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### Gray area now on domestic arrests skews lower courts and funnels suspects into the civilian system

Elsea 13 (Detention of U.S. Persons as Enemy Belligerents Jennifer K. Elsea Legislative Attorney July 25, 2013 Congressional Research Service http://www.fas.org/sgp/crs/natsec/R42337.pdf)

A majority of the Hamdi Court appears to have accepted the view that, in principle, U.S. citizens who join an enemy armed force and engage in hostilities against the United States may be treated as enemy belligerents on the same basis that alien enemy belligerents may be so treated under the laws and usages of war.28 It seems to follow that the same criteria and definition used to determine the status of aliens who are believed to be enemy belligerents would apply equally to U.S. citizens. Thus, there is little reason to suppose that the contours of the legal category of persons subject to detention, as it has been developed by the lower courts interpreting Hamdi, 29 by the executive branch, and most recently, by Congress, will differ according to citizenship. It may be the case that U.S. citizenship will entitle citizen-detainees to more procedural rights in contesting the factual basis for their detention than alien detainees have enjoyed. Moreover, there is no dispute that citizens detained in U.S. custody abroad may seek habeas review, and Congress has not stripped the courts of jurisdiction over non-habeas cases by U.S. citizens detained as enemy belligerents, as it has done with respect to aliens,30 nor has it established jurisdiction in military commissions to try citizens for war crimes.31 On the other hand, lower courts have applied the plurality opinion in Hamdi, which decision expressly deals with the rights of a U.S. citizen-detainee, as a baseline for determining the procedural rights due to aliens detained at Guantanamo in habeas proceedings, apparently without requiring proof of the existence of “exigent circumstance.”32 Assuming that the Supreme Court jurisprudence establishes that citizens accused of participating in hostilities against the United States may be treated the same as similarly situated aliens, the seemingly relaxed procedural rights and evidentiary burden applicable in the Guantanamo cases may also apply to any habeas cases involving citizen-detainees.33 The Supreme Court has not yet addressed on the merits whether an alien lawfully present in the United States can be detained under the authority of the AUMF based on activity conducted there. A noncitizen could not invoke the Non-Detention Act, but might nevertheless be able to contest whether the government’s facts support an enemy combatant designation. After all, the Hamdi plurality suggested there may be a distinction based on the fact that that case involved a capture on a foreign battlefield. 34 At about the same time that it issued Hamdi and Padilla, the Court denied certiorari to review the case of Ali Saleh Kahlah al-Marri, a Qatari student who had been arrested in Peoria, IL in late 2001 but declared an “enemy combatant” prior to trial and transferred to military custody in South Carolina. His petition for habeas corpus was dismissed for lack of jurisdiction by the U.S. Court of Appeals for the Seventh Circuit.35 Both al-Marri and Padilla filed new petitions for habeas corpus in the Fourth Circuit, meaning that the issue of detention authority with respect to citizens and aliens within the United States would have to be relitigated there before the Supreme Court would have another opportunity to address it. As we explain more fully below, the Fourth Circuit ultimately confirmed both detentions, but without establishing a conclusive test for determining which persons arrested within the United States are subject to detention under AUMF authority. Supreme Court review was avoided in both cases after the government filed charges against the petitioners and moved them into the civilian court system. The only opinion left standing, that which affirmed the detention of Jose Padilla on grounds very different from the original allegations that had been addressed by the Second Circuit, does little to expand the understanding of detention authority beyond that which Hamdi already established, that is, that detention is justified in the case of a person who fought alongside enemy forces against the United States on a foreign battlefield.

## EU Intel Sharing

### Clear signal for low evidentiary bar now—habeas wins on circumstantial evidence

Linzer 11 (Appeals Court Makes It Easier for Gov’t to Hold Gitmo Detainees by Dafna Linzer ProPublica, March 29, 2011, 4:51 p.m http://www.propublica.org/article/appeals-court-makes-it-easier-for-govt-to-hold-gitmo-detainees)

In a decision that will likely make it more difficult for Guantanamo prisoners to win release, the U.S. Court of Appeals for the D.C. Circuit today reversed a lower court’s ruling in the pivotal case of a Yemeni detainee. In a 14-page decision, the appeals court rejected the lower court’s ruling to release Uthman Abdul Rahim Mohammed Uthman, who has been held at Guantanamo without charge since 2002. Uthman’s case and the government’s attempts to classify the legal opinions it generated were the subject of a ProPublica story. The appeals court standard for detention has been laid out over the last year in a number of significant cases, and as with today’s case, each time in the government’s favor. The results have been a boon for the Obama administration’s efforts to keep certain Guantanamo detainees in custody. Today’s decision further clarifies that standard by declaring that the government doesn’t need direct evidence that a detainee fought for or was a member of al-Qaida in order to justify a detention. Much was riding on the Uthman case because he is among several dozen prisoners the Obama administration plans to hold indefinitely without charge. For other detainees, it will likely alter the way they can present their cases for release. In 2008, Guantanamo detainees won the right to challenge the lawfulness of their detention in court. The first challenges were largely successful for detainees, but a number of significant cases have been pushed back at the circuit court. Uthman filed a challenge, and in February 2010, District Court Judge Henry H. Kennedy, Jr. ruled that he was being improperly held and that the United States had failed to demonstrate that he was a member of al-Qaida. As ProPublica detailed, the government censored Kennedy’s decision and quickly appealed the case to a court that was already lowering the government’s burden for proving a prisoner’s detainability. In another case last year, known as Salahi, the appeals court rejected a lower court’s standard that the government show direct evidence the detainee was a member of al-Qaida. In that case, the court sent the detainee back to the district court to have his habeas corpus petition reheard. In today’s opinion, written by Judge Brett Kavanaugh, the appeals court went further by reversing the habeas win outright. In doing so, the court determined that circumstantial evidence, such as a detainee being in the same location as other al-Qaida members, is enough to meet the standard to hold a prisoner without charge. That standard, the court wrote in its decision today, “along with uncontested facts in the record, demonstrate that Uthman more likely than not was part of al Qaeda.” Benjamin Wittes of the Brookings Institution and the national security blog Lawfare attended Uthman’s appeals hearing in February and predicted that the government would prevail. Noting the circuit court’s emerging standards, Wittes wrote that if the appeals court ordered an outright reversal of the Uthman decision “a lot of other Guantanamo detainees are going to share his pain. His case could end up lowering the substantive bar for the government to prevail in these habeas cases.” Jonathan Hafetz, a professor at Seton Hall University School of Law who has represented a number of Guantanamo detainees including Salahi, said today’s opinion significantly favors the government in ways the Supreme Court did not intend when it granted detainees the right to challenge detentions. “The Uthman case cements the trend in the D.C. Circuit's decisions toward a broad and malleable definition of who can be considered ‘part of’ al Qaeda, combined with a highly deferential view of the government's interpretation of the facts,” Hafetz said, “In many cases, the result is indefinite detention based on suspicion or assumptions about a detainee's behavior.” Hafetz argued that today’s decision conflicts not only with the approach taken by the district courts but also with the Supreme Court. Hafetz said the Supreme Court “mandated a meaningful judicial process in which the government would be called to account; Uthman says judges should not require much in the way of an answer.” Wittes embraced today’s opinion, writing on his blog that the court’s opinion reflects the complex reality of Guantanamo Bay. Today’s case asks “whether a relatively spare string of incriminating facts can get the government over the hump. The answer now is clear: It can,” Wittes wrote. “Many fewer detainees will prevail under this understanding of the government’s evidentiary burden than would prevail under one less tolerant of a mosaic of incriminating facts,” he wrote.

### Law enforcement shift and evidentiary review key to implement European derogation model

Cassel 8 (Journal of Criminal Law and Criminology Volume 98 Issue 3 Article 3 Spring 2008 Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraints under International Law Douglass Cassel Professor of Law; Director, Center for Civil and Human Rights, Notre Dame Law School. http://www.law.northwestern.edu/journals/jclc/backissues/v98/n3/9803\_811.Cassel.pdf)

VIII.CONCLUSION Because of the difficulties in relying exclusively on criminal prosecution to confront the threat of terrorism, the United States, United Kingdom and other States have grappled with developing systems of preventive detention of suspected terrorists for security purposes. These systems have not distinguished themselves as exemplars of the rule of law. If prolonged or indefinite security detention is to be permitted, far greater attention must be paid to the substantive and procedural safeguards of international human rights and humanitarian law. Except in the member states of the Council of Europe, where security detention is allowed, if at all, only by derogation from the right to liberty, IHRL allows security detention, provided it is not arbitrary or discriminatory, is based on grounds and procedures previously established by law that meet minimum procedural requirements, does not entail inhuman treatment of detainees, and is no more restrictive of liberty or long-lasting than required to meet the exigencies of security. In addition, unlawfully detained persons have a right to be compensated. Security detention must also comply with other provisions of international law where applicable, in particular IHL, which imposes similar requirements, with the important addition that IHL generally prohibits detention of foreign nationals in international armed conflict unless “absolutely necessary” or “necessary, for imperative reasons of security.” IHRL would do well to follow the European model, which permits security detention, if at all, only by derogation.234 That approach makes clear that security detention is an extraordinary device to be used (if at all) only in exceptional circumstances. The formalities of having to declare and defend states of emergency235 in order to derogate also ensure that conscious, visible attention by government officials, lawmakers and judges will focus on whether there is truly a need for security detention in a given situation and, later, on whether the exigencies truly continue. Under a derogation framework, this visible attention may be focused at three distinct stages: when the legislature authorizes and designs a system of preventive detention; when the executive formally invokes it in an emergency; and when the independent judiciary considers, on a case-by-case basis, whether preventive detention of a particular suspected terrorist is warranted. Whether security detention is done under the European model, allowing it only by derogation if at all, or is authorized without derogation as currently allowed by IHRL outside Europe, two central questions merit further consideration. First, what is the evidentiary basis required to justify security detention? Given the fundamental liberty interests at stake in a prolonged detention, the standard for preventive detention should be no less than a preponderance of the evidence. Second, should security detention outside the context of armed conflict be allowed at all? Even taking into account that criminal justice systems encounter extreme difficulties in coping with terrorism, is preventive detention always, or ever, necessary? Might not a system of alternative restraints suffice, including house arrest, electronic ankle bracelets and the other devices used in recent years in Britain? Acknowledging that some suspects have managed to escape those restraints, can the devices be finetuned to be more efficient? If security detention is to be allowed, it must be only with the greatest caution and restraint. Granting executive or military officials authority, on the basis of secret and often flawed intelligence information and subject only to limited judicial review, to deprive persons of their liberty based on grounds of security alone, is dangerous to liberty and to the rule of law. In many countries political dissidents may be deemed security threats. Even in democracies under the rule of law, zealous officials may be too quick to conclude that someone is a security threat on the basis of shaky intelligence information. If security detention is not prohibited altogether, its use must be kept to an absolute minimum, and subjected to rigorous and redundant procedural safeguards. As a plurality of the United States Supreme Court recently warned: [A]s critical as the Government’s interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.236

### Detention policies specifically skew US-EU counterterror cooperation—shared values and recruitment

Archick 13 (U.S.-EU Cooperation Against Terrorism Kristin Archick Specialist in European Affairs September 4, 2013 Congressional Research Service http://www.fas.org/sgp/crs/row/RS22030.pdf)

Detainee Issues and Civil Liberties U.S. and European officials alike maintain that the imperative to provide freedom and security at home should not come at the cost of sacrificing core principles with respect to civil liberties and upholding common standards on human rights. Nevertheless, the status and treatment of suspected terrorist detainees has often been a key point of U.S.-European tension. Especially during the former George W. Bush Administration, a number of U.S. policies were subject to widespread criticism in Europe; these included the U.S.-run detention facility at Guantánamo Bay, Cuba; U.S. plans to try enemy combatants before military commissions; and the use of “enhanced interrogation techniques.” The U.S. practice of “extraordinary rendition” (or extrajudicial transfer of individuals from one country to another, often for the purpose of interrogation) and the possible presence of CIA detention facilities in Europe also gripped European media attention and prompted numerous investigations by the European Parliament, national legislatures, and judicial bodies, among others. Some individuals held at Guantánamo and/or allegedly subject to U.S. rendition have been European citizens or residents. Many European leaders and analysts viewed these U.S. terrorist detainee and interrogation policies as being in breach of international and European law, and as degrading shared values regarding human rights and the treatment of prisoners. Moreover, they feared that such U.S. policies weakened U.S. and European efforts to win the battle for Muslim “hearts and minds,” considered by many to be a crucial element in countering terrorism. The Bush Administration, however, defended its detainee and rendition polices as important tools in the fight against terrorism, and vehemently denied allegations that such policies violated U.S. human rights commitments. Bush Administration officials acknowledged European concerns about Guantánamo and sought agreements with foreign governments to accept some Guantánamo detainees, but maintained that certain prisoners were too dangerous to be released.

