# 1AC – Fullerton Semis

### Adv 1

Contention 1: Afghanistan

Bagram’s the key sticking point in Bilateral Security Agreement negotiations -- Karzai’s using US hypocrisy on indefinite detention to justify prisoner releases --- collapses the deal and ensures U.S. withdrawal

Matthew Rosenberg 1-2, NYT, “Karzai Is Warned Over Release of Detainees”, ttp://www.nytimes.com/2014/01/03/world/middleeast/karzai.html?\_r=0

KABUL, Afghanistan — American senators visiting Kabul on Thursday intensified pressure on President Hamid Karzai to sign a long-term security deal with the United States. And responding to a new crisis between the allies this week, they warned the Afghan government away from plans to summarily release dozens of detainees accused of attacking American forces.¶ “If these releases go ahead, it will do irreparable damage to the relationship,” said Senator Lindsey Graham, Republican of South Carolina. “There will be a backlash in the U.S. Congress.”¶ Mr. Graham and Senator John McCain of Arizona, a fellow Republican, have been frequent visitors to Afghanistan since well before the United States invasion in 2001, and they are still among the most ardent congressional supporters of a continued American role in the country. But the two lawmakers, along with another visiting Republican, Senator John Barrasso of Wyoming, told reporters here on Thursday that they had expressed grave concerns to Mr. Karzai over a lunch meeting, warning that American will to stay involved with Afghanistan was dwindling, and that actions like the planned prisoner release were adding further strain.¶ American officials want the prisoners to be prosecuted and say the men are members of the Taliban or allied militant groups that are suspected in the deaths of 117 members of the Afghan or international security forces.¶ The men are being held near Bagram Air Base, in what was the main American prison in Afghanistan until it was transferred to the Afghan government last year.¶ That transfer of authority over detainees seemed to have settled one of the most corrosive disputes between Mr. Karzai and his American supporters, and it cleared the way for talks to secure a broader deal, known as the bilateral security agreement, that would allow for continued aid and a small American troop presence beyond 2014.¶ But the troop deal is now in limbo, derailed after its initial approval in November when Mr. Karzai said he would wait to sign it until after elections this coming spring. A long succession of American officials warned him that the delay could scuttle the entire deal, and billions of dollars in international aid. But Mr. Karzai then began issuing new demands, alienating some of his own Afghan supporters and infuriating American officials.¶ Now, the new flare-up over the potential prisoner release has revived the entire detainee issue, and the acrimony has escalated in a matter of days to the point where some of the staunchest American supporters of a continued troop presence in Afghanistan are openly warning that the deal may collapse if the Afghan government frees the prisoners without hearings.¶ Mr. Graham suggested as much on Thursday, though he made no direct threats. “It will be devastating to any future negotiations with the United States,” he said after the senators’ meeting with Mr. Karzai.¶ Though Mr. Graham does not speak for the Obama administration, he and Mr. McCain are among the dwindling number of elected officials in Washington who are willing to advocate for keeping the United States engaged in Afghanistan. If their support were to cool, it would probably bolster the position of those inside and outside the administration pushing for a complete withdrawal when the NATO combat mission ends this year.¶ Mr. McCain appeared to acknowledge as much, saying he had told Mr. Karzai of a recent poll by CNN and ORC International that found only 17 percent of Americans support the war.¶ Still, Mr. McCain was publicly more measured on the prisoner release issue. In his comments, he focused on what he described as the narrowing differences over the security deal, and said of the prisoners: “We’re going to have to see what happens, how it happens and what the situation is before we make a judgment. We can’t go any further in our comments.”¶ The releases were ordered by a commission Mr. Karzai appointed to review the cases of those detained at the prison next to Bagram Air Base, a coalition hub north of Kabul.¶ American officials believe freeing the men would be a violation of the prison deal struck in March. They say Mr. Karzai personally assured them no prisoners implicated in attacks on NATO-led troops would be set free without a trial when Afghanistan took control of the prison.¶ “If this agreement is dishonored, how can you expect future agreements to be honored?” Mr. Graham asked.¶ Figuring out where Mr. Karzai stands has proved more difficult. His office issued an ambiguous statement after his lunch with the American senators. “Afghanistan wants the innocent prisoners to be released based on Afghan laws, and criminals must be punished,” it said.¶ The Afghan commission reviewing the cases has said the prisoners — American officials say there are 88, the Afghan commission says 86 — are innocent, or that there is not enough evidence to justify holding them until trial. The men are among the 650 detainees the commission has ordered freed since beginning its work last year, and the remaining ones could begin being freed as early as Saturday.¶ The commission has also ordered more than 100 other detainees to stand trial, a fact that commission members have cited as evidence they are willing to keep people suspected of being killers in prison.¶ In a statement, Mr. Karzai’s office suggested that the Americans were being hypocritical on the issue of detainees. It was at the behest of American officials, after all, that a system of imprisoning battlefield detainees without trial was established in Afghanistan, over the criticism of many Afghan and international officials. And now, the office said, the Americans are holding themselves up as protectors of Afghan justice.¶ “President Karzai stressed that many arrests have been made in violation of Afghan laws since the Bagram prison was built,” said the statement from his office. As a result, “a number of our innocent countrymen are imprisoned there.”

