## Slv

### 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, 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 credible relevance

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.

#### Assign warming zero percent probability – flawed models and predictions

Craig D. Idso (founder and chairman of the board of the Center for the Study of Carbon Dioxide and Global Change) and Sherwood B. Idso (president of the Center for the Study of Carbon Dioxide and Global Change) February 2011 “Carbon Dioxide and Earth’s Future Pursuing the Prudent Path” http://www.co2science.org/education/reports/prudentpath/prudentpath.pdf

As presently constituted, earth’s atmosphere contains just slightly less than 400 ppm of the colorless and odorless gas we call carbon dioxide or CO2. That’s only four-hundredths of one percent. Consequently, even if the air's CO2 concentration was tripled, carbon dioxide would still comprise only a little over one tenth of one percent of the air we breathe, which is far less than what wafted through earth’s atmosphere eons ago, when the planet was a virtual garden place. Nevertheless, a small increase in this minuscule amount of CO2 is frequently predicted to produce a suite of dire environmental consequences, including dangerous global warming, catastrophic sea level rise, reduced agricultural output, and the destruction of many natural ecosystems, as well as dramatic increases in extreme weather phenomena, such as droughts, floods and hurricanes. As strange as it may seem, these frightening future scenarios are derived from a single source of information: the ever-evolving computer-driven climate models that presume to reduce the important physical, chemical and biological processes that combine to determine the state of earth’s climate into a set of mathematical equations out of which their forecasts are produced. But do we really know what all of those complex and interacting processes are? And even if we did -- which we don't -- could we correctly reduce them into manageable computer code so as to produce reliable forecasts 50 or 100 years into the future? Some people answer these questions in the affirmative. However, as may be seen in the body of this report, real-world observations fail to confirm essentially all of the alarming predictions of significant increases in the frequency and severity of droughts, floods and hurricanes that climate models suggest should occur in response to a global warming of the magnitude that was experienced by the earth over the past two centuries as it gradually recovered from the much-lower-than-present temperatures characteristic of the depths of the Little Ice Age. And other observations have shown that the rising atmospheric CO2 concentrations associated with the development of the Industrial Revolution have actually been good for the planet, as they have significantly enhanced the plant productivity and § Marked 19:58 § vegetative water use efficiency of earth's natural and agro-ecosystems, leading to a significant "greening of the earth." In the pages that follow, we present this oft-neglected evidence via a review of the pertinent scientific literature. In the case of the biospheric benefits of atmospheric CO2 enrichment, we find that with more CO2 in the air, plants grow bigger and better in almost every conceivable way, and that they do it more efficiently, with respect to their utilization of valuable natural resources, and more effectively, in the face of environmental constraints. And when plants benefit, so do all of the animals and people that depend upon them for their sustenance. Likewise, in the case of climate model inadequacies, we reveal their many shortcomings via a comparison of their "doom and gloom" predictions with real-world observations. And this exercise reveals that even though the world has warmed substantially over the past century or more -- at a rate that is claimed by many to have been unprecedented over the past one to two millennia -- this report demonstrates that none of the environmental catastrophes that are predicted by climate alarmists to be produced by such a warming has ever come to pass. And this fact -- that there have been no significant increases in either the frequency or severity of droughts, floods or hurricanes over the past two centuries or more of global warming -- poses an important question. What should be easier to predict: the effects of global warming on extreme weather events or the effects of elevated atmospheric CO2 concentrations on global temperature? The first part of this question should, in principle, be answerable; for it is well defined in terms of the small number of known factors likely to play a role in linking the independent variable (global warming) with the specified weather phenomena (droughts, floods and hurricanes). The latter part of the question, on the other hand, is ill-defined and possibly even unanswerable; for there are many factors -- physical, chemical and biological -- that could well be involved in linking CO2 (or causing it not to be linked) to global temperature. If, then, today's climate models cannot correctly predict what should be relatively easy for them to correctly predict (the effect of global warming on extreme weather events), why should we believe what they say about something infinitely more complex (the effect of a rise in the air’s CO2 content on mean global air temperature)? Clearly, we should pay the models no heed in the matter of future climate -- especially in terms of predictions based on the behavior of a non-meteorological parameter (CO2) -- until they can reproduce the climate of the past, based on the behavior of one of the most basic of all true meteorological parameters (temperature). And even if the models eventually solve this part of the problem, we should still reserve judgment on their forecasts of global warming; for there will yet be a vast gulf between where they will be at that time and where they will have to go to be able to meet the much greater challenge to which they aspire