### EU judicial and intelligence standard co-op is crucial to stopping the next US terror attack—logistical and planning bases

Archick 13 (U.S.-EU Cooperation Against Terrorism Kristin Archick Specialist in European Affairs September 4, 2013 Congressional Research Service http://www.fas.org/sgp/crs/row/RS22030.pdf)

The September 11, 2001, terrorist attacks on the United States and the subsequent revelation of Al Qaeda cells in Europe gave new momentum to European Union (EU) initiatives to combat terrorism and improve police, judicial, and intelligence cooperation. The EU is a unique partnership that defines and manages economic and political cooperation among its current 28 member states.1 The EU is the latest stage in a process of European integration begun in the 1950s to promote peace and economic prosperity throughout the European continent. As part of this drive toward further European integration, the EU has long sought to harmonize policies among its members in the area of “justice and home affairs” (or JHA). Efforts in the JHA field are aimed at fostering common internal security measures while protecting the fundamental rights of EU citizens and promoting the free movement of persons within the EU. Among other policy areas, JHA encompasses countering terrorism and cross-border crimes, police and judicial cooperation, border controls, and immigration and asylum issues. For many years, however, EU attempts to forge common JHA policies were hampered by member state concerns that doing so could infringe on their national legal systems and national sovereignty. Insufficient resources and a lack of trust among member state law enforcement agencies also impeded progress in the JHA area. The 2001 terrorist attacks changed this status quo and served as a wake-up call for EU leaders and member state governments. In the weeks after the attacks, European law enforcement efforts to track down terrorist suspects and freeze financial assets—often in close cooperation with U.S. authorities—produced numerous arrests, especially in Belgium, France, Germany, Italy, Spain, and the United Kingdom. Germany and Spain were identified as key logistical and planning bases for the attacks on the United States. As a result, European leaders recognized that the EU’s largely open borders and Europe’s different legal systems enabled some terrorists and other criminals to move around easily and evade arrest and prosecution. For example, at the time of the 2001 attacks, most EU member states lacked anti-terrorist legislation, or even a legal definition of terrorism. Without strong evidence that a suspect had committed a crime common to all countries, terrorists or their supporters were often able to avoid apprehension in one EU country by fleeing to another with different laws and criminal codes. Moreover, although suspects could travel among EU countries quickly, extradition requests often took months or years to process. Since the 2001 attacks, the EU has sought to speed up its efforts to harmonize national laws and bring down barriers among member states’ law enforcement authorities so that information can be meaningfully shared and suspects apprehended expeditiously. Among other steps, the EU has established a common definition of terrorism and a list of terrorist groups, an EU arrest warrant, enhanced tools to stem terrorist financing, and new measures to strengthen external EU border controls and improve aviation security. The EU has been working to bolster Europol, its joint criminal intelligence body, and Eurojust, a unit charged with improving prosecutorial coordination in cross-border crimes in the EU. The March 2004 terrorist bombings in Madrid and the July 2005 attacks on London’s metro system injected a greater sense of urgency into EU counterterrorism efforts, and gave added impetus to EU initiatives aimed at improving transport security, impeding terrorist travel, and combating Islamist extremism. In the wake of the Madrid attacks, the EU created the position of Counterterrorist Coordinator. Key among the Coordinator’s responsibilities are enhancing intelligence-sharing among EU members and promoting the implementation of already agreed EU anti-terrorism policies, some of which have bogged down in the legislative processes of individual member states. Following the London attacks, the EU adopted a new counterterrorism strategy outlining EU goals to “prevent, protect, pursue, and respond to the international terrorist threat,” as well as a plan to combat radicalization and terrorist recruitment.2

### Next nuclear terror attack is extremely likely

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(Zafar Nawaz, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, Vol. 19, Issue - 1, 2012, 91:111)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dualuse nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does noteliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth. Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187) Since taking office, President Obama has been reiterating that “nuclear weapons represent the ‘gravest threat’ to United States and international security.” While realizing that the US could not prevent nuclear/radiological terrorist attacks singlehandedly, he launched 47an international campaign to convince the international community about the increasing threat of nuclear/ radiological terrorism. He stated on April 5, 2009: “Black market trade in nuclear secrets and nuclear materials abound. The technology to build a bomb has spread. Terrorists are determined to buy, build or steal one. Our efforts to contain these dangers are centered on a global non-proliferation regime, but as more people and nations break the rules, we could reach the point where the center cannot hold (Remarks by President Barack Obama, 2009, April 5).” He added: “One terrorist with one nuclear weapon could unleash massive destruction. Al Qaeda has said it seeks a bomb and that it would have no problem with using it. And we know that there is unsecured nuclear material across the globe” (Remarks by President Barack Obama, 2009, April 5). In July 2009, at the G-8 Summit, President Obama announced the convening of a Nuclear Security Summit in 2010 to deliberate on the mechanism to “secure nuclear materials, combat nuclear smuggling, and prevent nuclear terrorism” (Luongo, 2009, November 10). President Obama’s nuclear/radiological threat perceptions were also accentuated by the United Nations Security Council (UNSC) Resolution 1887 (2009). The UNSC expressed its grave concern regarding ‘the threat of nuclear terrorism.” It also recognized the need for all States “to take effective measures to prevent nuclear material or technical assistance becoming available to terrorists.” The UNSC Resolution called “for universal adherence to the Convention on Physical Protection of Nuclear Materials and its 2005 Amendment, and the Convention for the Suppression of Acts of Nuclear Terrorism.” (UNSC Resolution, 2009) The United States Nuclear Posture Review (NPR) document revealed on April 6, 2010 declared that “terrorism and proliferation are far greater threats to the United States and international stability.” (Security of Defence, 2010, April 6: i). The United States declared that it reserved the right to“hold fully accountable” any state or group “that supports or enables terrorist efforts to obtain or use weapons of mass destruction, whether by facilitating, financing, or providing expertise or safe haven for such efforts (Nuclear Posture Review Report, 2010, April: 12)”. This declaration underscores the possibility that terrorist groups could acquire fissile material from the rogue states.

### Terrorism causes miscalculation that draws in Russia and China and culminates in extinction- also causes rising alert levels

Ayson 2010 (Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. It may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against them. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response. As part of its initial response to the act of nuclear terrorism (as discussed earlier) Washington might decide to order a significant conventional (or nuclear) retaliatory or disarming attack against the leadership of the terrorist group and/or states seen to support that group. Depending on the identity and especially the location of these targets, Russia and/or China might interpret such action as being far too close for their comfort, and potentially as an infringement on their spheres of influence and even on their sovereignty. One far-fetched but perhaps not impossible scenario might stem from a judgment in Washington that some of the main aiders and abetters of the terrorist action resided somewhere such as Chechnya, perhaps in connection with what Allison claims is the “Chechen insurgents’ … long-standing interest in all things nuclear.”42 American pressure on that part of the world would almost certainly raise alarms in Moscow that might require a degree of advanced consultation from Washington that the latter found itself unable or unwilling to provide. There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability? If Washington decided to use, or decided to threaten the use of, nuclear weapons, the responses of Russia and China would be crucial to the chances of avoiding a more serious nuclear exchange. They might surmise, for example, that while the act of nuclear terrorism was especially heinous and demanded a strong response, the response simply had to remain below the nuclear threshold. It would be one thing for a non-state actor to have broken the nuclear use taboo, but an entirely different thing for a state actor, and indeed the leading state in the international system, to do so. If Russia and China felt sufficiently strongly about that prospect, there is then the question of what options would lie open to them to dissuade the United States from such action: and as has been seen over the last several decades, the central dissuader of the use of nuclear weapons by states has been the threat of nuclear retaliation. If some readers find this simply too fanciful, and perhaps even offensive to contemplate, it may be informative to reverse the tables. Russia, which possesses an arsenal of thousands of nuclear warheads and that has been one of the two most important trustees of the non-use taboo, is subjected to an attack of nuclear terrorism. In response, Moscow places its nuclear forces very visibly on a higher state of alert and declares that it is considering the use of nuclear retaliation against the group and any of its state supporters. How would Washington view such a possibility? Would it really be keen to support Russia’s use of nuclear weapons, including outside Russia’s traditional sphere of influence? And if not, which seems quite plausible, what options would Washington have to communicate that displeasure? If China had been the victim of the nuclear terrorism and seemed likely to retaliate in kind, would the United States and Russia be happy to sit back and let this occur? In the charged atmosphere immediately after a nuclear terrorist attack, how would the attacked country respond to pressure from other major nuclear powers not to respond in kind? The phrase “how dare they tell us what to do” immediately springs to mind. Some might even go so far as to interpret this concern as a tacit form of sympathy or support for the terrorists. This might not help the chances of nuclear restraint.

### Europe’s key to rendition upon release—no due process frustrates the process now

Archick 13 (U.S.-EU Cooperation Against Terrorism Kristin Archick Specialist in European Affairs September 4, 2013 Congressional Research Service http://www.fas.org/sgp/crs/row/RS22030.pdf)

At the same time, the Obama Administration has faced significant challenges in its efforts to close Guantánamo. Some observers contend that U.S. officials have been frustrated by the reluctance of other countries, including some in Europe, to take in more detainees. Congressional opposition to elements of the Administration’s plan for closing Guantánamo, and certain restrictions imposed by Congress (including on the Administration’s ability to transfer detainees to other countries amid concerns that some released detainees were engaging in terrorist activity), have also presented obstacles. Consequently, the Obama Administration has not fulfilled its promise to shut down Guantánamo. In March 2011, President Obama signed an executive order that in effect creates a formal system of indefinite detention for those detainees at Guantánamo not charged or convicted but deemed too dangerous to free. The Administration also announced in March 2011 an end to its two-year freeze on new military commission trials for Guantánamo detainees.52 Some European policymakers continue to worry that as long as Guantánamo remains open, it helps serve as a recruiting tool for Al Qaeda and its affiliates. Some European officials have also voiced concern about those detainees at Guantánamo who began hunger strikes in early 2013 to protest their ongoing incarceration. In May 2013, the European Parliament adopted a resolution that expresses concern for those on hunger strike, and again calls upon the United States to close the detention facility.53 The Obama Administration asserts that it is still committed to closing Guantánamo. In late May 2013, President Obama renewed his pledge to work toward this goal; as a first step, he announced that U.S. authorities would restart the process of sending home or resettling in third countries those detainees already cleared for transfer. In August 2013, the Administration released two Algerian detainees (the first such releases in nearly a year), after certifying to Congress that they no longer posed a threat to U.S. national security. Press reports indicate that 164 detainees currently remain at Guantánamo.54

## Deference

### Courts accept classified docs in habeas hearings now and BALK at hearsay and statements which would be offered otherwise

Benhalim 10 (The Emerging Law of Detention The Guantánamo Habeas Cases as Lawmaking\* Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. Robert M. Chesney is a nonresident senior fellow in Governance Studies at The Brookings Institution. Rabea Benhalim is a legal fellow in Governance Studies at The Brookings Institution. January 22, 2010 http://www.brookings.edu/~/media/research/files/papers/2010/1/22%20guantanamo%20wittes%20chesney/0122\_guantanamo\_wittes\_chesney.pdf)

In conceptual terms, Judge Kessler’s hearsay jurisprudence tracks Judge Leon’s, although she seems to display considerably more skepticism. As with Judge Leon, third-party hearsay material—statements by other detainees inculpating the petitioner—bears consideration only when corroborated, but Judge Kessler’s sense of appropriate corroboration appears more demanding than Judge Leon’s. For instance, in Ahmed, the government alleged the following facts: “the Petitioner fought in Afghanistan, trained in Afghanistan, used the kunya [redaction] traveled in Afghanistan with al-Qaida and/or Taliban members, [and] stayed at [redaction] with al-Qaida and/or Taliban member.”145 As with the cases in which third-party hearsay evidence failed to move Judge Leon, the government’s “chief pieces of evidence” in support of these allegations were statements by other detainees, not self-incriminatory statements by the petitioner himself or strong documentary evidence.146 Unfortunately for the government, one of these detainees is one of the same people whose testimony Judge Leon rejects in El Gharani—and Judge Kessler agrees with Judge Leon’s skeptical assessment of him.147 A second witness, she rules, gave statements that were “equivocal and lacking in detail or description” and “riddled...with equivocation and speculation,” while a third gave inconsistent statements, had a history of mental health problems, and may have faced torture. The fourth also apparently had credibility problems, though redactions in the opinion make it impossible to discern what they were.148 Ultimately, Judge Kessler rejects almost all of the allegations—because of weakness, because the hearsay is not corroborated, and some simply because they were given at Bagram amidst the alleged torture and abuse of others.149 The one significant fact that Judge Kessler is willing to find against Ahmed is that he spent a considerable period of time at a guesthouse in Faisalabad in the company of Al Qaeda terrorists. This fact was not based on hearsay, however. It was, rather, undisputed. And Judge Kessler finds this fact unimportant in the absence of evidence of terrorist activity on Ahmed’s part while staying there: “the problem with this charge is that there is no solid evidence that… [the petitioner] engaged in, or planned, any future wrongdoing.…There is no evidence that he was arrested with any weapons or other terrorist paraphernalia.…Though others at the House admitted their affiliation with al-Qaida, they did not implicate… [the petitioner] in any terrorist activity,” she writes. While Judge Kessler allows that the government proved that the petitioner stayed at the guest house, she writes that it had “utterly failed to present evidence that he was a substantial supporter of al-Qaida and/or the Taliban while he did stay there.”150 In short, in Ahmed, Judge Kessler allows no fact to be proven based on uncorroborated hearsay from other detainees. In fact, she allows no fact to be proven that the detainee does not concede. She takes a similar approach in Al Adahi and in doing so raises, if only implicitly, the question of what quantity or quality of extrinsic evidence is necessary in order to satisfy the corroboration requirement. She describes the government’s evidence in this case as “classified intelligence and interview reports” which “contain the statements of Petitioner, as well as statements made by other detainees. . . .”151 And in general, she accepts these reports to the extent they are not contested or to the extent they find corroboration in the detainee’s own statements. Yet where the government relies more completely on third-party hearsay that the detainee either contests or has supported with his own statements, she consistently balks. So while she accepts, for example, that the detainee stayed in a guest house for one night, a fact he admitted repeatedly, she writes that she “cannot rely” on another detainee’s “vague and uncorroborated statement about his meeting with Al-Adahi at an unnamed Kandahar guesthouse.”152 And while she accepts that Al-Adahi was present at the Al Farouq camp, which he admits, she rejects a statement by another detainee, even when corroborated by “several pieces of circumstantial evidence,” that he was an instructor there.153 She likewise rejects a detainee’s statement that Al Adahi served as a bodyguard for Bin Laden, even though Al Adahi’s statements reflect a great deal of familiarity with Bin Laden’s other bodyguards.154 In these latter two instances, Judge Kessler seems to be applying standards of corroboration more rigorous than Judge Leon’s. At a minimum, however, she makes clear not only that corroboration is required in actual practice for hearsay statements by other detainees, but also that minimal corroboration will not suffice. Judge Kessler demands a high level of confidence that hearsay allegations are accurate.