Now’s key --- Afghanistan’s poised to release detainees --- failure to resolve the detention issue kills relations and prevents signing of the BSA

Kevin Sieff 1-2, Washington Post, “Afghan prisoner-release plan said to risk ‘backlash’ in U.S. Congress”, http://www.washingtonpost.com/world/asia\_pacific/afghan-prisoner-release-said-to-threaten-backlash-in-us-congress/2014/01/02/d836c9ba-73cd-11e3-bc6b-712d770c3715\_story.html

KABUL — The Afghan government’s plan to release 88 high-profile detainees without trial “would have an unbelievably negative impact” on U.S.-Afghan relations, according to two of Congress’s biggest advocates for an enduring American presence here.¶ During a visit to Kabul on Thursday, Republican Sens. John McCain (Ariz.) and Lindsey O. Graham (S.C.) said that although their differences with Afghan President Hamid Karzai were narrowing on many issues, the prisoner release threatens to undermine bilateral ties at a critical moment — as the deadline for a long-term security agreement looms.¶ In March, the United States transferred control of the Parwan prison next to Bagram air base — with its roughly 3,000 detainees — to the Afghan government. Since then, Graham said, the Afghans have released 560 detainees without trial, and “some of those have gone back to the fight.”¶ The Afghan government is now considering releasing 88 detainees who are of particular concern to the United States. Collectively, Graham said, they killed 60 members of the U.S.-led International Security Assistance Force (ISAF).¶ When the United States transferred control of the Parwan Detention Facility, it mandated that detainees with evidence against them be tried in Afghan courts. U.S. officials say that agreement is being violated, because the cases are being decided only by a review board, which lacks the judicial authority to make such rulings.¶ “Release of these individuals by the Afghan Review Board undermines Afghan rule of law, because the Afghan people do not get their day in court,” said Col. David Lapan, a spokesman for ISAF. “Based on the evidence and the risk these individuals pose to the peace and security of the Afghan people, and in accordance with Afghan law, their cases should be addressed by the formal Afghan justice system.”¶ U.S. officials said last year that they understood the risks involved in handing over control of the prison — the transfer was considered a key part of the transition process — as the United States withdraws its troops and shutters bases. But although they assumed that a number of prisoners would be released, they expected the Afghan government to at least follow due process, adjudicating cases through Afghan courts, which the United States has spent a decade trying to bolster.¶ The prisoner release, Graham said, would lead to a “backlash in the U.S. Congress,” which would need to appropriate funds for any long-term American commitment in Afghanistan.¶ “Unless we resolve these differences, the United States of America has no choice but to not continue with its commitment,” McCain said.¶ The possibility that the 88 prisoners will be released without trial is particularly frustrating to U.S. officials because they had sent evidence to the review board that might have yielded convictions. That evidence, apparently, is being ignored.¶ Asked about the issue, Afghan officials said without elaborating that the U.S. military, too, was keeping Afghan detainees without trial at Parwan.¶ “It is a clear violation of all agreements and absolutely illegal,” said Aimal Faizi, a spokesman for Karzai. “They want us to close our eyes on it, but it is unacceptable for us.”¶ When control of the prison was transferred last year, U.S. officials deemed 40 detainees as “enduring security threats” whose release could destabilize the country. The Afghan government agreed not to release them until the end of 2014.¶ Although none of the 88 detainees slated for release were labeled “enduring security threats,” Graham said he worries that if Afghan leaders are willing to carry out one unlawful prisoner release, they could do so again when the stakes are higher.¶ “If this agreement is dishonored, how can you expect future agreements to be honored?” he asked.¶ McCain and Graham said there is an urgent need to resolve the prisoner dispute, as well as other points of contention with Karzai, so that the bilateral security agreement could be signed. They did not mention a firm deadline for signing the accord, but they noted that Congress needs to approve a budget — including expenditures in Afghanistan — by Jan. 15 and that President Obama’s State of the Union speech is scheduled for Jan. 21.¶ “What is [Obama] going to tell the American people about Afghanistan if there is no bilateral agreement signed?” Graham said.

Resolving US detention of third-country nationals solves --- it’s central to the BSA dispute

Christopher Rogers 13, Program Officer for the Regional Policy Initiative on Afghanistan & Pakistan at Open Society Foundations, "Guest Post: Afghanistan Post-2014: Closing Bagram", November 14, justsecurity.org/2013/11/14/guest-post-afghanistan-post-2014-closing-bagram/