## Case-eu

### 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.

### Intel’s the bigger internal link

Thiessen 2011 (Marc A. Thiessen, visiting fellow at AEI, November 18, 2011, “We need a terrorist detention and interrogation policy,” American Enterprise Institute, <http://www.aei.org/article/foreign-and-defense-policy/terrorism/we-need-a-terrorist-detention-and-interrogation-policy/>)

The problem with this approach is: dead terrorists cannot tell you their plans for new attacks. When we kill high-value terrorists instead of taking them in alive, we vaporize all the intelligence they possess—invaluable information we cannot get anywhere else about al Qaeda’s operations, recruits, safe houses, communications, and plans for new attacks. We need this intelligence to save lives. The Obama administration inherited a treasure trove intelligence that had been gathered by the Bush administration from KSM and other CIA detainees. That information was critical to the administration’s greatest counterterrorism success: the operation that killed Osama bin Laden. But with each passing year, that intelligence becomes increasingly dated. New leaders rise through the ranks. New terrorists operatives are recruited. New plots are conceived. New methods are developed to communicate, move money, recruit operatives, and carry out attacks. And new networks—like al Qaeda in the Arabian Peninsula and al-Shabab—emerge about which we know little. We are no longer replenishing the information we have about al Qaeda’s inner workings because we are no longer capturing and detaining the terrorist leaders who could refresh our knowledge about al Qaeda’s operations—which means the next administration will not enjoy the same intelligence inheritance its predecessor did. Worse, the head of U.S. Special Operations command recently told Congress that because the Obama administration has no clear plan for handling suspected terrorist leaders if they are caught alive outside a war zone, it is U.S. policy that if such a captured terrorist cannot be tried in a U.S. court or transferred to the custody of an allied country, the prisoner is ultimately “let go.” In other words, America has a policy of terrorist catch and release.

### State shift in law enforcement’s key to prevent existential Southeast European attacks

SET 9-12 (Experts: Prevention is the key to fighting terrorism 12/09/2013 By Linda Karadaku for Southeast European Times in Pristina http://www.setimes.com/cocoon/setimes/xhtml/en\_GB/features/setimes/features/2013/09/12/feature-02)

Officials at the Council of the European Union have said co-operation has been vital to preventing terrorism attacks in southeast Europe and in gaining convictions, although there have been some incidents, such as the 2012 tourist bus bombing in Burges, Bulgaria, and the February suicide bombing at the US embassy in Ankara. Experts said prevention efforts in Albania have been successful but must be improved to keep up with § Marked 19:59 § existing challenges. "The fact that no terrorist act has taken place [in Albania] means the continuous preventive measures, and also those undertaken in specific situations, have had results," Xhavit Shala of the Albanian Centre for National Security Studies, an NGO in Tirana, told SETimes. In Kosovo, authorities say a strategic approach is needed to prevent terrorism and acts of violent extremism. "There are extremists in every society. There are in Kosovo as well. A strategic approach is needed to deal with the issue, involving not only the law enforcement agencies, but more stakeholders, all state instruments, civil society, communities. A joint approach is needed, attacking the factors (that lay the ground for it). Addressing those factors does not allow the society to be vulnerable towards extremism and radicalism," Major Fatos Makolli, director of the directorate against terrorism in the Kosovo Police, told SETimes. Makolli said the state apparatus is not sufficient to raise awareness or deal by itself with the consequences of terrorism. Only by stakeholders jointly undermining the factors that contribute to the development of extremism will Kosovo reduce its vulnerability. Belgrade professor Obrad Savic said that the Muslim community in Kosovo is the integral part of European Muslims, "except small, radical Islamistic groups mainly organised in small villages, over local mosques around Pristina, as well as Sarajevo and Skopje." Such groups exist in many parts in Europe and the world, but what is important is the attitude by the populace toward them, Makolli said. "People's awareness of the issue and their education is the key," he said.