### It’s a big issue of deference—aff solves the accordance of special weight to executive evidence

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Both government and habeas counsel are also pushing the appeals courts to redirect the lower court concerning the use of hearsay evidence, with a particular focus on the admissibility of and weight to be accorded such evidence. Again, the potential range of possible approaches the parties urge is wide, and the universe of cases likely affected by the Court of Appeals’ ultimate standard is presumably large as well. In Al Adahi, the government argues that Judge Kessler flyspecked its evidence way too closely, looking at each piece of evidence individually and applying scrutiny to it that, “far from acknowledging the realities of the wartime military setting and the weight and sensitivity of the government’s interests. . . [applied a] heightened standard of proof for the government.”240 In one instance, the government argues, Judge Kessler “searched for reasons, including mistaken reasons, to discredit the government’s witness, and refused on legally erroneous grounds to even consider the evidence that corroborated the witness’s statements.”241 The proper approach, it urges the D.C. Circuit, “is to recognize the distinct nature of the intelligence information and other sources on which the military must rely, and to accord appropriate deference to the inferences that expert military personnel draw from such material based on the insights they derive from their military operations and experience.”242 This latter point is particularly important, as the notion of deference has not heretofore played a significant role in the habeas decisions. In other contexts relating to national security and military affairs, the government routinely urges judges to defer to its factual judgments, citing comparative institutional competence and legitimacy. Such claims, for example, frequently emphasize the executive branch’s presumed access to special expertise in the relevant subject matter.243 The government’s hearsay-related arguments in Al Adahi appear to invoke a similar principle, insofar as the government criticizes Judge Kessler for failing to accord special weight to the factual conclusions drawn by executive branch experts. If adopted by the courts, this approach could have far-reaching implications for future habeas proceedings whether the evidentiary dispute concerns hearsay or not.

### Intel reliability pushes now—precedent’s key

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While the government complains that Judge Kessler gives insufficient weight to its hearsay material, the detainees have complained that Judge Leon shows too much solicitude for it—though the D.C. Circuit has not been receptive to this complaint to date. One of the central grounds of attack in Bensayah alleges that Judge Leon “credited unfinished, conclusory intelligence reports and uncorroborated assertions from anonymous sources in disregard of Parhat v. Gates.”244 These “raw intelligence reports for which no reliability assessment was possible,” Bensayah’s lawyers argue, were corroborated only with other such reports which “were themselves raw, unfinished intelligence” whose “reliability is just as questionable” as the original. There is, they argue, “no indication in the record that the originating agencies rigorously analyzed them or concluded they were reliable.”245 Likewise, Al Bihani’s lawyers objected to Judge Leon’s “wholesale admission of unreliable hearsay without balancing any purported need to proceed in that manner against Al-Bihani’s due process rights.”246 The D.C. Circuit, as previously noted, rejected Al Bihani’s arguments on this point, but again, this is an interim, not a final step. Ultimately, the Supreme Court, and not the D.C. Circuit, is likely to determine what it meant when it suggested that hearsay had a role to play in these cases. The consequences of appellate courts’ approach to this question seem particularly significant: If it adopts the government’s view of hearsay, the district court judges will be obliged to find a great deal more facts in the government’s favor than if it adopts a more closely-scrutinizing approach.

### Political branches are incapable of resolving clarity—MCA proves Court detainment check’s key to refinement of executive deference

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

B. Congressional Remands After 9/11 Once the post-9/11 decisions are understood through the lens of the Court's preference for dual-branch solutions to national security problems, Chevron's absence becomes more understandable. Rather than adopt a default rule of deference to reasonable Executive Branch interpretations of statutes that do not actually delegate power to the Executive to act with the force of law, the Court has required collective political branch assessment of the underlying merits of the Executive's preferred policies. In this way, the Court has attempted, whenever possible, to elevate presidential decisionmaking from Youngstown Category Two to Category One. 307 But the political branches have not always responded to the Court's overtures. While the AUMF speaks only generally to a use of force against al-Qaeda and the Taliban, 308 it has served as the primary statutory basis for the Executive Branch's policymaking regarding domestic and international detention, surveillance, and military commissions. Yet, the AUMF provides at best vague indications of the President's national security powers and little clarity on questions such as the definition of those persons the President may detain at Guantanamo, the length of those detentions, the conditions of those detentions, and the substantive rights and remedies cognizable in habeas challenges. While courts have resolved subsidiary elements of these questions, the Supreme Court has mainly adopted a policy of [\*1965] remanding these questions to Congress for clarification through statutory delegations, and Congress has generally avoided those calls. 309 While the resulting statutes contain some important procedural improvements, 310 Congress has generally refrained from legislating on numerous other matters concerning Executive Branch national security powers. Hamdan's requirement for a clear legislative mandate authorizing the President's commissions led to a "quick and inevitably messy quilting bee in Congress" culminating in the MCA. 311 The most recent National Defense Authorization Act, which addresses a few of the questions raised by the Guantanamo litigation, leaves the lion's share of those matters unanswered. 312 Because Congress, when it has acted, generally has done so through broad, vague, and at times sweeping national security legislation, often with little debate and with few (if any) indications of the limits of executive implementation, 313 a number of important issues have been left for judicial development. 314 [\*1966] It should be noted that, since 9/11, Congress has not refrained from enacting detailed framework statutes when it wants to do so. After Hamdan, Congress authorized military commissions, 315 and at least one court that had initially rejected the commissions approved them after Congress acted. 316 Other post-9/11 statutes, such as the USA PATRIOT Act, also speak clearly and specifically to national security detention issues by, for example, prescribing clear limits to Executive Branch detention authority in the absence of formal criminal charges or the initiation of removal proceedings. 317 Notably, those provisions have so far survived constitutional scrutiny. 318 But in the post-9/11 arena, clear delegations to the President have been lacking, and the kind of "super-strong" deference championed by Chevron-backers has consequently been absent.

### Judicially legitimated flexibility’s key to heg—detention policies are the determinant

Knowles 2009 (Robert Knowles, Acting Assistant Professor, New York University School of Law, 41 Ariz. St. L.J. 87 American Hegemony and the Foreign Affairs Constitution)

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability.421 G. John Ikenberry analogizes America's hegemonic position to that of a “giant corporation” seeking foreign investors: “The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and accountability.”422 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make “abrupt or aggressive moves toward other states.”423¶ The Bush Administration’s detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch.424 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law.425 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions.426 It declared all detainees at Guantánamo to be “enemy combatants” without establishing a regularized process for making an individual determination for each detainee.427 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections.428¶ In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s—a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage.429 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability.430 America’s military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

### Outweighs material advantage

Kagan 2004 (Robert Kagan, senior associate at the Carnegie Endowment for International Peace, January 24, 2004, “A Tougher War For the U.S. Is One Of Legitimacy,” New York Times, http://www.nytimes.com/2004/01/24/books/a-tougher-war-for-the-us-is-one-of-legitimacy.html?pagewanted=all&src=pm)

Today a darker possibility looms. A great philosophical schism has opened within the West, and instead of mutual indifference, mutual antagonism threatens to debilitate both sides of the trans-Atlantic community. Coming at a time in history when new dangers and crises are proliferating, this schism could have serious consequences. For Europe and the United States to decouple strategically has been bad enough. But what if the schism over ''world order'' infects the rest of what we have known as the liberal West? Will the West still be the West?¶ It is the legitimacy of American power and American global leadership that has come to be doubted by a majority of Europeans. America, for the first time since World War II, is suffering a crisis of international legitimacy.¶ Americans will find that they cannot ignore this problem. The struggle to define and obtain international legitimacy in this new era may prove to be among the critical contests of our time, in some ways as significant in determining the future of the international system and America's place in it as any purely material measure of power and influence.¶ Americans for much of the past three centuries have considered themselves the vanguard of a worldwide liberal revolution. Their foreign policy from the beginning has not been only about defending and promoting their material national interests. ''We fight not just for ourselves but for all mankind,'' Benjamin Franklin declared of the American Revolution, and whether or not that has always been true, most Americans have always wanted to believe that it is true. There can be no clear dividing line between the domestic and the foreign, therefore, and no clear distinction between what the democratic world thinks about America and what Americans think about themselves.¶ Every profound foreign policy debate in America's history, from the time when Jefferson squared off against Hamilton, has ultimately been a debate about the nation's identity and has posed for Americans the primal question ''Who are we?'' Because Americans do care, the steady denial of international legitimacy by fellow democracies will over time become debilitating and perhaps even paralyzing.¶ Americans therefore cannot ignore the unipolar predicament. Perhaps the singular failure of the Bush administration is that it has been too slow to recognize this. Mr. Bush and his advisers came to office guided by the narrow realism that dominated in Republican foreign policy circles during the Clinton years. The Clinton administration, Condoleezza Rice, the national security adviser, wrote in a famous essay in January 2000, had failed to focus on the ''national interest'' and instead had addressed itself to ''humanitarian interests'' or the interests of ''the international community.'' The Bush administration, by contrast, would take a fresh look at all treaties, obligations and alliances and re-evaluate them in terms of America's ''national interest.''¶ The notion that the United States could take such a narrow view of its ''national interest'' has always been mistaken. But besides being an analytical error, the enunciation of this ''realist'' approach by the sole superpower in a unipolar era was a serious foreign policy error. The global hegemon cannot proclaim to the world that it will be guided only by its own definition of its ''national interest.''¶ This is precisely what even America's closest friends fear: that the United States will wield its unprecedented vast power only for itself. In her essay, Ms. Rice derided ''the belief that the United States is exercising power legitimately only when it is doing so on behalf of someone or something else.'' But for the rest of the world, what other source of legitimacy can there be? When the United States acts in its own interests, Ms. Rice claimed, as would many Americans, it necessarily serves the interests of everyone.¶ ''To be sure,'' she argued, ''there is nothing wrong with doing something that benefits all humanity, but that is, in a sense, a second-order effect.''¶ But could even America's closest friends ever be persuaded that an America always pursuing its self-interest could be relied upon to serve their interests, too, as some kind of ''second-order effect''?¶ Both the unipolar predicament and the American character require a much more expansive definition of American interests. The United States can neither appear to be acting only in its self-interest, nor can it in fact act as if its own national interest were all that mattered. Even at times of dire emergency, and perhaps especially at those times, the world's sole superpower needs to demonstrate that it wields its great power on behalf of its principles and all who share them.

### Hegemony solves great power wars

Thayer 2006 (Bradley A. Thayer, Missouri State University Defense and Strategic Studies Institute, November/December, 2006 “In Defense of Primacy,” NATIONAL INTEREST Issue 86)