With the U.S. combat role in Afghanistan coming to an end, and the Bilateral Security Agreement now under review, officials are under pressure to do something many observers may believe was already done: end U.S. detentions at the Detention Facility in Parwan (DFIP), or Bagram. Though the U.S. government recently handed over 3,000 Afghan detainees, more than 60 third country nationals, or TCNs, remain in U.S. custody. U.S. officials have stated that resolving their cases is their goal, and that December 2014 is the deadline. But right now the United States will likely fail to do so, possibly leaving detainees in indefinite limbo, and raising serious legal and political concerns for the U.S. presence in Afghanistan post-2014.¶ Over the years, many have criticized U.S. detentions as inconsistent with applicable international human rights law and for failing to provide the requisite level of due process—all of which will take on new urgency as the United States brings an end to its combat mission in 2014. So too will concern over the legality of U.S. detentions under Afghan law, which has thus far received too little attention. Such differences reflect deeper disagreement over post-2014 U.S. engagement.¶ Just last week, U.S. officials criticized the Afghan government’s recommendation to release many transferred detainees because of lack of evidence to prosecute or continue their detention under Afghan law. As outlined in a report last year by Open Society Foundations, an Afghan internment regime modeled on the U.S. system was initially proposed as part of the DFIP transfer, but appeared to violate several Afghan constitutional guarantees. The dispute over the legality of the detention regime under Afghan law eventually led to a suspension of the Bagram handover and the Afghan government deciding against formally adopting such a regime.¶ In consenting to U.S. detentions at the DFIP, the Afghan government has already been in violation of its own legal obligations under Afghan domestic law and constitution as well international human rights law. With the United States bringing an end to its combat operations, and an Afghan presidential election on the horizon, Afghan leaders will likely view ongoing U.S. detentions as legally untenable and a political liability, which could jeopardize U.S.-Afghan relations at a critical time.¶ This is a problem that is entirely avoidable if concerted action is taken now and over the next year to resolve TCN cases. The majority of the approximately 60 TCNs currently held in limbo at Bagram are Pakistani. A recent report by the NGO Justice Project Pakistan (JPP) reveals how the U.S. and Pakistani have failed to put in place the policies, protocols, and political capital necessary to resolve these cases by the end of combat operations. As JPP’s report documents, even after the handover of the DFIP to the Afghans in March 2013, progress on TCNs has been excruciatingly slow. Six Pakistani detainees have been slated for repatriation to Pakistan for almost a year, yet remain in detention, a clear violation of their rights under IHL and IHRL. Negotiation over the fate of dozens more shows little signs of progress.¶ There are several specific steps that the United States can take to ensure it closes down Bagram by the time it ends combat operations next year. It should commit to a public timeline to resolve detainees’ cases and standardize the terms of repatriation, which could greatly expedite the negotiation process and make the U.S. and other governments more accountable for progress.¶ More sustained, strategic attention is also needed at higher levels within the U.S. government. The Special Representative on Afghanistan and Pakistan should press high-level Pakistani officials to commit to an agreed upon timetable for repatriation negotiations. Doing so would compel higher-level Pakistani officials to take ownership over the issue and send a signal down the chain of the Pakistani government. The recently appointed Defense Department Special Envoy for Guantanamo Closure, who will also be responsible for transferring TCNs held in Afghanistan, could press for higher-level engagement among the United States and the detainees’ home countries.¶ Ongoing U.S. detention of TCNs at the DFIP ultimately points to persistent uncertainty regarding U.S. engagement in Afghanistan post-2014 and the inescapable challenge of reconciling U.S. interests and influence with Afghan law and sovereignty. What will be the scope of U.S. detention and targeting operations, and what will be the legal authority under international, U.S., and Afghan law for such operations? What does the end of U.S. combat operations mean for U.S. counter-terrorism operations in Afghanistan? How will U.S. operations be reconciled with Afghan sovereignty and the Afghan government’s own legal obligations?¶ Recent reports indicate that the BSA negotiations hit an impasse in part due to dispute over U.S. authority to conduct unilateral operations after 2014. In a little-noticed operation in September, U.S. forces captured Pakistani Taliban commander Latifullah Mehsud. Not only did the operation occur without Afghan sign-off (President Karzai strongly objected, calling it a violation of Afghan law and sovereignty) but Latifullah was reportedly forcibly taken from Afghan intelligence officials’ custody, and transferred to U.S. detention at Bagram. Though the BSA will now reportedly require the U.S. to “consult” Afghan authorities before launching operations, Latif’s capture and the political row it caused show that despite purported agreements, there are fundamental differences over the permissible scope and legality of U.S. detentions and military operations.¶ Unfortunately, ambiguity around these questions has often suited the United States.—and at times, Afghanistan—allowing officials to paper over differences, as has happened time and again with Bagram. Whatever language is agreed to in the BSA, the United States and Afghanistan should make clear how all aspects of U.S. engagement post-2014 will be consistent not only with U.S. legal obligations, but also with Afghan law and international legal obligations.¶ Doing so, and bringing an end to the U.S. war in Afghanistan, will be impossible without resolving TCN cases and ending U.S. detentions at Bagram. If concerted action is taken now, the United States can do so, and make sure Bagram does not become an even greater legal and political challenge after 2014.

BSA failure collapses Afghan and regional stability

Anubhav Gupta 14, Asia Society, “2014: South Asia's Make or Break Year”, 1-7, http://asiasociety.org/blog/asia/2014-south-asias-make-or-break-year

This year could define the fate of the region for years to come. The leaders of India, Pakistan, Afghanistan, and the United States have an opportunity to secure a more stable future or risk the outbreak of greater conflict. As is often the case in South Asia, success is far from certain. Before the United States draws down its military presence in Afghanistan, it must redouble its diplomatic engagement with South Asia and pursue a regional strategy to enhance stability.¶ The Tough Road Ahead for India, Pakistan, and Afghanistan¶ With presidential elections and the end of NATO’s combat mission coming up, 2014 is perhaps most critical for Afghanistan. Unfortunately, there remains uncertainty on both fronts. After months of negotiating, the U.S. and Afghanistan finally brokered a bilateral security agreement in November, providing a legal framework for a small number of U.S. troops to remain in the country post-2014 to train, advise, and support Afghan forces as well as carry out some counterterrorism operations.¶ Shortly after the agreement was finalized, President Hamid Karzai stymied U.S. plans by deciding to delay signing the agreement until after the 2014 elections or until the U.S. agrees to certain preconditions it finds unacceptable. Though U.S. troops have largely handed off security responsibilities to the Afghan National Security Forces, there is a general consensus that a small contingent of U.S. troops is necessary to ensure stability. Military planning for the troop draw down and a limited presence post-2014 requires time. If this issue is not resolved soon, the U.S. could withdraw all troops in 2014, which could be calamitous for stability in the country.

The impact is Central and Pakistan instability --- goes nuclear

Lisa Curtis 13, Senior Research Fellow, Heritage Foundation, “Nato's total withdrawal from Afghanistan could rock Asia stability”, 11-18 http://www.heritage.org/research/commentary/2013/11/natos-total-withdrawal-from-afghanistan-could-rock-asia-stability