### 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

## Def

#### Sustainable—econ and military—short term snapshots are insufficient

Kagan 12 (Not Fade Away The myth of American decline. Robert Kagan senior fellow at Brookings Inst. January 11, 2012 | 5:04 pm; The New Republic, http://goo.gl/SEyOM)

Powerful as this sense of decline may be, however, it deserves a more rigorous examination. Measuring changes in a nation’s relative power is a tricky business, but there are some basic indicators: the size and the influence of its economy relative to that of other powers; the magnitude of military power compared with that of potential adversaries; the degree of political influence it wields in the international system—all of which make up what the Chinese call “comprehensive national power.” And there is the matter of time. Judgments based on only a few years’ evidence are problematic. A great power’s decline is the product of fundamental changes in the international distribution of various forms of power that usually occur over longer stretches of time. Great powers rarely decline suddenly. A war may bring them down, but even that is usually a symptom, and a culmination, of a longer process. The decline of the British Empire, for instance, occurred over several decades. In 1870, the British share of global manufacturing was over 30 percent. In 1900, it was 20 percent. By 1910, it was under 15 percent—well below the rising United States, which had climbed over the same period from more than 20 percent to more than 25 percent; and also less than Germany, which had lagged far behind Britain throughout the nineteenth century but had caught and surpassed it in the first decade of the twentieth century. Over the course of that period, the British navy went from unchallenged master of the seas to sharing control of the oceans with rising naval powers. In 1883, Britain possessed more battleships than all the other powers combined. By 1897, its dominance had been eclipsed. British officials considered their navy “completely outclassed” in the Western hemisphere by the United States, in East Asia by Japan, and even close to home by the combined navies of Russia and France—and that was before the threatening growth of the German navy. These were clear-cut, measurable, steady declines in two of the most important measures of power over the course of a half-century. SOME OF THE ARGUMENTS for America’s relative decline these days would be more potent if they had not appeared only in the wake of the financial crisis of 2008. Just as one swallow does not make a spring, one recession, or even a severe economic crisis, need not mean the beginning of the end of a great power. The **U**nited **S**tates **suffered** deep and prolonged economic crises in the 1890s, the 1930s, and the 1970s. In each case, it rebounded in the following decade and actually ended up in a stronger position relative to other powers than before the crisis. The 1910s, the 1940s, and the 1980s were all high points of American global power and influence. Less than a decade ago, most observers spoke not of America’s decline but of its enduring primacy. In 2002, the historian Paul Kennedy, who in the late 1980s had written a much-discussed book on “the rise and fall of the great powers,” America included, declared that never in history had there been such a great “disparity of power” as between the United States and the rest of the world. Ikenberry agreed that “no other great power” had held “such formidable advantages in military, economic, technological, cultural, or political capabilities.... The preeminence of American power” was “unprecedented.” In 2004, the pundit Fareed Zakaria described the United States as enjoying a “comprehensive uni-polarity” unlike anything seen since Rome. But a mere four years later Zakaria was writing about the “post-American world” and “the rise of the rest,” and Kennedy was discoursing again upon the inevitability of American decline. Did the fundamentals of America’s relative power shift so dramatically in just a few short years? The answer is no. Let’s start with the basic indicators. In economic terms, and even despite the current years of recession and slow growth, America’s position in the world has not changed. Its share of the world’s GDP has held remarkably steady, not only over the past decade but over the past four decades. In 1969, the United States produced roughly a quarter of the world’s economic output. Today it still produces roughly a quarter, and it remains not only the largest but also the richest economy in the world. People are rightly mesmerized by the rise of China, India, and other Asian nations whose share of the § Marked 20:01 § global economy has been climbing steadily, but this has so far come almost entirely at the expense of Europe and Japan, which have had a declining share of the global economy. Optimists about China’s development predict that it will overtake the United States as the largest economy in the world sometime in the next two decades. This could mean that the United States will face an increasing challenge to its economic position in the future. But the sheer size of an economy is not by itself a good measure of overall power within the international system. If it were, then early nineteenth-century China, with what was then the world’s largest economy, would have been the predominant power instead of the prostrate victim of smaller European nations. Even if China does reach this pinnacle again—and Chinese leaders face significant obstacles to sustaining the country’s growth indefinitely—it will still remain far behind both the United States and Europe in terms of per capita GDP. Military capacity matters, too, as early nineteenth-century China learned and Chinese leaders know today. As Yan Xuetong recently noted, “military strength underpins hegemony.” Here the United States remains unmatched. It is far and away the most powerful nation the world has ever known, and there has been no decline in America’s relative military capacity—at least not yet. Americans currently spend less than $600 billion a year on defense, more than the rest of the other great powers combined. (This figure does not include the deployment in Iraq, which is ending, or the combat forces in Afghanistan, which are likely to diminish steadily over the next couple of years.) They do so, moreover, while consuming a little less than 4 percent of GDP annually—a higher percentage than the other great powers, but in historical terms lower than the 10 percent of GDP that the United States spent on defense in the mid-1950s and the 7 percent it spent in the late 1980s. The superior expenditures underestimate America’s actual superiority in military capability. American land and air forces are equipped with the most advanced weaponry, and are the most experienced in actual combat. They would defeat any competitor in a head-to-head battle. American naval power remains predominant in every region of the world. By these military and economic measures, at least, the United States today is not remotely like Britain circa 1900, when that empire’s relative decline began to become apparent. It is more like Britain circa 1870, when the empire was at the height of its power. It is possible to imagine a time when this might no longer be the case, but that moment has not yet arrived.