THROUGHOUT HISTORY, peace and stability have been great benefits of an era where there was a dominant power--Rome, Britain or the United States today. Scholars and statesmen have long recognized the irenic effect of power on the anarchic world of international politics. Everything we think of when we consider the current international order--free trade, a robust monetary regime, increasing respect for human rights, growing democratization--is directly linked to U.S. power. Retrenchment proponents seem to think that the current system can be maintained without the current amount of U.S. power behind it. In that they are dead wrong and need to be reminded of one of history's most significant lessons: Appalling things happen when international orders collapse. The Dark Ages followed Rome's collapse. Hitler succeeded the order established at Versailles. Without U.S. power, the liberal order created by the United States will end just as assuredly. As country and western great Ral Donner sang: "You don't know what you've got (until you lose it)." Consequently, it is important to note what those good things are. In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for Washington and the world. The first has been a more peaceful world. During the Cold War, U.S. leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy helps keep a number of complicated relationships aligned--between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. This is not to say it fulfills Woodrow Wilson's vision of ending all war. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood, particularly war's worst form: great power wars. Second, American power gives the United States the ability to spread democracy and other elements of its ideology of liberalism: Doing so is a source of much good for the countries concerned as well as the United States because, as John Owen noted on these pages in the Spring 2006 issue, liberal democracies are more likely to align with the United States and be sympathetic to the American worldview.( n3) So, spreading democracy helps maintain U.S. primacy. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Indeed they do. Rather, it is because they are more open, more transparent and more likely to want to resolve things amicably in concurrence with U.S. leadership. And so, in general, democratic states are good for their citizens as well as for advancing the interests of the United States. Critics have faulted the Bush Administration for attempting to spread democracy in the Middle East, labeling such aft effort a modern form of tilting at windmills. It is the obligation of Bush's critics to explain why :democracy is good enough for Western states but not for the rest, and, one gathers from the argument, should not even be attempted. Of course, whether democracy in the Middle East will have a peaceful or stabilizing influence on America's interests in the short run is open to question. Perhaps democratic Arab states would be more opposed to Israel, but nonetheless, their people would be better off. The United States has brought democracy to Afghanistan, where 8.5 million Afghans, 40 percent of them women, voted in a critical October 2004 election, even though remnant Taliban forces threatened them. The first free elections were held in Iraq in January 2005. It was the military power of the United States that put Iraq on the path to democracy. Washington fostered democratic governments in Europe, Latin America, Asia and the Caucasus. Now even the Middle East is increasingly democratic. They may not yet look like Western-style democracies, but democratic progress has been made in Algeria, Morocco, Lebanon, Iraq, Kuwait, the Palestinian Authority and Egypt. By all accounts, the march of democracy has been impressive. Third, along with the growth in the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, and mobility of capital and labor markets. The economic stability and prosperity that stems from this economic order is a global public good from which all states benefit, particularly the poorest states in the Third World. The United States created this network not out of altruism but for the benefit and the economic well-being of America. This economic order forces American industries to be competitive, maximizes efficiencies and growth, and benefits defense as well because the size of the economy makes the defense burden manageable. Economic spin-offs foster the development of military technology, helping to ensure military prowess. Perhaps the greatest testament to the benefits of the economic network comes from Deepak Lal, a former Indian foreign service diplomat and researcher at the World Bank, who started his career confident in the socialist ideology of post-independence India. Abandoning the positions of his youth, Lal now recognizes that the only way to bring relief to desperately poor countries of the Third World is through the adoption of free market economic policies and globalization, which are facilitated through American primacy.( n4) As a witness to the failed alternative economic systems, Lal is one of the strongest academic proponents of American primacy due to the economic prosperity it provides. Fourth and finally, the United States, in seeking primacy, has been willing to use its power not only to advance its interests but to promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The U.S. military has participated in over fifty operations since the end of the Cold War--and most of those missions have been humanitarian in nature. Indeed, the U.S. military is the earth's "911 force"--it serves, de facto, as the world's police, the global paramedic and the planet's fire department. Whenever there is a natural disaster, earthquake, flood, drought, volcanic eruption, typhoon or tsunami, the United States assists the countries in need. On the day after Christmas in 2004, a tremendous earthquake and tsunami occurred in the Indian Ocean near Sumatra, killing some 300,000 people. The United States was the first to respond with aid. Washington followed up with a large contribution of aid and deployed the U.S. military to South and Southeast Asia for many months to help with the aftermath of the disaster. About 20,000 U.S. soldiers, sailors, airmen and marines responded by providing water, food, medical aid, disease treatment and prevention as well as forensic assistance to help identify the bodies of those killed. Only the U.S. military could have accomplished this Herculean effort. No other force possesses the communications capabilities or global logistical reach of the U.S. military. In fact, UN peacekeeping operations depend on the United States to supply UN forces. American generosity has done more to help the United States fight the War on Terror than almost any other measure. Before the tsunami, 80 percent of Indonesian public opinion was opposed to the United States; after it, 80 percent had a favorable opinion of America. Two years after the disaster, and in poll after poll, Indonesians still have overwhelmingly positive views of the United States. In October 2005, an enormous earthquake struck Kashmir, killing about 74 000 people and leaving three million homeless. The U.S. military responded immediately, diverting helicopters fighting the War on Terror in nearby Afghanistan to bring relief as soon as possible To help those in need, the United States also provided financial aid to Pakistan; and, as one might expect from those witnessing the munificence of the United States, it left a lasting impression about America. For the first time since 9/11, polls of Pakistani opinion have found that more people are favorable toward the United States than unfavorable, while support for Al-Qaeda dropped to its lowest level. Whether in Indonesia or Kashmir, the money was well-spent because it helped people in the wake of disasters, but it also had a real impact on the War on Terror. When people in the Muslim world witness the U.S. military conducting a humanitarian mission, there is a clearly positive impact on Muslim opinion of the United States. As the War on Terror is a war of ideas and opinion as much as military action, for the United States humanitarian missions are the equivalent of a blitzkrieg.

### Decline causes numerous nuclear wars

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For if America falters, the world is unlikely to be dominated by a single preeminent successor -- not even China. International uncertainty, increased tension among global competitors, and even outright chaos would be far more likely outcomes. While a sudden, massive crisis of the American system -- for instance, another financial crisis -- would produce a fast-moving chain reaction leading to global political and economic disorder, a steady drift by America into increasingly pervasive decay or endlessly widening warfare with Islam would be unlikely to produce, even by 2025, an effective global successor. No single power will be ready by then to exercise the role that the world, upon the fall of the Soviet Union in 1991, expected the United States to play: the leader of a new, globally cooperative world order. More probable would be a protracted phase of rather inconclusive realignments of both global and regional power, with no grand winners and many more losers, in a setting of international uncertainty and even of potentially fatal risks to global well-being. Rather than a world where dreams of democracy flourish, a Hobbesian world of enhanced national security based on varying fusions of authoritarianism, nationalism, and religion could ensue. RELATED 8 Geopolitically Endangered Species The leaders of the world's second-rank powers, among them India, Japan, Russia, and some European countries, are already assessing the potential impact of U.S. decline on their respective national interests. The Japanese, fearful of an assertive China dominating the Asian mainland, may be thinking of closer links with Europe. Leaders in India and Japan may be considering closer political and even military cooperation in case America falters and China rises. Russia, while perhaps engaging in wishful thinking (even schadenfreude) about America's uncertain prospects, will almost certainly have its eye on the independent states of the former Soviet Union. Europe, not yet cohesive, would likely be pulled in several directions: Germany and Italy toward Russia because of commercial interests, France and insecure Central Europe in favor of a politically tighter European Union, and Britain toward manipulating a balance within the EU while preserving its special relationship with a declining United States. Others may move more rapidly to carve out their own regional spheres: Turkey in the area of the old Ottoman Empire, Brazil in the Southern Hemisphere, and so forth. None of these countries, however, will have the requisite combination of economic, financial, technological, and military power even to consider inheriting America's leading role. China, invariably mentioned as America's prospective successor, has an impressive imperial lineage and a strategic tradition of carefully calibrated patience, both of which have been critical to its overwhelmingly successful, several-thousand-year-long history. China thus prudently accepts the existing international system, even if it does not view the prevailing hierarchy as permanent. It recognizes that success depends not on the system's dramatic collapse but on its evolution toward a gradual redistribution of power. Moreover, the basic reality is that China is not yet ready to assume in full America's role in the world. Beijing's leaders themselves have repeatedly emphasized that on every important measure of development, wealth, and power, China will still be a modernizing and developing state several decades from now, significantly behind not only the United States but also Europe and Japan in the major per capita indices of modernity and national power. Accordingly, Chinese leaders have been restrained in laying any overt claims to global leadership. At some stage, however, a more assertive Chinese nationalism could arise and damage China's international interests. A swaggering, nationalistic Beijing would unintentionally mobilize a powerful regional coalition against itself. None of China's key neighbors -- India, Japan, and Russia -- is ready to acknowledge China's entitlement to America's place on the global totem pole. They might even seek support from a waning America to offset an overly assertive China. The resulting regional scramble could become intense, especially given the similar nationalistic tendencies among China's neighbors. A phase of acute international tension in Asia could ensue. Asia of the 21st century could then begin to resemble Europe of the 20th century -- violent and bloodthirsty. At the same time, the security of a number of weaker states located geographically next to major regional powers also depends on the international status quo reinforced by America's global preeminence -- and would be made significantly more vulnerable in proportion to America's decline. The states in that exposed position -- including Georgia, Taiwan, South Korea, Belarus, Ukraine, Afghanistan, Pakistan, Israel, and the greater Middle East -- are today's geopolitical equivalents of nature's most endangered species. Their fates are closely tied to the nature of the international environment left behind by a waning America, be it ordered and restrained or, much more likely, self-serving and expansionist. A faltering United States could also find its strategic partnership with Mexico in jeopardy. America's economic resilience and political stability have so far mitigated many of the challenges posed by such sensitive neighborhood issues as economic dependence, immigration, and the narcotics trade. A decline in American power, however, would likely undermine the health and good judgment of the U.S. economic and political systems. A waning United States would likely be more nationalistic, more defensive about its national identity, more paranoid about its homeland security, and less willing to sacrifice resources for the sake of others' development. The worsening of relations between a declining America and an internally troubled Mexico could even give rise to a particularly ominous phenomenon: the emergence, as a major issue in nationalistically aroused Mexican politics, of territorial claims justified by history and ignited by cross-border incidents. Another consequence of American decline could be a corrosion of the generally cooperative management of the global commons -- shared interests such as sea lanes, space, cyberspace, and the environment, whose protection is imperative to the long-term growth of the global economy and the continuation of basic geopolitical stability. In almost every case, the potential absence of a constructive and influential U.S. role would fatally undermine the essential communality of the global commons because the superiority and ubiquity of American power creates order where there would normally be conflict. None of this will necessarily come to pass. Nor is the concern that America's decline would generate global insecurity, endanger some vulnerable states, and produce a more troubled North American neighborhood an argument for U.S. global supremacy. In fact, the strategic complexities of the world in the 21st century make such supremacy unattainable. But those dreaming today of America's collapse would probably come to regret it. And as the world after America would be increasingly complicated and chaotic, it is imperative that the United States pursue a new, timely strategic vision for its foreign policy -- or start bracing itself for a dangerous slide into global turmoil.

## Solvency

### Youngstown makes review inevitable—push for executive deference polarizes the engagement—pragmatic clarification of scope sets a productive precedent

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

E. Chevron, Executive Unilateralism, and Civil Libertarianism Although certain Chevron-backers in theory call for a statutory, not constitutional, solution to national security problems, they advocate deference even when "there is no interpretation of a statutory term[,] but simply a policy judgment by the executive." 351 This expansive theory of Chevron not only [\*1972] rests on a dubious doctrinal foundation 352 but is at times virtually indistinguishable from a theory of unilateral executive power that disregards entirely Youngstown's centrality to national security law. As Chevron-backers such as Posner and Sunstein explain, "in the domain of foreign relations, the approach signaled in Chevron should apply even if the executive is not exercising delegated authority to make rules or conduct adjudications," a point that is strengthened by "considerations of constitutional structure [that] argue strongly in favor of deference to the executive" 353 and that "makes the argument for deference stronger than in Chevron itself." 354 By advocating a vast policy space for the Executive that supplants congressional legislation whenever statutory authority is absent, their argument comes closer to the brand of pure and unalloyed executive unilateralism that the Court has rejected throughout the post-9/11 decisions. 355 Their enthusiasm for single-branch approaches causes them to espouse a theory outside the mainstream understanding of Chevron that undermines the "realistic and middle-ground alternative" that an administrative law approach can bring to the polarized debate between executive unilateralists and civil libertarians. 356 Perhaps it should not be surprising, then, that some Chevron-backers also support broader theories of executive unilateralism. For example, John Yoo, who has argued for a model of foreign affairs law based on executive unilateralism, 357 also makes the case for Chevron deference in national security [\*1973] jurisprudence. 358 While Chevron-backers often resist the comparison of their administrative law theory of national security jurisprudence with executive unilateralism, 359 the lack of any strict delegation requirement, and the replacement of that requirement with strong deference to the Executive on functionalist grounds, begs the question Chevron was meant to solve in the first place through legislative delegations. Hence, it seems entirely reasonable to draw parallels between the advocacy of Chevron, at least in its most extreme articulation, with an argument favoring the consolidation of all national security powers into a single branch. The risks are especially apparent when Chevron-backers push their argument for broad deference from the realm of statutory ambiguity - where there is at least plausible (if contested) justification for agency or presidential self-expansion - to cases of legislative silence. Although Chevron-backers argue that "the executive is in the best position to reconcile the competing interests at stake, and in the face of statutory silence or ambiguity, Congress should therefore be presumed to have delegated interpretive power to the executive," 360 this purely functional understanding of Chevron disregards its formal foundation. Given Congress's apparent disinterest in authorizing, much less reversing, executive national security policy through legislation since 9/11, 361 the Chevron-in-national-security argument, as a practical matter, collapses into a theory of single-branch governance. These problems would be severely lessened if Chevron-backers grounded their view of deference in arguments about legislative supremacy, or if they highlighted the importance of procedural formalities (such as notice-and-comment rulemaking or formal adjudications) that administrative law doctrine takes as an indication of such a delegation. 362 But to the extent that Chevron-backers countenance single-branch decisionmaking, it is hard to square their view either with the underlying delegation requirement of administrative law [\*1974] or with the Supreme Court's interpretations of Chevron in the domestic context. The Court's invocation of Youngstown has often resulted in seemingly non-deferential rulings. This is because "the Youngstown framework assumes that Congress will be actively involved in making the difficult policy decisions required during wartime and will provide the oversight of Executive-initiated action that courts feel ill-suited to offer through first-order rights adjudication." 363 But the opinions have been geared less toward restraining the Executive or vindicating certain conceptions of civil liberties, and more toward revitalizing Congress and involving the courts in the process of restoring that institutional balance. Once the post-9/11 decisions are understood to require congressional delegations to authorize executive action, it is hard to see the rulings as either purely deferential or non-deferential. Rather, the cases reflect a more practical inquiry that recalls "the imperatives of events and contemporary imponderables" 364 that define Jackson's "zone of twilight." 365 Instead of adopting a broad view of civil libertarianism or executive unilateralism, Supreme Court majorities of the past decade have engaged in a more focused, Youngstown-based inquiry. This pragmatic approach, which has implications for security-related questions beyond the post-9/11 habeas decisions addressed in this Article, 366 avoids the polls of pure deference or complete non-deference. It shifts the emphasis away from any single branch of government toward a collective responsibility of the political branches to engage one another on policy, promoting an inquiry that turns less on whether the Executive should "win" and more about the terms on which courts vindicate executive policies or individual liberties. By resetting the proper institutional balance, Jackson's framework clarifies the proper scope of judicial review during times of emergency, providing an important rule-of-law basis for judicial review of national security policy.