Analysts warn that the recent increase in al-Qaeda violence in Iraq should serve as a warning that failure to maintain a residual force in Afghanistan would increase instability throughout South and Central Asia. ¶ If the Taliban were able to re-assert power in Afghanistan, it would embolden militants in Pakistan and increase the risk of extremists gaining access to Islamabad’s nuclear weapons. ¶ An absence of international troops in Afghanistan post-2014 would also leave the door open for the Islamic Movement of Uzbekistan to gain a foothold in northern Afghanistan, from where it could launch operations into Central Asia. ¶ ‘We cannot risk allowing the Taliban to retake control of Afghanistan,’ said Ileana Ros-Lehtinen, chair of the US’s House Subcommittee on the Middle East and North Africa, at a congressional hearing in October 2013. ‘This could also lead to al-Qaeda regrouping and stepping up terrorist activities using its safe havens in Pakistan as a staging post, posing a real danger to our national security interests and those of our allies in the region.’ ¶ The threat is most acute for Pakistan, a nuclear-armed nation of 180 million, where there is real concern over nuclear weapons falling into the hands of extremists. Pakistan’s nuclear weapons arsenal is one of the fastest growing in the world today. -It has around 100 warheads. ¶ The traditional Loya Jirga (assembly of tribal elders) will meet in Kabul (November 18 – 21) to decide whether to approve the BSA. If the Jirga is in favour and the BSA is finalised, the US and its Nato partners are likely to leave an international force of about 10,000 – 15,000 troops to help fight extremist elements and train and advise the Afghan National Security Forces. ¶ The US decision on the number of troops will be watched closely by Afghanistan’s neighbours as it will determine the extent to which various Islamist extremist groups are able to thrive in Afghanistan and use it as a base from which to export their ideology and violence. ¶ A Taliban victory in Afghanistan would have a blowback effect in Pakistan and embolden terrorist elements there. ¶ There are a variety of terrorist groups based in Pakistan’s tribal areas, including the Haqqani network, Tehrik-e-Taliban Pakistan (TTP), and the Islamic Movement of Uzbekistan (IMU), all of which have links to the Taliban and al-Qaeda. ¶ Fred Kagan, of the US-based think tank the American Enterprise Institute, said at the congressional hearing that an absence of international troops in Afghanistan post-2014 would leave the door open for Haqqani militants to re-establish their bases in eastern Afghanistan and for the IMU to gain a foothold in northern Afghanistan. ¶ There is concern that the IMU would use its base in Afghanistan to launch operations into Central Asian states, particularly Tajikistan and Uzbekistan. ¶ Russia also is concerned that a complete withdrawal of US and Nato forces from Afghanistan could embolden jihadist elements in Afghanistan that would, in turn, export Islamist ideology and violence to the north.

Central Asia escalates globally

Hooman **Peimani 2,** Senior Research Fellow at the Centre for International Cooperation and Security, Senior International Relations consultant with the United Nations in Geneva, PhD in International Relations, *Failed Transition, Bleak Future?,* p. 122-7

In the short run, the prospect for peace is not very great for the countries of the Caucasus and Central Asia. Many influences have paved the way for the rise of wars in different forms, ranging from civil wars to regional wars. The situation is ripe, and will remain so, for instability and war for a predictably long period of time. Only a drastic change in the state of affairs in the two regions could remove the possibility of such destructive developments, which is a highly unrealistic scenario in the near future. **The outbreak of any type of military conflict for any length of time will be disastrous** for the Caucasians and Central Asians, who have experienced sharp declines in their living standards since independence. Their limited resources and insignificant foreign assistance have prolonged the transitional period from the old Soviet social and economic system to a form of free-enterprise economy with its corresponding social system. Apart from the tragic cost of any military conflict in human lives, such an event will deplete their scarce resources and perpetuate the existing agonizing limbo between the two economic and social systems. In the absence of adequate resources to complete the already long transitional process, this limbo may well become their own economic and social system for an unpredictable period of time.¶ The impact of war and instability in the Caucasus or Central Asia **will not be confined to the countries immediately affected.** **Any local conflict could escalate and expand to its neighboring countries, only to destabilize its entire respective region.** Furthermore, certain countries with stakes in the stability of Central Asia and/or the Caucasus could well be dragged into such a conflict, intentionally or unintentionally. Regardless of the form or extent of their intervention in a future major war, **the sheer act of intervention could further escalate the war, increase the human suffering, and plant the seeds for its further escalation.** Needless to say, this could only further contribute to the devastation of all parties involved and especially of the “hosting” CA or Caucasian countries. In fact, certain factors could even kindle a military confrontation between and among the five regional and nonregional states with long-term interests in Central Asia and the Caucasus. This scenario could potentially destabilize large parts of Asia and Europe. The geographical location of the two regions as a link between Asia and Europe— shared to different extents by Iran, Turkey, and Russia— creates a “natural” geographical context for the expansion of any regional war involving those states to other parts of Asia and Europe. Added to this, Iran, China, Turkey, Russia, and the United States all have ties and influence in parts of Asia and Europe. They are also members of regional organizations such as the Economic Cooperation Organization (Iran and Turkey) or military organizations such as NATO (Turkey and the United States). These geographical, political, economic and military ties could help expand any conflict in which they are involved.

Pakistan instability causes loose nukes and Indian intervention --- goes nuclear

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PhD in public and international affairs from Princeton, Apr 27 2005, “Dealing with the Collapse of a Nuclear-Armed State: The Cases of North Korea and Pakistan,” http://www.princeton.edu/~ppns/papers/ohanlon.pdf

Were Pakistan to collapse, it is unclear what the United States and like-minded states would or should do. As with North Korea, it is highly unlikely that “surgical strikes” to destroy the nuclear weapons could be conducted before extremists could make a grab at them. The United States probably would not know their location – at a minimum, scores of sites controlled by Special Forces or elite Army units would be presumed candidates – and no Pakistani government would likely help external forces with targeting information. The chances of learning the locations would probably be greater than in the North Korean case, given the greater openness of Pakistani society and its ties with the outside world; but U.S.-Pakistani military cooperation, cut off for a decade in the 1990s, is still quite modest, and the likelihood that Washington would be provided such information or otherwise obtain it should be considered small.¶ If a surgical strike, series of surgical strikes, or commando-style raids were not possible, the only option would be to try to restore order before the weapons could be taken by extremists and transferred to terrorists. The United States and other outside powers might, for example, respond to a request by the Pakistani government to help restore order. Given the embarrassment associated with requesting such outside help, the Pakistani government might delay asking until quite late, thus complicating an already challenging operation. If the international community could act fast enough, it might help defeat an insurrection. Another option would be to protect Pakistan’s borders, therefore making it harder to sneak nuclear weapons out of the country, while only providing technical support to the Pakistani armed forces as they tried to quell the insurrection. Given the enormous stakes, the United States would literally have to do anything it could to prevent nuclear weapons from getting into the wrong hands.¶ India would, of course, have a strong incentive to ensure the security of Pakistan’s nuclear weapons. It also would have the advantage of proximity; it could undoubtedly mount a large response within a week, but its role would be complicated to say the least. In the case of a dissolved Pakistani state, India likely would not hesitate to intervene; however, in the more probable scenario in which Pakistan were fraying but not yet collapsed, India’s intervention could unify Pakistan’s factions against the invader, even leading to the deliberate use of Pakistani weapons against India. In such a scenario, with Pakistan’s territorial integrity and sovereignty on the line and its weapons put into a “use or lose” state by the approach of the Indian Army, nuclear dangers have long been considered to run very high.