#### No US/China war—It’s in neither country’s best interest

Ackerman 2011 (Robert Ackerman, May 10, 2011, “War Between China, U.S. Not Likely,” http://www.afcea.org/signal/signalscape/index.php/2011/05/10/11510/)

The United States and China are not likely to go to war with each other because neither country wants it and it would run counter to both nations’ best interests. That was the conclusion of a plenary panel session hosted by former Good Morning America host David Hartman at the 2011 Joint Warfighting Conference in Virginia Beach. Adm. Timothy J. Keating, USN (Ret.), former head of the U.S. Pacific Command, noted that China actually wants the United States to remain active in the Asia-Pacific region as a hedge against any other country’s adventurism. And, most of the other countries in that region want the United States to remain active as a hedge against China. Among areas of concern for China is North Korea. Wallace “Chip” Gregson, former assistant secretary of Defense for Asian and Pacific Security Affairs, said that above all China fears instability, and a North Korean collapse or war could send millions of refugees streaming into Manchuria, which has economic problems of its own.

## Con Con CP

#### Supreme Court key to intl model

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.

#### Links to politics

Kachimba 2011 (Larry Kachimba, writer for Op Ed News, August 25, 2011, “Five reasons why a constitutional amendment is the wrong way to get money out of politics,” http://www.opednews.com/articles/Five-reasons-why-a-constit-by-Larry-Kachimba-110825-578.html)

3. Attempting a constitutional amendment is wasteful of scarce political capital because it would be many times more difficult and time-consuming than would enactment of a comprehensive law.¶ The constitutional amendment proposal diverts political capital to an impossible task.¶ A constitutional amendment process is far more difficult and time consuming than getting a single comprehensive law through Congress. In order to battle corporations and oligarchs to get an amendment passed it would be necessary to first get 2/3d's of the members of each house of Congress to vote against Congress' usual paymasters, and then also elect a majority of legislators in 38 states who would resist the growing temptations of political money. Money can be expected to battle any such amendment designed to take away its power at every stage of this process.