### BOP fights now

Benhalim 10 (The Emerging Law of Detention The Guantánamo Habeas Cases as Lawmaking\* Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. Robert M. Chesney is a nonresident senior fellow in Governance Studies at The Brookings Institution. Rabea Benhalim is a legal fellow in Governance Studies at The Brookings Institution. January 22, 2010 http://www.brookings.edu/~/media/research/files/papers/2010/1/22%20guantanamo%20wittes%20chesney/0122\_guantanamo\_wittes\_chesney.pdf)

Burden of Proof The consensus among the lower-court judges that the government bears the burden of proof by a preponderance of the evidence has faced a multi-faceted attack at the D.C. Circuit. In both of the detainee appeals—Bensayah and Al Bihani—the detainees have attacked the standard directly, arguing that the lower court should have adopted a more rigorous standard before authorizing their indefinite detentions. “No decision of the Supreme Court or this Court suggests that an individual may be permanently deprived of his most fundamental personal liberty based on anything less than clear and convincing evidence. Given the grave implications of being labeled and treated as an ‘enemy combatant,’ a reasonable doubt standard would be in order,” write Bensayah’s attorneys.226 Likewise, AlBihani’s lawyers argued that “Indefinite detention requires proof beyond-a reasonable-doubt” or, “At a minimum, clear-and-convincing evidence should apply.”227 The D.C. Circuit in Al Bihani not only expressly rejects this argument, but also goes out of its way in a footnote to note that it remains an open question whether a still-lower calibration of the government’s burden might be constitutional as well. The issue thus seems likely to return at some point, perhaps in Bensayah. The D.C. Circuit panel also rejects Al Bihani’s argument that the preponderance standard in any event was misapplied and that Judge Leon had not adequately accepted that the burden lay with the government but had effectively “shift[ed] the burden” to the detainee by making him address government evidence and fill in gaps within it.228 The detainees, in short, are asking the appeals courts to raise the standard or, failing that, at least to enforce it strictly and make the government prove every fact on which a decision can rely. So far, the one appeals panel to confront the issue has wondered only if the preponderance standard is too tough.

### No circumvention—Court structures national security law

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

[\*1976] However, in both the domestic and national security contexts, the Supreme Court has resisted any apparent temptation to "dial down" review in the ways Vermeule describes. The Court, by invoking Youngstown, has tamed Chevron doctrine from becoming precisely the type of legal hole Vermeule attributes to the administrative law response to emergencies. While Vermeule considers only Circuit-level decisions, 377 where one finds many examples of broad deference to the Executive Branch, 378 the Supreme Court cases are not so easily ignored. 379 Importantly, the decisions between Rasul and Boumediene discussed in this Article constitute Supreme Court reversals of Circuit-level rulings that might otherwise be used to illustrate the gray holes Vermeule attributes to national security jurisprudence. 380 While Vermeule is certainly correct that Chevron (and other tests of administrative law) can be subject to dynamic interpretations across different cases, he rejects any possibility of the kind of rule-of-law framework that has taken hold in the post-9/11 context. Rather than expose gray holes of administrative law, the post-9/11 decisions have invoked Youngstown as a way to bring important structure to national security, a field of law that is often bereft of clear procedural and substantive guidelines.

### XXClassified docs in detention habeas trials key to mosaic preponderance—it’s a judicial abomination

Benhalim 10 (The Emerging Law of Detention The Guantánamo Habeas Cases as Lawmaking\* Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. Robert M. Chesney is a nonresident senior fellow in Governance Studies at The Brookings Institution. Rabea Benhalim is a legal fellow in Governance Studies at The Brookings Institution. January 22, 2010 http://www.brookings.edu/~/media/research/files/papers/2010/1/22%20guantanamo%20wittes%20chesney/0122\_guantanamo\_wittes\_chesney.pdf)

The idea of a “mosaic theory” has long described a relatively straightforward strategy for intelligence analysis. As one scholar puts it, “[d]isparate items of information, though individually of limited or no utility to their possessor, can take on added significance when combined with other items of information. Combining the items illuminates their interrelationships and breeds analytic synergies, so that the resulting mosaic of information is worth more than the sum of its parts.”194 Stated in this fashion, the mosaic theory poses no special controversy; it merely describes the process of mining the latent probative value of seemingly innocuous or irrelevant information. It is a rough analogue for the use in courts of circumstantial evidence. The mosaic theory became a subject of some public attention and controversy in the 1980s, however, when the Reagan Administration invoked it as justification for classifying otherwise-innocuous information that a foreign intelligence service could use in combination with other information to generate knowledge of sensitive matters. Employed in this defensive capacity, the mosaic theory became central to arguments for resisting disclosures under the Freedom of Information Act and for invocations of the State Secrets Privilege. By extension, the theory became associated with the larger debate concerning excessive government secrecy, overclassification, and the like.195 Against this backdrop, the mosaic theory made its first significant appearance in the Guantánamo habeas litigation in Judge Leon’s opinion in El Gharani. There the government’s evidence amounted to what the judge called “a mosaic of allegations made up of statements by the petitioner, statements by several of his fellow detainees, and certain classified documents that allegedly establish in greater detail the most likely explanation for, and significance of, petitioner’s conduct.”196 Judge Leon makes clear that the allegations in question, “if proven, would be strong evidence of enemy combatancy,”197 but he finds that the government’s evidence failed to establish by the preponderance standard that any of the allegations actually were true.198 That in turn raised the question of whether the government might nonetheless satisfy its ultimate burden of proof by pointing to the cumulative impact of this otherwise-weak evidence. That is, might the government be able to prove by a preponderance of the evidence that El Gharani was part of or supporting Al Qaeda even if its evidence did not suffice to prove true some or all of the individual underlying allegations—such as claims that he had stayed at an Al Qaeda guesthouse, that he was present at the battle of Tora Bora, or that he attended an Al Qaeda training camp? It is commonplace for litigants to prove particular facts through combinations of evidence that would not carry the burden of proof if examined in isolation; the government suggested, in essence, that it might do the same at the level of the ultimate question to be determined in the habeas litigation. Judge Leon in El Gharani does not take a clear position on whether it might ever be possible to rescue the government’s case in this manner. In his judgment, the evidence in any event is too weak in this instance to achieve such an outcome. “A mosaic of tiles bearing images this murky,” he explains, “reveals nothing about the petitioner with sufficient clarity, either individually or collectively, that can be relied upon by this Court” (emphasis added).199 Subsequent to the El Gharani decision, at least one judge in the habeas litigation has repeatedly questioned the general propriety of using a mosaic theory in this setting, suggesting that adoption of the mosaic approach would tend to confuse the standards of habeas review with the standards of intelligence analysis. In identical language in the Ahmed, Al Adahi, and Mohammed opinions,200 Judge Kessler notes that it “may well be true” that the mosaic “approach is a common and well-established mode of analysis in the intelligence community.” Nonetheless, she observes, “at this point in this long, drawn-out litigation the Court’s obligation is to make findings of fact and conclusions of law which satisfy the appropriate and relevant legal standards as to whether the government has proven by a preponderance of the evidence that the Petitioner is justifiably detained.”201 She adds that the “kind and amount of evidence which satisfies the intelligence community in reaching final conclusions about the value of information it obtains may be very different, and certainly cannot govern the Court’s ruling.”202

### XXAff forces individual sufficiency of evidence—breaks the tiles

Benhalim 10 (The Emerging Law of Detention The Guantánamo Habeas Cases as Lawmaking\* Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. Robert M. Chesney is a nonresident senior fellow in Governance Studies at The Brookings Institution. Rabea Benhalim is a legal fellow in Governance Studies at The Brookings Institution. January 22, 2010 http://www.brookings.edu/~/media/research/files/papers/2010/1/22%20guantanamo%20wittes%20chesney/0122\_guantanamo\_wittes\_chesney.pdf)

One can read this language in one of three ways. First, Judge Kessler could simply be asserting the uncontroversial proposition that an intelligence analyst may appropriately apply a less-demanding standard than a federal judge in a habeas case when engaged in the task of generating factual conclusions for inclusion in analytic reports. Seen from this perspective, Judge Kessler’s statement is not truly about the mosaic theory at all, but rather is using the label “mosaic” as a loose proxy to describe the less rigorous nature of the intelligence community’s analytical processes as compared to the habeas process.203 Alternatively, she could also intend to reject the mosaic insight itself—that is, to reject the proposition that facially-irrelevant or innocuous evidence may have latent probative value that emerges only when considered in a fuller context informed by other evidence. This is the core point of mosaic analysis, and Judge Kessler could be arguing that it has no place in a courtroom. Third, Judge Kessler could also mean that the individual items of evidence— the mosaic’s tiles—have to be analyzed in an atomized fashion regardless of whether their probative value is latent or manifest, with their weight determined only on an individual basis. Put another way, one could read these opinions as insisting that the government carry its burden of proof through individually sufficient evidence rather than by using the totality of the evidence. This is the reading pressed—and strenuously objected to—by the government in its pending appeal in Al Adahi. In that case, as we discuss later, the government accuses Judge Kessler of having examined each individual item of evidence in artificial isolation, improperly refusing to review the items in the context of one another.204 This is the same issue raised but not answered by Judge Leon in El Gharani. 205

## Plan

### The United States federal judiciary should restrict the war powers authority of the President of the United States to indefinitely detain using circumstantial evidence.

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## Case-intel

### No dangerous release—don’t change cases with sound evidence

Wittes 12 (The Emerging Law of Detention 2.0 The Guantánamo Habeas Cases as Lawmaking April 2012 Benjamin Wittes senior fellow in Governance Studies Robert M. Chesney nonresident senior fellow in Governance Studies Larkin Reynolds legal fellow in Governance Studies The Harvard Law School National Security Research Committee http://www.brookings.edu/~/media/research/files/reports/2011/5/guantanamo%20wittes/chesney%20full%20text%20update32913.pdf)

Judge Laurence Silberman recently added his voice to those calling for a lower standard. In his concurring opinion in Abdah (Esmail), he wrote: [T]here are powerful reasons for the government to rely on our opinion in Al-Adahi v. Obama, which persuasively explains that in a habeas corpus proceeding the preponderance of evidence standard that the government assumes binds it, is unnecessary—and moreover, unrealistic. I doubt any of my colleagues will vote to grant a petition if he or she believes that it is somewhat likely that the petitioner is an al Qaeda adherent or an active supporter. Unless, of course, the Supreme Court were to adopt the preponderance of the evidence standard (which it is unlikely to do— taking a case might obligate it to assume direct responsibility for the consequences of Boumediene v. Bush). 72 He does caution that he would “certainly . . . release a petitioner against whom the government could not muster even ‘some evidence,’” but his bottom line is clear: the preponderance standard is unneeded, almost naïve.73

## Case-def

### Relationships are vitiated during detention for those released—release prospects greatly increase cooperation

Benhalim 10 (The Emerging Law of Detention The Guantánamo Habeas Cases as Lawmaking\* Benjamin Wittes is a senior fellow in Governance Studies at The Brookings Institution. Robert M. Chesney is a nonresident senior fellow in Governance Studies at The Brookings Institution. Rabea Benhalim is a legal fellow in Governance Studies at The Brookings Institution. January 22, 2010 http://www.brookings.edu/~/media/research/files/papers/2010/1/22%20guantanamo%20wittes%20chesney/0122\_guantanamo\_wittes\_chesney.pdf)

Relationship Vitiated After Capture Whereas Al Ginco, Al Adahi, Hatim, and Khan all address the question of whether a relationship can be vitiated prior to the date of capture, Judge Huvelle in Basardh confronts the more counter-intuitive question of whether the relationship can be vitiated as a result of post-capture events. Ultimately she concludes that it can, and that vitiation has taken place in the particular case before her. In Basardh, the petitioner joined Al Qaeda and learned how to use weapons at an Al Qaeda training facility.84 In contrast to the aborted relationship decribed in Al Ginco and Al Adahi, Basardh “[b]y late 2001 . . . was hiding with bin Laden and others in the mountains of Tora Bora, where he acted as a cook and a fighter.”85 Subsequently, Pakistani officials captured him and turned him over to U.S. authorities. While in Guantánamo, however, the petitioner fully cooperated with the government, which resulted in beatings and threats to his life from other detainees. He stated that “[m]y family and I are threatened to be killed… and this threat happened here in prison many times.”86 His cooperation became public knowledge on February 3, 2009, when “the Washington Post published a front-page article regarding [his] cooperation, specifically citing him by name.”87 In determining whether continued detention is legally available, Judge Huvelle concludes that the court must look to the petitioner’s *current likelihood* of rejoining the enemy.88 Given his cooperation and the public knowledge of this cooperation, she decides that “the requested relief is warranted, for [the petitioner] can no longer constitute a threat to the United States.”89 In other words, the fact of becoming a cooperating witness against his fellows while in captivity—and the fact of his cooperation’s becoming known—serves to vitiate a conceded prior relationship.

