’" Pacific Standard) www.psmag.com/politics/supreme-court-tk-60537/

AN ARRAY OF RESEARCH in political science—due substantially to James Gibson of Washington University, Gregory Caldeira of Ohio State University, and their collaborators—shows that the Supreme Court’s legitimacy is not dependent on agreement on individual questions of policy between the Court and the public. Instead, judicial legitimacy rests on the public’s perception that the Court uses fair procedures to make principled decisions—as compared to the strategic behavior of elected legislators. These perceptions are supported by a variety of powerful symbols representing the close association between the Supreme Court and the law and its impartiality, such as black robes, the image of blind justice, and the practice of calling the members “justices.” The public’s response to the Supreme Court’s decision in Bush v. Gore, which resolved the contested presidential election in 2000, is perhaps the classic example of the nature and influence of the Court’s legitimacy. Despite the bitter partisan conflict that precipitated the case, the enormous political implications of the decision, the blatant partisan divisions on the Court, and the harsh tone of the dissenting justices, the best evidence available indicates that the public’s loyalty to the Supreme Court did not diminish as a result of the case. In particular, neither Democrats nor African-Americans significantly turned against the Court after the decision.

### Envt--1NC

#### The environment is invincible

Easterbrook 95, Distinguished Fellow, Fullbright Foundation (Gregg, A Moment on Earth pg 25)

IN THE AFTERMATH OF EVENTS SUCH AS LOVE CANAL OR THE Exxon Valdez oil spill, every reference to the environment is prefaced with the adjective "fragile." "Fragile environment" has become a welded phrase of the modern lexicon, like "aging hippie" or "fugitive financier." But the notion of a fragile environment is profoundly wrong. Individual animals, plants, and people are distressingly fragile. The environmentthat contains themis close to indestructible.The living environment of Earth has survived ice ages; bombardments of cosmic radiation more deadly than atomic fallout; solar radiation more powerful than the worst-case projection for ozone depletion; thousand-year periods of intense volcanism releasing global air pollution far worse than that made by any factory; reversals of the planet's magnetic poles; the rearrangement of continents; transformation of plains into mountain ranges and of seas into plains; fluctuations of ocean currents and the jet stream; 300-foot vacillations in sea levels; shortening and lengthening of the seasons caused by shifts in the planetary axis; collisions of asteroids and comets bearing far more force than man's nuclear arsenals; and the years without summer that followed these impacts.Yet hearts beat on, and petals unfold still.Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. Human assaults on the environment, though mischievous, are pinpricks compared to forces of the magnitude nature is accustomed to resisting.

### \*\*1AR\*\*

This is what it is

Wikipedia no date http://en.wikipedia.org/wiki/Statutory\_interpretation

If a statute is susceptible to more than one reasonable construction, courts should choose an interpretation that avoids raising constitutional problems. In the US, this canon has grown stronger in recent history. The traditional avoidance canon required the court to choose a different interpretation only when one interpretation was actually unconstitutional. The modern avoidance canon tells the court to choose a different interpretation when another interpretation merely raises constitutional doubts.[4][5]

Congress won’t retaliate

**Baum 04** (Lawrence, professor of political science at the Ohio State University and holds a doctorate from the University of Wisconsin. A widely recognized authority on the court system, Baum is the author of *Judges and Their Audiences: A Perspective on Judicial Behavior* (2006), *American Courts: Process and Policy,* 5th Edition (2001) and *The Puzzle of Judicial Behavior* (1997), as well as numerous articles on topics such as the implementation of court decisions, change in Supreme Court policies, and interaction between the Supreme Court and Congress., The Supreme Court, Eight Edition, CQ Press, 2004, page 215-216 cabal//wej)

Despite such moves, **it is striking how little use Congress has made of its enormous powers over the Court** over the past century. Of the many actions that members of Congress threatened against the conservative Court in the early part of the twentieth century, culminating in Franklin Roosevelt's Court-packing plan, none was carried out.61 All the attacks on the liberal Court in the second half of the century resulted in nothing more serious than the salary "punishment" of 1964 and 1965. Why has Congress been so hesitant to use its powers, even at times when most members are unhappy about the Court's direction? Several factors help to explain this hesitancy. First, **there are always some members of Congress who agree with the Court's policies and lead its defense**. Second, **serious forms of attack against the Court**, such as impeachment and reducing its jurisdiction, **seem illegitimate to many people**. Finally, **when threatened with serious attack, the Court sometimes retreats** to reduce the impetus for congressional action. For these reasons, **the congressional bark at the Supreme Court has been a good deal worse than its bite.**