### Court’s key to successful Congress push

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)

While Chevron's advocates have frequently promoted the application of broad deference rules even in the absence of congressional legislation, 8 [\*1920] scholars at the opposite end of the spectrum question Chevron's application to the national security context. 9 According to these Chevron-detractors, even when national security policies are the product of joint political branch decisionmaking, the Supreme Court should "say what the law is" 10 and override the collective wisdom of the political branches when necessary. 11 While Chevron-backers and Chevron-detractors provide important insights into the role of administrative law as a source of decisionmaking in national security cases, both camps ignore Youngstown at their peril. 12 Under Jackson's framework in Youngstown, presidential powers are at their apogee when backed by congressional authorization and their "lowest ebb" when contrary to congressional will. 13 In between these two extremes are "zone of twilight" cases in which the President lacks a clear constitutional foundation or a basis in congressional authorization. 14 The post-9/11 decisions, following Youngstown, have focused less on the issue of deference as such and more on the shared responsibility of the political branches to create legislative schemes regarding national security policy. 15 Where Congress has [\*1921] responded by providing the Executive with a delegation concerning a particular security need, courts have typically construed those statutes deferentially. 16 However, where Congress has remained silent, courts have generally invoked Youngstown to catalyze greater inter-branch dialogue, 17 remanding issues to the political branches for additional legislative input. This process-oriented approach captures the Court's recent decisions more accurately than its apparent commitment to deference or non-deference where Executive power is concerned. By applying Youngstown, the Court has tamed Chevron's imperialistic aspirations, using judicial intervention as a way of resetting the proper institutional balance between Congress and the Executive. The post-9/11 decisions, understood through the lens of Youngstown, demonstrate congruities between national security cases and non-emergency administrative law rulings. In both domains, the Supreme Court has underscored the significance of congressional delegations for the scaling of judicial deference to the Executive Branch. By exploring cases in both the domestic and national security contexts, this Article indicates the importance of legislative authorization as a predicate for deference across different substantive arenas. By highlighting the intersection of "ordinary" administrative law decisions on the one hand, and recent national security cases on the other, it calls attention to an emerging middle-ground solution courts have used in national security cases that is consistent with, if not anchored squarely within, foundational principles of administrative law.

#### Legitimacy is key to failed states

Loomis 2008 (Andrew Joseph Loomis, PhD in Government from Georgetown, August 4, 2008, “LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP: NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY,” http://repository.library.georgetown.edu/bitstream/handle/10822/553090/loomisAndrewJoseph.pdf?sequence=1)

The results of this study suggest that U.S. authority levels vary with public ¶ perceptions of legitimacy, casting doubt on claims that ideational variables in the form of ¶ international perceptions of the legitimacy of U.S. policy are inconsequential with respect to ¶ the efficacy of U.S. foreign policy and alliance maintenance. These findings suggest that the ¶ United States would strengthen its authority by constructing policy that is sensitive to the ¶ international public voice. The need for allies is self-evident in the turbulent contemporary ¶ environment and most intractable international problems cannot be solved by the United ¶ States alone. Intelligence deficiencies, drug and human trafficking, proliferation of weapons ¶ of mass destruction, failing states, ethnic violence, and environmental catastrophe all ¶ demand joint responses by the world’s most capable countries. The question of what holds ¶ alliances together has immediate importance. The implications of this research suggest the ¶ need for policymakers to reassess the relevance of legitimate behavior and the impact that ¶ administration policy has on U.S. leadership among its allies.

#### Extinction

**Manwaring 2005** (Max G. Manwaring, Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, venezuela’s hugo chávez, bolivarian socialism, and asymmetric warfare, October 2005, pg. PUB628.pdf)

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

### Narrow limits force Congressional re-authorization and check authority roll-out

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)

In the end, the courts' embrace of complexity has been an experiment in war-time democracy in action. Consider Jack Balkin's assessment of the Supreme Court's decision in Hamdan: What the Court has done is not so much countermajoritarian as democracy forcing. It has limited the President by forcing him to go back to Congress to ask for more authority than he already has, and if Congress gives it to him, then the Court will not stand in his way... . By forcing the President to ask for authorization, the Court does two things. First, it insists that both branches be on board with what the President wants to do. Second, it requires the President to ask for authority when passions have cooled somewhat, as opposed to right after 9/11, when Congress would likely have given him almost anything ... . What the Court has done ... is use the democratic process as a lever to discipline and constrain the President's possible overreaching. 182 Balkin seems right, both in analyzing Hamdan and more broadly. The courts' restraint in embracing complexity and engaging solely with the complicated means of the war against terrorism has produced narrow rulings and reinterpretable opinions that, in the end, empower the political branches - which is to say that they empower popular democracy. It follows that what Congress and the President have done in response to such judicial behavior is a more direct reflection of the will of today's American people than sweeping, bright-line intervention by the courts would have been. Balkin seems to suggest that this outcome is praiseworthy; others find it worrisome. 183 Ultimately, the real conclusion may be that, for better or for worse, the American people have ended up with the Guantanamo that they really wanted.