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### Supreme Court key

Feldman 2008 (Noah Feldman, law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, September 28, 2008, “When Judges Make Foreign Policy,” New York Times, http://www.nytimes.com/2008/09/28/magazine/28law-t.html?pagewanted=all&\_r=0)

Every generation gets the Constitution that it deserves. As the central preoccupations of an era make their way into the legal system, the Supreme Court eventually weighs in, and nine lawyers in robes become oracles of our national identity. The 1930s had the Great Depression and the Supreme Court’s “switch in time” from mandating a laissez-faire economy to allowing New Deal regulation. The 1950s had the rise of the civil rights movement and Brown v. Board of Education. The 1970s had the struggle for personal autonomy and Roe v. Wade. Over the last two centuries, the court’s decisions, ranging from the dreadful to the inspiring, have always reflected and shaped who “we the people” think we are.¶ During the boom years of the 1990s, globalization emerged as the most significant development in our national life. With Nafta and the Internet and big-box stores selling cheap goods from China, the line between national and international began to blur. In the seven years since 9/11, the question of how we relate to the world beyond our borders — and how we should — has become inescapable. The Supreme Court, as ever, is beginning to offer its own answers. As the United States tries to balance the benefits of multilateral alliances with the demands of unilateral self-protection, the court has started to address the legal counterparts of such existential matters. It is becoming increasingly clear that the defining constitutional problem for the present generation will be the nature of the relationship of the United States to what is somewhat optimistically called the international order.

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### National courts are better than international courts

Downs 2009 (Eyal Benvenisti, Professor of Law, Tel Aviv University, and George W. Downs, Professor of Politics, New York University, “National Courts, Domestic Democracy, and the Evolution of International Law,” European Journal of International Law, Vol. 20 No. 1 , 59 – 72)

Under these conditions the continued deference on the part of national courts to ¶ their governments in the realm of foreign affairs is a risky policy from the perspective of democracy. Granted, the increasing opportunities of international adjudicatory ¶ bodies to review domestic policies, such as for example the European Court of Justice, ¶ the European Court of Human Rights, the Appellate Body of the WTO, or the Inspection Panel of the World Bank and their demands for transparency and participation ¶ in domestic decision-making processes, promoted accountability in the domestic ¶ sphere. 7¶ But these opportunities remained only a small part of the various formal and ¶ increasingly informal institutions that characterized global regulation, and their performance often left much to be desired. Ultimately the creatures of powerful governments, and primarily mindful to enhance the goals of the inter-governmental bargain ¶ (for example free trade in the WTO context, or the protection of foreign investments), ¶ these institutions often failed to match the national courts’ concerns and levels of ¶ scrutiny. 8

## Iran DA

### Exec deference is defunct—precedent has unquestionably shifted to the Courts

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

C. Chevron's Detractors While the Supreme Court has rejected Executive Branch decisions lacking in congressional endorsement, the rulings do not necessarily validate the view of those who reject the idea of Executive Branch deference where national security is concerned. For scholars such as Deborah Pearlstein, Jenny Martinez, David Cole, and Martin Flaherty, courts should resolve rights questions at the core of national security disputes by articulating bright-line rules regarding the scope of individual liberty on questions concerning detention, conditions of confinement, surveillance, military commissions, renditions, and the like. 319 Some of these scholars argue, further, that the post-9/11 decisions, while not going far enough to protect the principles of liberty at stake, nonetheless demonstrate a commitment to a civil libertarian jurisprudence that indicates the decline, if not demise, of Chevron. But a fair reading of the doctrine is not consistent with such sweeping conclusions. For Pearlstein, the post-9/11 decisions epitomize the decline of Chevron and the ascendancy of the Marbury v. Madison principle "to say what the law is" on critical issues of individual liberty and executive power. 320 In the major [\*1967] post-9/11 Supreme Court decisions, "the Court has swept aside vigorous arguments by the executive that it refrain from engagement ... . Moreover, the Court has scarcely noted any doctrinal tradition of interpretive "deference' on the meaning of the laws." 321 Hence, for Pearlstein, "on descriptive and normative grounds, the events of the past decade have called the prevailing account [of foreign affairs exceptionalism] into question." 322 Other civil libertarian scholars have echoed this view. 323 Martin Flaherty argues that "in every major case arising out of 9/11, the Court has rejected the position staked out by the executive branch, even when supported by Congress." 324 As he sees it, the Supreme Court "reclaimed its primacy in legal interpretation" in the post-9/11 decisions, which "represent a stunning reassertion of the judiciary's proper role in foreign relations." 325

### No link but we solve—Rulings are light in conclusion but heavy in practice

Vladeck 11 (Stephen I., Professor of Law and Associate Dean for Scholarship, American University Washington College of Law. October 20, 2011, Columbia Law Review Sidebar, “ARTICLE: THE PASSIVE-AGGRESSIVE VIRTUES”)

As al-Kidd suggests, even when the Court has looked to the substantive law at issue in post-9/11 terrorism cases, it has treaded lightly. In Hamdi, for example, both of the Court's holdings were exceedingly narrow, with the plurality carefully circumscribing its holding that the Authorization for Use of Military Force (AUMF) n78 authorized Hamdi's detention, n79 and stressing that, although "some evidence" was an insufficient evidentiary burden to impose upon the government, the actual mechanics of resolving Hamdi's claims could--and should--be worked out by the lower courts. n80¶ And in Hamdan, the one case in which the Court categorically invalidated a post-September 11 counterterrorism policy, the Justices were at pains to stress the limited nature of their conclusion--turning, as it did, on the absence of statutory authorization for military commissions. n81 As Justice Breyer put it in his concurrence, "Nothing prevents the President from returning to Congress to seek the authority he believes necessary," n82 which is exactly what happened [\*133] next. n83¶ The above is not to suggest that no substantive law emerged from these decisions. On the contrary, Hamdi's analysis of the relationship between the AUMF and the laws of war have been a critical issue in the ongoing litigation in the D.C. Circuit arising out of Guantánamo, n84 and its outright rejection of the "some evidence" standard is also the likely culprit for the court of appeals's grudging adoption of a preponderance standard in those cases, as well. n85 Similarly, Hamdan's conclusion that the war on terrorism is not an international armed conflict triggering Common Article 3 of the Geneva Conventions was itself a massively important development§ Marked 08:47 § , n86 as was the Court's more subtle repudiation of claims to indefeasible presidential power. n87 Even as the Court has stepped carefully, it has sent both indirect and thinly veiled messages to the Executive Branch that, without question, have had a salutary impact on the parameters of subsequent counterterrorism policy. n88 We may never know just how vital a role these assertions of judicial authority played in reshaping governmental conduct after September 11, but one need not look particularly hard to see the very real ways in which the government's approach changed after each of these decisions--even on issues on which the Supreme Court had provided no guidance whatsoever. Thus, one cannot plausibly argue--and I do not here suggest--that the Court's holdings in these cases have not dramatically shaped at least some aspects of counterterrorism policy over the past decade, especially with regard to the detention, treatment, and trial of enemy combatants. Clearly, they have.

### Refinement is not restriction—taming deference maintains its credibility

Landau 12 (ARTICLE: CHEVRON MEETS YOUNGSTOWN: NATIONAL SECURITY AND THE ADMINISTRATIVE STATE Joseph Landau Associate Professor, Fordham Law School. December, 2012 Boston University Law Review 92 B.U.L. Rev. 1917. Lexis)

III. Guarding Chevron's Borders in National Security Law Chevron-backers, as one might expect, lament the past decade's lack of "super-strong" deference to the Executive. Posner and Sunstein argue that "Hamdan was simply wrong" 293 and that Justice Thomas's dissent, which "relied on the principle of executive deference, based on the President's institutional advantages, is very much in the spirit of our argument that foreign relations should be Chevronized." 294 Similarly, John Yoo and Julian Ku, in [\*1962] their article promoting Chevron deference in national security, argue that "the executive's interpretations of the UCMJ provisions [in Hamdan] deserved substantial deference under the Chevron doctrine" 295 and that such "non-deference ... is the most surprising and disturbing aspect of the Court's decision." 296 But the suggestion that 9/11 ushered in a renewed assertion of judicial non-deference mischaracterizes the import of these rulings. After all, the decisions leave unanswered as many questions (if not far more) than they resolve - including matters such as the content of individual rights and scope of executive power during times of emergency. At the same time, the rulings reflect a taming of Chevron consistent with its interpretation in the domestic context. By guarding Chevron's borders, 297 the Court has preserved its relevance to the national security context.

### Iran will not miscalculate or be aggressive – too many checks in the system

Boroujerdi and Fine 2007 – 57 Syracuse L Rev 619

The potential for groupthink miscalculations is also thwarted by the existence of multiple consensus-based decision bodies within the overall multilayered structure. n18 While this complex process can sometimes make Iranian policy confusing and contradictory, it does not necessarily lend itself to high risk behavior. Even if one agent makes a hasty decision or issues an aggressive policy statement, it may be immediately contradicted by another authority. n19 Individual leaders also have difficulty muting [\*623] criticism within the regime and forcing all agents to agree on one course of action. While miscalculations and hasty behavior may be the rule at the micro-level, at the macro-level hasty action is checked by the competing nodes of power. While this structure could admittedly be problematic with regard to the nuclear program depending on what form of command and control system to control accidents and illicit transfer is established, it makes the prospect of Iran engaging in a boldly offensive or miscalculated action less realistic.

## 2AC Drone Shift

### That’s already triggered the shift—aff solves

David Ignatius 10, Washington Post, "Our default is killing terrorists by drone attack. Do you care?", December 2, www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104458.html

Every war brings its own deformations, but consider this disturbing fact about America's war against al-Qaeda: It has become easier, politically and legally, for the United States to kill suspected terrorists than to capture and interrogate them.¶ Predator and Reaper drones, armed with Hellfire missiles, have become the weapons of choice against al-Qaeda operatives in the tribal areas of Pakistan. They have also been used in Yemen, and the demand for these efficient tools of war, which target enemies from 10,000 feet, is likely to grow.¶ The pace of drone attacks on the tribal areas has increased sharply during the Obama presidency, with more assaults in September and October of this year than in all of 2008. At the same time, efforts to capture al-Qaeda suspects have virtually stopped. Indeed, if CIA operatives were to snatch a terrorist tomorrow, the agency wouldn't be sure where it could detain him for interrogation.¶ Michael Hayden, a former director of the CIA, frames the puzzle this way: "Have we made detention and interrogation so legally difficult and politically risky that our default option is to kill our adversaries rather than capture and interrogate them?"¶ It's curious why the American public seems so comfortable with a tactic that arguably is a form of long-range assassination, after the furor about the CIA's use of nonlethal methods known as "enhanced interrogation." When Israel adopted an approach of "targeted killing" against Hamas and other terrorist adversaries, it provoked an extensive debate there and abroad.¶ "For reasons that defy logic, people are more comfortable with drone attacks" than with killings at close range, says Robert Grenier, a former top CIA counterterrorism officer who now is a consultant with ERG Partners. "It's something that seems so clean and antiseptic, but the moral issues are the same."

### No link—shift is because of difficulty of CAPTURE not conviction

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

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the § Marked 08:48 § target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

### Countries won’t follow the US in terms of drone policy

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race § Marked 08:49 § in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

## 2AC Debt Ceiling Reg

### Debt ceiling won’t pass because of election fears and Obama’s approach prolongs Republican backlash

**Kaplan 10-3**-13 [Rebecca, serves as City Councilmember At-Large for Oakland, California, CBS News, “Why is it so difficult to end the government shutdown?” <http://www.cbsnews.com/8301-250_162-57605784/why-is-it-so-difficult-to-end-the-government-shutdown/>]