Indo-pak causes extinction

Greg Chaffin 11, Research Assistant at Foreign Policy in Focus, July 8, 2011, “Reorienting U.S. Security Strategy in South Asia,” online: http://www.fpif.org/articles/reorienting\_us\_security\_strategy\_in\_south\_asia

The greatest threat to regional security (although curiously not at the top of most lists of U.S. regional concerns) is the possibility that increased India-Pakistan tension will erupt into all-out warthat could quickly escalate into a nuclear exchange. Indeed, in just the past two decades, the two neighbors have come perilously close to war on several occasions. India and Pakistan remain the most likely belligerents in the world to engage in nuclear war. Due to an Indian preponderance of conventional forces, Pakistan would have a strong incentive to use its nuclear arsenal very early on before a routing of its military installations and weaker conventional forces. In the event of conflict, Pakistan’s only chance of survival would be the early use of its nuclear arsenal to inflict unacceptable damage to Indian military and (much more likely) civilian targets. By raising the stakes to unacceptable levels, Pakistan would hope that India would step away from the brink. However, it is equally likely that India would respond in kind, with escalation ensuing. Neither state possesses tactical nuclear weapons, but both possess scores of city-sized bombs like those used on Hiroshima and Nagasaki. Furthermore, as more damage was inflicted (or as the result of a decapitating strike), command and control elements would be disabled, leaving individual commanders to respondin an environment increasingly clouded by the fog of war and decreasing the likelihood that either government (what would be left of them) would be able to guarantee that their forces would follow a negotiated settlement or phased reduction in hostilities. As a result any suchconflict would likely continue to escalateuntil one side incurred an unacceptable or wholly debilitating level of injury or exhausted its nuclear arsenal. A nuclear conflict in the subcontinentwould havedisastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussionsof a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union wouldresult in acatastrophic and prolonged nuclear winter,which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead toglobal cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval. Although the likelihood of this doomsday scenario remains relatively low, the consequences are dire enough to warrant greater U.S. and international attention. Furthermore, due to the ongoing conflict over Kashmir and the deep animus held between India and Pakistan, it might not take much to set them off. Indeed, following the successful U.S. raid on bin Laden’s compound, several members of India’s security apparatus along with conservative politicians have argued that India should emulate the SEAL Team Six raid and launch their own cross-border incursions to nab or kill anti-Indian terrorists, either preemptively or after the fact. Such provocative action could very well lead to all-out war between the two that couldquickly escalate.

### Adv 2

Contention 2: Terrorism

Commissions are the only way to prevent the inevitable release of terrorists held at Bagram

Robert Chesney 12/19, Charles I. Francis Professor in Law at the University of Texas School of Law, "Unwinding Detention in Afghanistan: Are Military Commissions in United States the Solution?", 2013, www.lawfareblog.com/2013/12/unwinding-detention-in-afghanistan-are-military-commissions-in-the-united-states-the-solution/#.UsuEsfRDsnE

The Washington Post had an important story yesterday involving the future of the 53 military detainees who remain in U.S. custody in Afghanistan.¶ Why not just stick with the status quo—i.e., military detention under color of the law of armed conflict? Primarily because the clock is ticking on our practical capacity to maintain the status quo. As readers of this site know well, the United States already has given up control over Afghan citizens held in our custody there, and recently have confined our detention ops there to a rump group of non-Afghans (some captured in Afghanistan, others elsewhere). Our ability to sustain that lingering detention system into the future is dubious, however. A host of factors cut against it. Increasing resistance from the Afghans. Renewed domestic litigation pressure (in the form of revived and increasingly-plausible attempts to establish habeas review as the drawdown proceeds). The potential for an outright withdrawal of the minimum necessary U.S. forces. Some or all of these factors will, sooner or later, force our hand. It happened in Iraq, and will happen here too; as I’ve written, overseas detention facilities made possible by overt combat deployments are not sustainable over the long term.¶ Why not just wait and see what happens? Because we need to avoid a repeat of the “Daqduq Scenario”—i.e., a situation in which we have custody of a person who may have American blood on their hands, but we end up allowing the person to go free by failing to take timely action to secure a sustainable long-term detention option while it is still within reach. See here for more on the Daqduq mess. This is not at all to say that all our current detainees in Afghanistan fit this model, of course. Perhaps many or even most do not; I’m in no position to say. But if any of them do—and the Post story suggests that this is the case for Irek Hamidullan, a Russian who allegedly attacked US troops in 2009—it is important to act promptly to deal with them, before our options dwindle further.¶ Ok, so what does this story suggest the administration has in mind? For some detainees, the goal is to secure repatriation agreements with the person’s country of origin, backed by appropriate security assurances. But for the ones the US Government wants to ensure remain incapacitated, or punished for specific criminal acts? Or more to the point, perhaps, the ones whose country of origin will passively or even actively resist having sent back to them? An alternative solution is needed. Which brings us to the trial balloon embedded in the Post article: a compromise of sorts involving trial by military commission rather than civilian court, to occur within the United States rather than at GTMO.¶ Wait, why not civilian prosecution? Part of the answer, for better or worse, must be the radioactive politics of bringing military detainees into the civilian criminal justice system (in my view it is unjustified to be so alarmed about that prospect as a general matter, but there it is). But that is not likely all there is to it. Insofar as a given case involves allegations of illegal conduct in a war zone directed at U.S. forces deployed into combat, the military has far more substantial equities than in a run-of-the-mill terrorism case. That is the sort of consideration that might favor selecting the commission forum even when the civilian alternative might be a plausible alternative. And it is possible, too, that the relevant evidence to be used at trial could be of a sort that would likely be admissible in a commission proceeding but not in a civilian trial subject to the Federal Rules of Evidence, for example because of differences in the rules of authentication. Finally, it may also be that this is the path of least-interagency-resistance, enabling DOD or CIA buy-in that might be harder to obtain with a civilian prosecution alternative. [UPDATE: Marty Lederman has a good post here pointing out that there is an interesting question as to what the available charge(s) might be in a military commission, among other things.]¶ Ok, perhaps, but why not do it at GTMO, where we have spent all this money to establish military commissions already? Simple: Congress has made it very hard to remove people from GTMO once there (something that change to a degree soon), and impossible to remove to the United States (something that is unlikely to change soon). And, of course, this administration wants nothing to do with bringing new detainees into GTMO at any rate.¶ Then why not hold the commission proceeding in Afghanistan? Several reasons. First, it might be too much for the Afghan government to swallow, with real costs on larger negotiations such as the still-unsigned security agreement. Second, it does not solve the problem of where the person would be over the long term, even if convicted. (All that said….this approach would circumvent the objection that it is too risky to bring the person to the US for trial in that it might be hard to remove the person from the US if on our territory and then acquitted or given a short sentence).¶ Does this solve all problems? No, no more so than the existence of commissions at GTMO has solved all problems there. This is a way to reduce to the smallest number possible the set of persons who cannot plausibly be prosecuted, but who are too dangerous to release even with security assurances from a host country. We should maximize it, but we should not assume it cures all either.