## 2AC Debt Ceiling Reg

### They’ve got nothing—polarization & deficit reductions are the nail in the coffin for now

Weisman 9-12 (Boehner Seeking Democrats’ Help on Fiscal Talks By JONATHAN WEISMAN

Published: September 12, 2013 http://www.nytimes.com/2013/09/13/us/politics/at-meeting-with-treasury-secretary-boehner-pressed-for-debt-ceiling-deal.html?\_r=0)

Senator Richard J. Durbin of Illinois, the second ranking Democrat, said, “Sometimes I sympathize with Speaker Boehner, but the fact of the matter is, if he wants to lead for the good of the nation, he has to step beyond the Tea Party faction of his caucus.” Republican divisions were manifest not only in the tactics they have proposed but also in the strategic aims of those tactics. Mr. Boehner continued to emphasize taming the budget deficit as the price for a debt-ceiling increase. But the urgency of that mission was undercut by government financing figures released Thursday by the Treasury, which showed the smallest annual shortfall since 2008. In the first 11 months of the current fiscal year, the deficit reached $755.8 billion, with tax revenues rising and spending falling. The deficit in fiscal 2012 was $1.1 trillion. With no resolution in sight, Republican leaders said decisions would have to be made next week on a way forward — with Democratic votes, or Republican unity. But Mr. Boehner gave no indication he knew which way to turn. “There are a million options that are being discussed by a lot of people,” he said. “When we have something to report, we’ll let you know.”

### No vote coming—no GOP base and Dems polarized

Weisman 9-12 (Boehner Seeking Democrats’ Help on Fiscal Talks By JONATHAN WEISMAN

Published: September 12, 2013 http://www.nytimes.com/2013/09/13/us/politics/at-meeting-with-treasury-secretary-boehner-pressed-for-debt-ceiling-deal.html?\_r=0)

It was delayed indefinitely as House Republicans resumed their search for a measure that could unite them. One group of conservatives on Thursday pressed what they called a compromise: a one-year stopgap spending bill that would raise the debt ceiling for a year, delay all aspects of the health care law for a year, and give back some of the Pentagon cuts as a sweetener. Backers insisted on Thursday that it was a package Mr. Obama should be able to accept. Representative Phil Gingrey, Republican of Georgia, said seven Democratic senators facing re-election fights next year in Republican-leaning states would provide a beachhead of Democratic support, and noted the president had already agreed to some delays for his health law. Democrats scoffed at the Republican plans, and even some Republican leadership aides questioned how any could get to the president’s desk. Mr. Reid called the succession of proposals “juvenile political games” and suggested that many Republicans had lost touch with reality.

### PC doesn’t solve and the perception of talks causes the DA

Everett 13 (Lew reiterates Obama won't negotiate over debt limit By BURGESS EVERETT | 7/28/13 9:02 AM EDT http://www.politico.com/blogs/politico-live/2013/07/lew-reiterates-obama-wont-negotiate-over-debt-limit-169332.html)

Treasury Secretary Jack Lew says President Barack Obama will not sign government funding bills that cut domestic spending and will not negotiate over the debt limit with Republicans seeking spending cuts. "Congress can't let us default. Congress has to do its work," Lew said Sunday on ABC's "This Week," adding the president has has been "crystal clear" that raising the country's debt limit this fall is not an issue of negotiation between Congress and the White House. Senate Majority Leader Harry Reid also said last week he'll not negotiate over raising the country's borrowing limit, a position that echoes that of the Obama administration. House Republicans hope to use the debt ceiling as leverage to extract more spending cuts, and a group in both chambers has stated they are opposing any spending bill that funds Obamacare. "I certainly hope that Congress isn't looking to create confrontations and false crises because we did see, in 2011, how bad that is for the American economy," Lew said. "The mere fact of negotiating over the debt limit, after 2011, would introduce this notion that somehow there's a question about whether or not we're going to pay our bills, whether or not we're going to protect the full faith and credit of the United States."