As the government shutdown enters its third day, Democrats and Republicans seem no closer to bridging their differences than they were when the shutdown began early Tuesday morning. It's difficult to say when the standoff will end. The two shutdowns that occurred in 1995 and 1996 lasted a total of 27 days. And back then, the conditions for getting to a deal were much better.¶ Republicans won the House and Senate in the 1994 midterm elections - the first time the party had a House majority in 40 years. That set up a showdown between House Speaker Newt Gingrich, who had run on a conservative platform, and then-President Bill Clinton. That dispute came in 1995, when Gingrich wanted to balance the budget in a short time frame and Clinton wanted money spent on Democratic priorities. After two separate shutdowns and several weeks, the pressure was too high on Republicans and they cut a deal with Clinton: he would get his priorities, but would have to balance the budget for 10 years.¶ "They were kind of testing each other," said former Rep. Tom Davis, R-Va., who was a freshman in Congress at the time. Afterward, Davis noted, Clinton and Gingrich would go on to work together on a host of issues including welfare reform. The economy boomed, helping to mitigate budget issues.¶ Republicans who were lawmakers or aides in Congress in 1995 cite a variety of reasons that the shutdown ended. For Davis, it was the mounting public pressure on Republicans and their rapidly dropping poll numbers that helped spur a compromise. "There was a revolt, and they simply couldn't hold their members after a while," he said of the Republican leadership. It didn't help that Republicans were afraid of losing the first majority they'd had in decades. Davis recalls going to former Rep. Dick Armey, then the Republican Majority leader from Texas, and saying, "We're getting our butts kicked."¶ But Bob Walker, then a Republican congressman from Pennsylvania, had a different take from the conventional narrative that Republicans had caved. "We stayed focused in 1995 on the fact that what the end result for us was to get a pathway to a balanced budget, and so in the end when we got an agreement to just begin the process of moving toward a balanced budget," he said. "We declared victory on that and we were prepared to then get the government back into action."¶ This time, it's not so easy for Republicans to achieve even a piece of their chief goal - to dismantle the Affordable Care Act. The law is President Obama's signature policy achievement, and its constitutional authority was affirmed by the Supreme Court. Democrats in the Senate and Mr. Obama himself have proven with the shutdown fight that they are determined to keep the law intact.¶ "We didn't get an immediate balanced budget obviously but what we got was a seven-year plan toward a balanced budget that then ended up being accomplished in there years," Walker said of the House Republicans in 1995. But nowadays, he said, "I'm not certain I see where the bottom lines are."¶ As shutdown continues, Obama says Wall Street "should be concerned"¶ Government shutdown: Is Congress acting selfishly?¶ Yet another explanation of why the 1995-1996 shutdown ended had to do with presidential politics. Former Senate Majority Leader Bob Dole, R-Kansas, was eyeing a presidential bid against Clinton in 1996.¶ "He just got sick of it. I think he started seeing that this was directly impacting his ability to run for president," said John Feehery, a political strategist who was the communications director for then-House Majority Whip Tom DeLay during the shutdown. Dole was key to engineering an end to the shutdown, a fact that was apparent to everyone - even Democrats.¶ "It was a huge factor," said American University professor Patrick Griffin, who served as Clinton's assistant for legislative affairs from 1994 to 1996. "We could always sense that there was no love lost between him and [Gingrich] - on the [Contract with America], on the shutdown. It was just not Dole's style...he was wasting time, he was not being able to get his campaign."¶ If anything, presidential politics will lengthen the shutdown. Mr. Obama has no re-election campaign to worry about - like Clinton did at the time - and Republican presidential campaigns cannot be won without pleasing an active base that hates the healthcare law. It would be difficult for any Republican to help broker a compromise that preserved most of Obamacare and then woo Republican primary voters.¶ Not that many Republicans feel as if they can work with Mr. Obama. "Many people in Congress ...believe that the president treats them with contempt and so the atmosphere for negotiating is not very good. That's a big difference," said Walker.¶ House Speaker John Boehner, R-Ohio, and Mr. Obama have tried and failed to negotiate big deals several times. Since the government shut down on Tuesday, they've barely talked aside from a meeting the president held with top congressional leaders Wednesday afternoon. And a recent Politico story that detailed how Boehner and Senate Majority Leader Harry Reid, R-Nev., worked together to preserve congressional subsidies for healthcare coverage will likely have poisoned the well between the leaders of the two chambers.¶ That wasn't the case with Gingrich and Clinton, despite their differences. "Both President Clinton and Speaker Gingrich had a pretty civil and reasonably good personal relationship," said Mack McLarty, Clinton's first chief of staff as president. Both hailed from the south, and had "very inquisitive minds" about the world around them.¶ Perhaps the biggest roadblock to a deal, however, is the increasingly partisan nature of Congress caused by congressional redistricting that puts many members into seats where fewer and fewer constituents are from the opposite party. In 1995, more than 34 percent of Republican representatives in the House were elected in districts that had voted for Clinton as president. Now, only seven percent of House members come from districts that voted for Mr. Obama.¶ There's a larger proportion of hardline conservatives in the House in 2013, and they have so far been more successful at driving the agenda than their more moderate counterparts. "The-rank-and-file members are sick and tired of the rebels running the thing but there's too many of them who vote with the rebels to protect their flank," Feehery said, referring to Republicans who are worried about receiving a primary challenge from the right.¶ With so many factors working against a deal, it's hard to see a way out of the crisis. The only thing that's guaranteed to inject some urgency into the debate is the looming deadline to raise the debt ceiling on Oct. 17. While a government shutdown can have minimal effects on the financial markets, the possibility of the U.S. defaulting is much more likely to cause financial panic that could push lawmakers into a deal.¶ Plus, if the spending and debt ceiling deals morph into one, there may be more issues on the table to discuss such as the sequester and the whole federal budget. That, Walker said, will give Republicans more areas where they can look for victory.

### Shutdown crushes Obama’s agenda

O’Brien 10/1 (Michael O'Brien 10/1, "Winners and losers of the government shutdown", 2013, nbcpolitics.nbcnews.com/\_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite)

Obama¶ The fiscal fight is a double-edged sword for Obama.¶ Yes, the president won a short-term victory that revitalizes his pull within the Beltway after beating back Republicans and shifting blame primarily to them for a shutdown. But Obama is no less a symbol of Washington dysfunction than Ted Cruz or John Boehner.¶ It might be simplistic, but any president shares in some of the broader opinion toward D.C. just by the very nature of the job. Put another way: as president, Obama is the most visible political leader in the U.S., if not the world. If Americans are dissatisfied with Washington, Obama will have to shoulder some of that burden.¶ Obama's 2011 battles with Republicans over the debt ceiling saw his approval ratings sink to one of the lowest points of his presidency. There are signs this fight might be taking a similar toll: a CNN/ORC poll released Monday found that 53 percent of Americans disapprove of the way the president is handling his job, versus 44 percent who approve.¶ Moreover, after the time and political capital expended on this nasty political fight — and with midterm elections on the docket for 2014 — Obama's top second-term priorities, like comprehensive immigration reform, are on life support.

Iran sanctions thumps

Washington Post 10-4 <http://www.washingtonpost.com/blogs/right-turn/wp/2013/10/04/iran-sanctions-tussle/>

Okay. And then one other thing: [Deputy Secretary of State Wendy Sherman] was explicit in telling the senators that the administration thinks it would be helpful if they held off on additional sanctions over the next — less than two weeks now. And as I’m sure you noted, Chairman [Sen. Robert] Menendez [D-N.J.], in his opening statement, said, some of us are working on new sanctions that would lead to further reductions in purchases of Iranian petroleum. And the administration is now being criticized by a number of Republicans for suggesting a slowdown in movement towards new sanctions, including Chairman [Rep. Edward R.] Royce [R-Calif.], Senator [Mark] Kirk [D-Ill.]. Why is it when you yourselves believe, as you just said, that the only reason the Iranians are at the negotiating table is the sanctions, why is it necessary, or why is it advisable for the Senate to slow its movement on additional sanctions?

### Political influence does nothing

The Economist, 10/1/13, Will voters punish the Republicans?, www.economist.com/blogs/democracyinamerica/2013/10/shutdown

THE federal-government shutdown that started this morning is the result of a factional fight among Republicans in the House of Representatives, pitting an ultraconservative tea-party minority against a merely very conservative majority. As Michael Gerson, a former speechwriter for George W. Bush, puts it, "We are no longer seeing a revolt against the Republican leadership, or even against the Republican 'establishment'; this revolt is against anyone who accepts the constraints of political reality." Like other extremist movements, he notes, the tea-party faction spends more of its energy fighting other conservative Republicans than it does fighting Democrats, since rivals are more of a threat than enemies. The political dynamics of the shutdown will thus play out on two different fields: that of Republican voters, and that of American voters in general. The two groups are likely to respond differently, and that means we're in for a very rocky year.

Polls so far are suggesting that the general public will blame Republicans for the shutdown. It's not clear how far such disapproval can move the needle on overall disapproval of congressional Republicans, though. Republicans in Congress already have a -44% unfavourable rating (68% unfavourable to 24% favourable), according to TPM's Polltracker average of polls, and it's been in roughly similar territory since mid-2011. Those numbers are clearly not bad enough to affect Republican behaviour, and they were good enough to allow them to retain the House in last year's elections. Congressional Democrats are much better off than Republicans, but they still have a -24% rating (59% to 35%), and even if the public does blame the GOP for the current impasse, it seems unlikely that this will lead to better ratings for Democrats. Things have in fact been moving in the opposite direction: Polltracker's congressional generic-ballot poll average, which Democrats had led since last year's elections, is now about even for the two parties, not because Republicans have improved—they have spent the entire period hovering at 38%—but because Democrats have dropped to meet them.

Meanwhile, we can safely assume that the 24% of Americans who do still approve of congressional Republicans are almost all Republicans themselves. (Twenty-two percent of Americans currently identify as Republicans, according to Gallup, against 31% who identify as Democrats.) And among Republican voters, the government shutdown is likely to make their congressmen more popular, not less. Tea-party organisations are blaming the shutdown on intransigence—Democratic intransigence. Heck, Erick Erickson is still denouncing House Republicans for failing to "stand your ground", because the final version of a continuing resolution they sent to the Senate no longer demands the complete defunding of Obamacare.

There is no equivalent on the moderate-Republican side to the organisational muscle and rhetorical elan that propels the party's tea-party wing. No one is lining up to back moderate primary challengers to tea-party candidates. Establishment figures from previous Republican administrations who have found themselves transformed into voices of caution and moderation, such as Mr Gerson, most of the writers at National Review Online, and even (mutatis mutandi) Karl Rove, appear to have little ability to affect the party's course anymore. As someone once said of Mikhail Gorbachev after he had lost control of the Soviet Communist Party, they are "moving the levers, but they aren't attached to anything."

In other words, it's hard to see what political force could lead the Republicans' ascendant tea-party wing to change its behaviour and agree to any deal with the Democratic Senate, be it passing a clean continuing resolution funding the government at current levels or, as we move towards October 17th, raising the federal debt ceiling. It just isn't clear what's in it for them. So far, a scorched-earth strategy of total resistance has won them victory after victory, within the party at least. Why mess with a winning formula?

The upshot is that even if the broad public does blame Republicans for the shutdown, there's little reason to believe that this will force the GOP to do anything about it. It is possible, though unlikely, that anger over the government shutdown and the rest of this autumn's confrontations could affect public attitudes enough to shift the congressional vote and give the Democrats a majority in the House after the 2014 elections. RealClearPolitics' poll average still gives Democrats a 4% advantage on the generic congressional vote, and that could certainly widen. But the elections are a long way off. Recent history suggests that during the campaign, Republicans are likely to become more intransigent in Congress, not less, to safeguard against primary challenges. In sum, unless GOP party discipline somehow cracks, America is probably in for a pretty lousy political year.

### Court Means-limitation avoids politics

Geltzer 11 (Boalt Hall School of Law, University of California, Berkeley 2011 Berkeley Journal of International Law 29 Berkeley J. Int'l L. 94 Decisions Detained: The Courts' Embrace of Complexity in Guantanamo-Related Litigation NAME: Joshua Alexander Geltzer a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London. His dissertation was published by Routledge as US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View. Lexis)

B. Avoiding Conflict with the Political Branches Focusing on the means of today's war against terrorism rather than on the war's time or space not only spared the judiciary from intruding into political questions; doing so also avoided the courts' clear and potentially unwinnable conflict with the political branches. To be sure, the courts' decisions in cases like Hamdi, Hamdan, Basardh, and Parhat dealt direct defeats to the government and forced the political branches, usually the executive, to take steps that previously it had claimed a right not to take. 108 Put in perspective, however, the effects of the judiciary's rulings were rather minimal. 109 While Hamdi may have demanded notice and an opportunity to be heard by a neutral adjudicator and Hamdan may have required alterations to Guantanamo's military commissions, as this article approached publication - almost nine years into the post-9/11 detentions - only a handful of detainees had been released from Guantanamo by court order, the ultimate outcome for which most detainees have been pressing. 110 Hence, by nibbling at the margins of the political branches' conduct of the war against terrorism, the courts have [\*117] managed to alter some of the means employed in that war without provoking open conflict with the political branches on major issues - conflict that the judiciary might well lose.

### They just decided a whole slew of controversial cases

Wolf 2013 (Richard Wolf, August 12, 2013, “Supreme Court urged to open up,” USA Today, http://www.usatoday.com/story/news/nation/2013/08/12/supreme-court-urged-to-allow-cameras/2644779/)

A year-long string of controversial cases the general public couldn't see at all, or hear until later, has increased pressure on the Supreme Court to consider lifting the veil on its proceedings.¶ Since the end of the court's blockbuster term in late June, members of Congress and watchdog groups have urged the justices to allow cameras into the courtroom for the first time, broadcast live audio of their proceedings and adopt a binding code of ethics.¶ Many of the demands come from Democrats and liberal interest groups concerned about the court's conservative tilt. Though they are not likely to prompt Chief Justice John Roberts and his colleagues to make immediate changes, they could eventually help loosen up an institution that guards its privacy and autonomy.¶ "There have been baby steps taken to make the court more transparent, but it is still in many respects the least transparent branch of the three branches of government," says Doug Kendall, president of the Constitutional Accountability Center.

### Plan is a huge win for Obama

Catalini 2013 (Michael Catalini, May 30, 2013, “Political Barriers Stand Between Obama and Closing Guantanamo Facility,” http://www.nationaljournal.com/politics/political-barriers-stand-between-obama-and-closing-guantanamo-facility-20130503)

The Cuban camp is grabbing headlines again because of a hunger strike among the detainees. Nearly 100 have stopped eating, and the military is forcing them to eat by placing tubes through their noses, the Associated Press reported. The president reconfirmed his opposition to the camp, responding to a question about the recent hunger strikes at Guantanamo Bay with regret in his voice.¶ “Well, it is not a surprise to me that we've got problems in Guantanamo, which is why, when I was campaigning in 2007 and 2008 and when I was elected in 2008, I said we need to close Guantanamo. I continue to believe that we've got to close Guantanamo,” he said.¶ Obama blamed his failure to follow through on a campaign promise on lawmakers. “Now, Congress determined that they would not let us close it,” he said. Despite Obama’s desire to close the base and his pledge this week to “go back to this,” he touched on a political reality: Lawmakers are not inclined to touch the issue.¶ "The president stated that the reason Guantanamo has not closed was because of Congress. That's true," Majority Leader Harry Reid told reporters last month, declining to elaborate.¶ The stakes for Obama on this issue are high when it comes to his liberal base, who would like to see him display the courage of his convictions and close the camp. But the political will is lacking, outside a small contingent of lawmakers, including Sen. Dick Durbin of Illinois and five other liberal Democrats who sided with Obama in 2009, and left-leaning opinion writers.¶ Congressional Democrats, unlike Obama, will have to face voters again. And closing the camp is deeply unpopular. A Washington Post/ABC News poll in February 2012 showed that 70 percent of Americans wantedto keep the camp open to detain “terrorist suspects,” and in a 2009 Gallup Poll, a majority said they would be upset if it shut down. In 2009, the Senate voted 90-6 to block the president’s efforts at closing the camp. Obama had signed an order seeking to close the detention center, but the Senate’s vote denied the administration the $80 million needed to fund the closure. ¶ Closing the camp in Cuba and bringing the detainees into the United States grates against the political sensibilities of many lawmakers. Jim Manley, a Democratic strategist who served as Reid’s spokesman at the time, remembers the debate very well.