Many TCNs represent a significant terrorist threat

Sieff 13 Kevin Sieff – Washington Post. "The Second Guantanamo" Terrorist Detention Facility in Afghanistan August 5, 2013, www.matthewaid.com/post/57417211293/the-second-guantanamo-terrorist-detention-facility-in

The United States holds 67 non-Afghan prisoners there, including some described as hardened al-Qaeda operatives seized from around the world in the months after the Sept. 11, 2001, attacks. More than a decade later, they’re still kept in the shadowy facility at Bagram air base outside Kabul.¶ Closing the facility presents many of the same problems the Obama administration has encountered in its attempt to close down the Guantanamo Bay detention center in Cuba. Some U.S. officials argue that Bagram’s resolution is even more complicated — and more urgent. The U.S. government transferred the prison’s Afghan inmates to local authorities this year. But figuring out what to do with the foreign prisoners is proving to be an even bigger hurdle to shutting the American jail.¶ “Is there a plan? No. Is there a desire to close the facility? Yes,” Gen. Joseph F. Dunford Jr., the top U.S. general in Afghanistan, said in an interview.¶ With the United States’ nearly 12-year fight in Afghanistan due to end next year, the State Department and the Pentagon have been unable to come up with a strategy for the trial or repatriation of men from more than a dozen countries held at Bagram. Meanwhile, the population in the prison is growing because of the apprehension of foreign fighters in joint U.S.-Afghan Special Forces operations. The newest detainee was sent to Bagram last month.¶ None of the prisoners have been formally tried. Many have been cleared for release by informal military review boards, but most of those were never freed.¶ Because the detention center is on Afghan soil, U.S. forces are technically obliged to shutter it when their combat role here formally ends in December 2014. But some U.S. officials and politicians say that would pose an enormous security risk.¶ The best solution, they say, is to keep the facility open under U.S. oversight, possibly for decades. It is not at all clear, though, that the Afghans will permit that.¶ As at Guantanamo, U.S. officials have deemed a portion of the Bagram prisoners too much of a threat to send home to countries that can’t or won’t keep them locked up. Officials worry that it might not be possible to convict the men in U.S. courts, because evidence could be classified or seen as weak.¶ “They’re too dangerous to let go,” said Sen. Lindsey O. Graham (R-S.C.), a reservist Air Force lawyer who was appointed last month by Dunford to consider solutions to the detention dilemma.¶ “We’re a nation without an available jail in the war on terror, and we need to fix that,” Graham said in an interview.¶ Keeping a U.S.-run prison in Afghanistan beyond 2014 would require the permission of Afghan President Hamid Karzai, who has staunchly resisted American-run detention facilities. The U.S. government has already hit significant stumbling blocks in negotiating a long-term bilateral security agreement with the Afghans.¶ The Afghan government this year quietly agreed to allow the United States to continue operating its detention center at Bagram for “third-country nationals” — mostly Pakistanis — in exchange for handing over the Afghan prisoners, who are now held in a separate facility. But Afghan officials, including Karzai, assumed the United States would relinquish its prison by 2014.¶ Only a handful of the detainees have been repatriated, in part because of Pakistan’s reluctance to provide security guarantees required under U.S. legislation. U.S. law also mandates that before a prisoner’s release, the Pentagon must assess “the threat posed by the individual and the security environment of the country to which the individual is to be transferred.” Such studies can take many months.¶ “For the past decade, the U.S. has been able to hide Bagram behind the shield of ongoing military conflict in Afghanistan,” said Tina M. Foster, director of the International Justice Network, which represents more than 30 detainees. “What’s happening now is that the shield is disappearing and what’s left is the legacy of the second Guantanamo, which is going to last beyond the Afghan war.”¶ Lawyers such as Foster who represent clients at both Bagram and Guantanamo describe the situation at the Afghan prison as far more opaque. For years, there were widespread allegations of torture at Bagram, many of them later borne out in military reports that were made public. U.S. officials say the conditions have markedly improved. Although attorneys say they haven’t heard the same accusations from detainees since 2008, they also say they have a limited view into the facility.¶ Unlike at Guantanamo, the detainees in Afghanistan have no right to habeas corpus, a point Foster is arguing in the U.S. Court of Appeals for the District of Columbia Circuit.¶ Pentagon officials say they expect most detainees to be transferred to their home countries “once those countries have provided us assurances that they will take appropriate steps to mitigate the threat these individuals pose,” said Lt. Col. Todd Breasseale, a Pentagon spokesman.¶ “In some cases, we may seek to have individuals prosecuted for war crimes or violations of U.S. or Afghan law,” he added.¶ But the process of repatriation has proved extremely slow and complicated. As for prosecutions, none of the detainees captured abroad since the Sept. 11 attacks have been tried in military commissions in the United States. And some detainees can’t be tried by the Afghans because they didn’t violate Afghan law.¶ Graham said it would be foolish to assume that all the detainees could be sent to their home countries or tried before the end of next year.¶ Last year, some of the first Pakistani detainees were repatriated after a year of fraught negotiations. According to their attorneys, one was a 14-year-old boy picked up in a U.S.-led night operation and the other was an employee of an Afghan military base whose colleagues had turned him in after a personal dispute.¶ “If it takes a year to release those guys, whose innocence was never in dispute, what does it say about the prospect for the others?” said Sarah Belal, the lead attorney for Justice Project Pakistan, which has advocated for the repatriation of Pakistani detainees at Bagram.¶ Until at least 2007, the United States snatched high-level terrorism suspects in Pakistan and brought them across the Afghan border and, eventually, to Bagram.¶ Other detainees were kidnapped across the Middle East, Asia and Europe and taken to the Afghan facility in the early years of the past decade.¶ Amin al-Bakri, a Yemeni citizen, was seized by U.S. agents while he was on a business trip in Thailand. Fadi al-Maqaleh disappeared from his home in Yemen in 2004, when he was a high school student, and later turned up at Bagram.¶ Both Yemenis have been cleared for release by military detainee review boards on three occasions, beginning in 2010, according to Pentagon records. But the Obama administration has declined to repatriate detainees to Yemen because of concerns that country might release potential terrorists without a serious trial.¶ “Amin is surely not charged with anything, and there is not a single evidence that might keep him in prison all this time,” Khaled al-Bakri, Amin’s brother, said in a phone interview. The Americans “are denying him to see his children and wasting the best days of his youth in prison.”¶ Graham said the United States should focus on securing a guarantee from the Afghan government that the Bagram detention facility will remain open after the U.S. war effort formally ends.¶ “Radical jihadists are going to flow to Afghanistan after 2014,” Graham said. “We need a system there that works.”¶ U.S. officials in Afghanistan were candid about how much work remains to be done — regardless of whether Bagram is closed or kept open beyond 2014.¶ “We clearly need a transition plan on that issue,” Dunford said.