### No downgrade impact – credit rating agencies are unconcerned due to deficit cuts

Dan Weil 9-13 Credit Ratings Agencies More Sanguine About Debt Limit This Year Friday, 13 Sep 2013 08:28 AM http://www.moneynews.com/Economy/Credit-ratings-S-P-Congress/2013/09/13/id/525502#ixzz2emJAwe3T

As Congress and the White House fought over raising the debt ceiling in the summer of 2011, credit ratings agencies warned that a broad deficit reduction deal was necessary for the government to retain its triple-A credit rating. And Standard & Poor's ended up cutting its rating. But as Congress prepares to deal with the budget and another increase in the debt limit in the coming weeks, the credit rating agencies are a lot more congenial, The Hill reports. Their changed attitude stems from a shrinking budget deficit and perhaps a desire to avoid another fight with Congress, according to the news service. The Congressional Budget Office forecasts a deficit of $670 billion for the year ending Sept. 30, a sharp contraction from the $1.1 trillion deficit for fiscal 2012. "We expect the continuing [budget] resolution to pass, and we expect the debt ceiling to be raised, albeit not necessarily smoothly," says Marie Cavanaugh, managing director of S&P's sovereign ratings group, according to The Hill. "The kind of extreme brinkmanship one saw in 2011 didn't serve the economy. It probably didn't serve anyone. There's major incentive in our opinion to reach an agreement." Steven Hess, senior vice president at Moody's, agrees. "From a credit rating perspective, we are not too concerned about either [government funding or the debt ceiling]," he tells The Hill. "We don't foresee that these short-term issues are likely to change that [stable] outlook." The first downgrade from S&P didn't seem to have much of an impact on the U.S. economy or Treasurys. In fact, investors still rushed to Treasury bonds as a safe haven. "We did get downgraded, and the sky didn't fall. The sun came up the next morning, and rates did not go through the roof," says Brian Gardner, senior vice president for Washington research at Keefe, Bruyette and Woods. "We're kind of left with the question of, 'OK, does it really matter?'"

### 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.

### Congress gets involved but solves politics

Breyer 6 (Concurring Opinion, Justice Stephen Breyer & Anthony Kennedy, in part; SALIM AHMED HAMDAN, Petitioner v. DONALD H. RUMSFELD, SECRETARY OF DEFENSE, et al. No. 05-184 SUPREME COURT OF THE UNITED STATES 548 U.S. 557; 126 S. Ct. 2749; 165 L. Ed. 2d 723; 2006 U.S. LEXIS 5185; 19 Fla. L. Weekly Fed. S 452 March 28, 2006, Argued June 29, 2006, Decided; Lexis)

 [\*636] Justice Breyer, with whom Justice Kennedy, Justice Souter, and Justice Ginsburg join, concurring. The dissenters say that today's decision would "sorely hamper the President's ability to confront and defeat a new and deadly enemy." Post, at 705, 165 L. Ed. 2d, at 823 (opinion of Thomas, J.). They suggest that it undermines our Nation's ability to "preven[t] future attacks" of the grievous sort that we have already suffered. Post, at 724, 165 L. Ed. 2d, at 834-835. That claim leads me to state briefly what I believe the majority sets forth both explicitly and implicitly at greater length. The Court's conclusion ultimately rests upon a single ground: Congress has not issued the Executive a "blank check." Cf. Hamdi v. Rumsfeld, 542 U.S. 507, 536, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004) (plurality opinion). Indeed, Congress has denied the President the legislative authority to create military commissions of the kind at issue here. Nothing prevents the President from returning to Congress to seek the authority he believes necessary. Where, as here, no emergency prevents consultation with Congress, judicial insistence upon that consultation does not weaken our Nation's ability to deal with danger. To the contrary, that insistence strengthens the Nation's ability to determine--through democratic means-- how best to do so. The Constitution places its faith in those democratic means. Our Court today simply does the same. Justice Kennedy, with whom Justice Souter, Justice Ginsburg, and Justice Breyer join as to Parts I and II, concurring in part.

### 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.”