### Plan’s announced in June

Reuters 2013 (Jewish Daily, June 21, 2013, “Supreme Tension as Big Cases Loom for Top Court,” http://forward.com/articles/179046/supreme-tension-as-big-cases-loom-for-top-court/?p=all#ixzz2cuIQ3iXH)

Despite the mystery over how the nine justices will decide the big cases, there is no real mystery about the delay. Late June at the Supreme Court is crunch time, as the justices - not unlike college students finishing term papers late into the night - push up against their self-imposed, end-of-June deadline.¶ In 2003, the last time the justices had college affirmative action and gay rights together on the docket, decisions came on June 23 and June 26, respectively. Last year, their decision on the constitutionality of the 2010 healthcare law signed by President Barack Obama came on the last day, June 28, before the justices recessed for the summer.¶ Justice Ruth Bader Ginsburg has called June “flood season.”

### No impact

O'Toole 9/30/13 (James, CNN Money Writer, "Rating Agencies An Afterthought in Debt Ceiling Fight")

No one can predict exactly what the consequences of a missed payment would be, but analysts agree it's [a terrifying prospect](http://money.cnn.com/2013/09/27/news/economy/debt-ceiling-faqs/index.html?iid=EL). Another downgrade alone, however, is unlikely to make much difference.¶ "At the end of the day, even with a downgrade, the U.S. Treasury is still the safest game in town," said Michael Brown, an economist at Wells Fargo ([WFC](http://money.cnn.com/quote/quote.html?symb=WFC&source=story_quote_link), [Fortune 500](http://money.cnn.com/magazines/fortune/fortune500/2012/snapshots/2578.html?iid=EL)). Rates are also being held lower by the Federal Reserve's bond-buying program, he added.¶ New downgrades could raise borrowing costs years down the line, but "in the immediate term, I don't think you'd see a massive movement of rates," Brown said. Some investment firms operate under guidelines that prohibit them from holding securities that aren't rated AAA by one, two or all three of the major rating agencies. They could therefore be forced to sell them following a downgrade, creating upward pressure on yields.¶ But among buyers of Treasuries, these firms are "very, very small relative to those that don't have a ratings threshold," Brothers said.¶ "There are ramifications if U.S. Treasury debt isn't AAA, but I don't think that would create a cascade of selling," he said.

### Econ collapse doesn’t cause war – prefer our studies

Samuel Bazzi (Department of Economics at University of California San Diego) and Christopher Blattman (assistant professor of political science and economics at Yale University) November 2011 “Economic Shocks and Conflict: The (Absence of?) Evidence from Commodity Prices” <http://www.chrisblattman.com/documents/research/2011.EconomicShocksAndConflict.pdf?9d7bd4>

VI. Discussion and conclusions A. Implications for our theories of political instability and conflict The state is not a prize?—Warlord politics and the state prize logic lie at the center of the most influential models of conflict, state development, and political transitions in economics and political science. Yet we see no evidence for this idea in economic shocks, even when looking at the friendliest cases: fragile and unconstrained states dominated by extractive commodity revenues. Indeed, we see the opposite correlation: if anything, higher rents from commodity prices weakly 22 lower the risk and length of conflict. Perhaps shocks are the wrong test. Stocks of resources could matter more than price shocks (especially if shocks are transitory). But combined with emerging evidence that war onset is no more likely even with rapid increases in known oil reserves (Humphreys 2005; Cotet and Tsui 2010) we regard the state prize logic of war with skepticism.17 Our main political economy models may need a new engine. Naturally, an absence of evidence cannot be taken for evidence of absence. Many of our conflict onset and ending results include sizeable positive and negative effects.18 Even so, commodity price shocks are highly influential in income and should provide a rich source of identifiable variation in instability. It is difficult to find a better-measured, more abundant, and plausibly exogenous independent variable than price volatility. Moreover, other time-varying variables, like rainfall and foreign aid, exhibit robust correlations with conflict in spite of suffering similar empirical drawbacks and generally smaller sample sizes (Miguel et al. 2004; Nielsen et al. 2011). Thus we take the absence of evidence seriously. Do resource revenues drive state capacity?—State prize models assume that rising revenues raise the value of the capturing the state, but have ignored or downplayed the effect of revenues on self-defense. We saw that a growing empirical political science literature takes just such a revenue-centered approach, illustrating that resource boom times permit both payoffs and repression, and that stocks of lootable or extractive resources can bring political order and stability. This countervailing effect is most likely with transitory shocks, as current revenues are affected while long term value is not. Our findings are partly consistent with this state capacity effect. For example, conflict intensity is most sensitive to changes in the extractive commodities rather than the annual agricultural crops that affect household incomes more directly. The relationship only holds for conflict intensity, however, and is somewhat fragile. We do not see a large, consistent or robust decline in conflict or coup risk when prices fall. A reasonable interpretation is that the state prize and state capacity effects are either small or tend to cancel one another out. Opportunity cost: Victory by default?—Finally, the inverse relationship between prices and war intensity is consistent with opportunity cost accounts, but not exclusively so. As we noted above, the relationship between intensity and extractive commodity prices is more consistent with the state capacity view. Moreover, we shouldn’t mistake an inverse relation between individual aggression and incomes as evidence for the opportunity cost mechanism. The same correlation is consistent with psychological theories of stress and aggression (Berkowitz 1993) and sociological and political theories of relative deprivation and anomie (Merton 1938; Gurr 1971). Microempirical work will be needed to distinguish between these mechanisms. Other reasons for a null result.—Ultimately, however, the fact that commodity price shocks have no discernible effect on new conflict onsets, but some effect on ongoing conflict, suggests that political stability might be less sensitive to income or temporary shocks than generally believed. One § Marked 08:51 § possibility is that successfully mounting an insurgency is no easy task. It comes with considerable risk, costs, and coordination challenges. Another possibility is that the counterfactual is still conflict onset. In poor and fragile nations, income shocks of one type or another are ubiquitous. If a nation is so fragile that a change in prices could lead to war, then other shocks may trigger war even in the absence of a price shock. The same argument has been made in debunking the myth that price shocks led to fiscal collapse and low growth in developing nations in the 1980s.19 B. A general problem of publication bias? More generally, these findings should heighten our concern with publication bias in the conflict literature. Our results run against a number of published results on commodity shocks and conflict, mainly because of select samples, misspecification, and sensitivity to model assumptions, and, most importantly, alternative measures of instability. Across the social and hard sciences, there is a concern that the majority of published research findings are false (e.g. Gerber et al. 2001). Ioannidis (2005) demonstrates that a published finding is less likely to be true when there is a greater number and lesser pre-selection of tested relationships; there is greater flexibility in designs, definitions, outcomes, and models; and when more teams are involved in the chase of statistical significance. The cross-national study of conflict is an extreme case of all these. Most worryingly, almost no paper looks at alternative dependent variables or publishes systematic robustness checks. Hegre and Sambanis (2006) have shown that the majority of published conflict results are fragile, though they focus on timeinvariant regressors and not the time-varying shocks that have grown in popularity. We are also concerned there is a “file drawer problem” (Rosenthal 1979). Consider this decision rule: scholars that discover robust results that fit a theoretical intuition pursue the results; but if results are not robust the scholar (or referees) worry about problems with the data or empirical strategy, and identify additional work to be done. If further analysis produces a robust result, it is published. If not, back to the file drawer. In the aggregate, the consequences are dire: a lower threshold of evidence for initially significant results than ambiguous ones.20

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## Drone shift

### \*Status quo detention triggers the link—aff’s key to solve

Craig Whitlock 13, Washington Post, "Renditions continue under Obama, despite due-process concerns", January 1, articles.washingtonpost.com/2013-01-01/world/36323571\_1\_obama-administration-interrogation-drone-strikes

The three European men with Somali roots were arrested on a murky pretext in August as they passed through the small African country of Djibouti. But the reason soon became clear when they were visited in their jail cells by a succession of American interrogators.¶ U.S. agents accused the men — two of them Swedes, the other a longtime resident of Britain — of supporting al-Shabab, an Islamist militia in Somalia that Washington considers a terrorist group. Two months after their arrest, the prisoners were secretly indicted by a federal grand jury in New York, then clandestinely taken into custody by the FBI and flown to the United States to face trial.¶ The secret arrests and detentions came to light Dec. 21 when the suspects made a brief appearance in a Brooklyn courtroom.¶ The men are the latest example of how the Obama administration has embraced rendition — the practice of holding and interrogating terrorism suspects in other countries without due process — despite widespread condemnation of the tactic in the years after the Sept. 11, 2001, attacks.¶ Renditions are taking on renewed significance because the administration and Congress have not reached agreement on a consistent legal pathway for apprehending terrorism suspects overseas and bringing them to justice.¶ Congress has thwarted President Obama’s pledge to close the military prison at Guantanamo Bay, Cuba, and has created barriers against trying al-Qaeda suspects in civilian courts, including new restrictions in a defense authorization bill passed last month. The White House, meanwhile, has resisted lawmakers’ efforts to hold suspects in military custody and try them before military commissions.¶ The impasse and lack of detention options, critics say, have led to a de facto policy under which the administration finds it easier to kill terrorism suspects, a key reason for the surge of U.S. drone strikes in Pakistan, Yemen and Somalia. Renditions, though controversial and complex, represent one of the few alternatives.

## pltx

### Means-limitation doesn’t link to politics—the SPIN is key

Geltzer 11 (Boalt Hall School of Law, University of California, Berkeley 2011 Berkeley Journal of International Law 29 Berkeley J. Int'l L. 94 Decisions Detained: The Courts' Embrace of Complexity in Guantanamo-Related Litigation NAME: Joshua Alexander Geltzer a third-year student at Yale Law School, where he is editor-in-chief of the Yale Law Journal. He received his Ph.D. in War Studies from King's College London. His dissertation was published by Routledge as US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View. Lexis)

Avoiding Political Questions As previously mentioned, American courts have shown a willingness to scrutinize and even alter the political branches' conduct of the war against terrorism that is unusual for the judiciary during war-time. Becoming involved to such an extent treads contested ground. In few arenas has the notion of non-justiciable political questions been pressed as vigorously as in the national security arena, in which a vision of "unchecked executive discretion has claimed virtually the entire field of foreign affairs as falling under the president's inherent authority." 97 While acceptance of this vision has waxed and waned throughout American history, it emerges most strongly during war-time, and is often attributed to the Supreme Court's 1936 decision in United States v. Curtiss-Wright Export Corp. 98 The dissenting opinions in the major cases bearing on post-9/11 detention consistently have complained that the Court has overstepped its bounds by venturing into political questions. 99 In Rasul, Justice Scalia's dissent charged that the Court's decision would force "the courts to oversee one aspect of the Executive's conduct of a foreign war" and would bring "the cumbersome machinery of our domestic courts into military affairs." 100 In Hamdi, Justice Thomas' dissent insisted that "this Court has long ... held that the President has constitutional authority to protect the national security and that this authority carries with it broad discretion," adding that "judicial interference in these domains destroys the purpose of vesting primary responsibility in a unitary Executive" and avowing that "we lack the information and expertise to question whether Hamdi is actually an enemy combatant, a question the resolution of [\*114] which is committed to other branches." 101 In like vein, Justice Thomas' dissent in Hamdan complained that the Court's opinion "openly flouts our well-established duty to respect the Executive's judgment in matters of military operations and foreign affairs," arguing that the Court's "evident belief that it is qualified to pass on the "military necessity' of the Commander in Chief's decision to employ a particular form of force against our enemies is so antithetical to our constitutional structure that it simply cannot go unanswered." 102 Already, the Court was straying far enough into the contested borderland between the judiciary and the political branches to make its decisions deeply divided, at times forcing a plurality to speak for the Court. However, the complexity of the war's limiting factor being questioned by the Court - the war's means - masked the extent to which the judiciary really was contesting the political branches' war-making authority. In asserting jurisdiction, as in Rasul, or in demanding procedural protections for American citizens detained on American soil, as in Hamdi, or in rejecting the proposed procedures and charges for a military commission, as in Hamdan, the Court plausibly could claim merely to be delineating the scope of the law, rather than circumscribing the scope of the war. After all, it is the judiciary's job to uphold the law, while it is the political branches' responsibility to wage war. 103 In turn, the Court was able to portray itself as modestly ensuring that the law played some role in situations where judges and justices seemed to belong: the extent to which that role enmeshed the judiciary in the prosecution of the war against terrorism was at least partially obscured amidst the complexity that defines the means of war-making, a complexity that is heightened when those means involve detentions and military commissions on or near American soil.

### Economic collapse doesn’t cause war – no causal connection

Thomas P.M. Barnett (senior managing director of Enterra Solutions LLC and a contributing editor/online columnist for Esquire magazine) August 2009 “The New Rules: Security Remains Stable Amid Financial Crisis” http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \* No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \* The usual frequency maintained in civil conflicts (in all the usual places); \* Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \* No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \* A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \* No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order. Do I expect to read any analyses along those lines in the blogosphere any time soon? Absolutely not. I expect the fantastic fear-mongering to proceed apace. That's what the Internet is for.