Historically true – TCNs in Bagram include top Al-Qaeda members

Clark 13 Kate Clark - Senior Analyst for Afghanistan Analysts Network, an independent non-profit research organisation, "The ‘Other Guantanamo’ 7: Foreigners in limbo at Bagram," October 3, 2013, www.afghanistan-analysts.org/the-other-guantanamo-7-foreigners-in-limbo-at-bagram

However, among the probably innocent, there are undoubtedly fighters and commanders who came to Afghanistan to wage war, although without more information about the detainees it is difficult to say much more than this. One piece of evidence pointing to senior al-Qaida fighters being held in Bagram, at least historically, was the break out in 2005 (read here). The escapees were a Kuwaiti, Omar al-Faruq, a Libyan Abu Yahya al-Libi, two of the highest-ranked al-Qaeda members ever captured, a Saudi, Muhammad Jafar Jamal al-Kahtani and a Syrian, Abdullah Al-Shami. All four are now dead or recaptured.

The threat is high

Xinhua 12-19, 2013, http://news.xinhuanet.com/english/world/2013-12/19/c\_132981320.htm

KABUL, Dec. 19 (Xinhua) -- Terrorism and extremism remained major threats to post-Taliban Afghanistan and the stability of the region, Dr. Rangin Dadfar Spanta, the Afghan national security advisor, said on Thursday, calling for collective efforts to overcome the menace.¶ "Despite the huge sacrifices by Afghans and other nations over the past decade, terrorism and extremism have remained major threats to the region and the world at large," Spanta said at Afghanistan-Central Asia Dialogue-I, a regional conference, held here.

Afghan terrorist base spills over globally

AEI 12, American Enterprise Institute, 10/17/12, Why we must win in Afghanistan, http://www.aei.org/issue/foreign-and-defense-policy/why-we-must-win-in-afghanistan/

The cost of the war must be balanced against both the benefits of success and the likely costs of failure. The benefits of success, in this case, are largely preventive — that is, they would prevent the extremely damaging consequences of failure. One could argue, in truth, that our problems with Pakistan could be materially eased if a stable and solid Afghanistan stripped Islamabad of the ability to export its violent Islamist proxies across the Durand Line rather than dealing with them itself. Securing Afghanistan would also help solidify our relationship with India, our key strategic partner on the Asian continent and a vital counterbalance to China. But those positive outcomes are less important than the need to prevent al Qaeda and its affiliates from regaining what had been their capital and crown jewel in the context of their global resurgence. The likely costs of failure in Afghanistan are the re-establishment of al Qaeda operational bases from which more attacks on the US and our allies will be planned and conducted, the further strengthening of the global jihadist narrative that terrorism in the service of violent Islamism is an inevitably successful means to defeat superpowers, and the destruction of what little remains of American credibility in the world. Those costs are very high — much higher, in fact, than the likely costs of remaining to finish the job at the force levels likely necessary to do so.