200 years of rulings deny their arg

**Chemerinsky 99** [Erwin, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science, University of Southern California, “The Supreme Court, Public Opinion, and the Role of the Academic Commentator”, South Texas Law Review, Fall, 40 S Tex L Rev 943]

Choper, for example, concludes from this premise that the Court should not rule on federalism or separation of powers issues so as to not squander its political capital in these areas that he sees as less important than individual rights cases. Bickel argued that the Court should practice the "passive virtues" and use justiciability doctrines to avoid highly controversial matters so as to preserve its political capital. 19 Other scholars reason from the same assumption. Daniel Conkle, for example, speaks of the "fragile legitimacy that attaches to Supreme Court pronouncements of constitutional law." 20 I am convinced that these scholars are wrong and that **the public image of the Court is not easily tarnished, and preserving it need not be a preoccupation of the Court** or constitutional theorists. **There is no evidence to support their assertion of fragile public legitimacy and almost 200 years of judicial review refute it.**

Judicial credibility resilient, even in controversial cases

LISA A. **Kloppenberg** September, **94** [35 b.c.l. rev 1003, Boston College Law Review, “AVOIDING CONSTITUTIONAL QUESTIONS”]

Even **the** initial **assertion that judicial credibility is fragile is not without dissenters. Two hundred years of history have disproved "predictions of doom** -- that society could not accept a government where judges had discretion to choose constitutional values," **including values involved in sensitive social issues such as desegregation and abortion**. n198 **Rather than fragile, judicial credibility can just as persuasively be characterized as robust,** and the Supreme Court arguably has reached a historically unparalleled level of stature and importance. n199 Of course, others might counter that the robust state of the Court's credibility derives from past prudence. At a minimum, support for the last resort rule based on the judiciary's limited credibility should be questioned. Although it is difficult to gauge the judiciary's credibility and viability empirically, **historical developments indicate that we do not need to take as sacred assertions that the judiciary's credibility and viability are fragile**. n200 **No link between avoiding decision of constitutional questions and judicial fragility has been proven**. For example, imagine the reaction if Brown had been decided on a plausible non-constitutional ground. Suppose a federal funding statute could have been interpreted to require any state accepting federal aid to end public school segregation. If the Court required integration in the statutory rather than constitutional bases, it seems unlikely that the public reaction would focus on the ground for decision rather than the bottom-line integration outcome.

Legitimacy doesn’t take out solvency

**Ura 13** (Joseph Daniel, Ph.D. Political Science, University of North Carolina at Chapel Hill (2006). Assistant Professor Department of Political Science Texas A&M, 6-20-13, "Supreme Court Decisions in Favor of Gay Marriage Would Not Go ‘Too Far, Too Fast’" Pacific Standard) www.psmag.com/politics/supreme-court-tk-60537/

LOOKING AHEAD TO DECISIONS in Windsor and Perry, Justice **Ginsberg’s fears of undermining social change by moving “too far, too fast” seem out of place.** A pair of majority opinions strongly in favor of marriage equality may well prompt a temporary backlash in public opinion, but it is unlikely that such a backlash would be permanent. **It is** also **unlikely that any** resulting **backlash against** the **policy implications of** the **decisions would injure the legitimacy of the Court or enable a successful effort to reverse the Court’s decisions via constitutional amendment. Both the Supreme Court and its decisions** for marriage equality **would successfully weather any storm** stirred by the marriage cases. More importantly, though, pro-equality decisions would not merely survive. Instead, the evidence suggests that they would thrive in the long run. By offering its authoritative voice to validate the constitutional claims of homosexual couples seeking legal recognition of their unions, the Supreme Court may alter the terms of public debate and gradually lead public opinion toward greater acceptance of same-sex marriage.