Afghan safe haven is the key staging point for large-scale attack

Jim Arkedis 9, is the director of the National Security Project at the Progressive Policy Institute. He was a counterterrorism analyst with the Naval Criminal Investigative Service from 2002 to 2007. OCTOBER 23, “Why Al Qaeda Wants a Safe Haven”, http://www.foreignpolicy.com/articles/2009/10/23/got\_safe\_haven

As deliberations about the Obama administration's strategic direction in Afghanistan unfold, the White House is weighing whether al Qaeda, in fact, needs an Afghan safe haven -- an expanse of land under the protection of the Taliban -- to reconstitute its capability to attack the United States. Many noted scholars doubt it. In a recent Washington Post op-ed, Council on Foreign Relations President Richard Haass bluntly stated, "Al Qaeda does not require Afghan real estate to constitute a regional or global threat." He's wrong. Although the group has been significantly weakened since late 2001, the only chance al Qaeda has of rebuilding its capability to conduct a large-scale terrorist operation against the United States is under the Taliban's umbrella of protection. Objections like Haass's are rooted in the following arguments: that terrorists don't need physical space because they can plot online; that the London and Madrid bombings prove deadly attacks can be planned in restrictive, Western, urban locations under the noses of local security services; and that denying terrorists one safe haven will simply compel them to move to another lawless region. I spent five years as a counterterrorism analyst for the Pentagon and rigorously studied plots from Madrid to London to 9/11. The above arguments may have merit in a piecemeal or abstract sense, but fall apart in the specific case of what we all dread: a large-scale, al Qaeda operation aimed at the United States. It is certainly true, for example, that terrorist groups can accomplish much online. Individuals can maintain contact with groups via chat rooms, money can be transferred over the Web (if done with extreme caution), and plotters can download items like instruction manuals for bomb-making, photographs of potential targets, and even blueprints for particular buildings. But all the e-mail accounts, chat rooms, and social media available will never account for the human touch. There is simply no substitute for the trust and confidence built by physically meeting, jointly conceiving, and then training together for a large-scale, complex operation on the other side of the world. As the 9/11 plot developed, mastermind Khalid Sheik Mohammed (KSM) put the future operatives through a series of training courses along the Afghanistan-Pakistan border. Courses included physical fitness, firearms, close combat, Western culture, and English language. The 9/11 Commission report notes the extreme physical and mental demands KSM put on the participants -- even if the operation didn't require extensive firearms usage, KSM would have wanted the operatives to be proficient under intense pressure, should the need arise. Juxtapose that with an online learning environment. While you can no doubt learn some amazing things from online courses, it is far preferable to have a dedicated professor physically present to supervise students and monitor their progress. Or think of it another way: You wouldn't want the U.S. Marine Corps to send recruits into battle without training under a drill instructor, would you? KSM was somewhere between a professor and sergeant. Second, critics argue that the Madrid bombings of 2004 (which killed 191) as well those in London a year later (which killed 56) were largely -- though not entirely -- conceived, prepared, and executed within their respective countries, thus obviating the need for a safe haven. True enough. However, unlike 9/11 (which killed nearly 3,000), those plots' successes were possible due to their simple concept and small scale. In both cities, the playbook was essentially the same: Four to eight individuals had to find a safe house, download bomb-making instructions, purchase explosive agents, assemble the devices, and deliver charges to the attack points. Without trivializing the tragic loss of life in the European attacks, building those explosive devices was akin to conducting a difficult high-school chemistry experiment. On that scale, 9/11 was like constructing a nuclear warhead. In every sense, it was a grander vision, involving 20 highly skilled operatives infiltrating the U.S. homeland, who conducted a series of hijackings and targeted four national landmarks with enough know-how, preparation, and contingency plans to be success. In one instance, KSM taught the 9/11 operatives to shoot a rifle from the back of a moving motorcycle, just in case. You can't do that in someone's bedroom -- you need space, time, and the ability to work without worrying that the cops are listening in. In other words, as a plot grows in number of operatives, scale of target, distance from base, and logistical complexity, so does the need for space to reduce the chances of being discovered and disrupted. The final argument is that denying al Qaeda a safe haven is an exercise in futility: Drive Osama bin Laden from Afghanistan and he'd relocate to some place like Sudan, southern Algeria, Somalia, or other swaths of ungoverned territory. However, this logic makes two faulty assumptions: that al Qaeda is mobile, and that the group's international affiliates would automatically roll out the red carpet for the jihadi refugees. Neither is true. Bin Laden and his senior and mid level cadre are well-known to intelligence services the world over. Any attempt to travel, let alone cross an international border (save Afghanistan-Pakistan) would fall somewhere between "utterly unthinkable" and "highly risky." Moving would further require massive reorientation of al Qaeda's financial operations and smuggling networks. Nor would bin Laden's senior leaders be automatically welcomed abroad in areas their regional partners control. Though al Qaeda has established "franchise affiliates" in places like North Africa and Southeast Asia, relationships between al Qaeda's leadership and its regional nodes are extraordinarily complex. Groups like the North African affiliate "al Qaeda in the Islamic Maghreb" (AQIM) are happy to co-opt the al Qaeda "brand" for recruiting and financial reasons, but they don't necessarily share the al Qaeda senior leadership's ideological goals. AQIM is much more focused on attacking the Algerian government or foreign entities within the country, having not displayed much capability or desire for grandiose international operations. And last, recruits come to North Africa more often through independent networks in Europe, not camps along the Durand Line. Think of the relationship like the one you have your in-laws: You might share a name, but you probably don't want them coming to visit for three full weeks. Regional leaders aren't terribly loyal to senior leadership, either. Take Abu Musab al-Zarqawi, the deceased leader of the group's Iraq affiliate. He was summoned to bin Laden's side numerous times in an attempt to exert control as the Iraqi commander's tactics grew more grotesque and questionable. Zarqawi declined, not wanting to risk travel or accept instruction from bin Laden. In the end, a safe haven along the Afghanistan-Pakistan border is as good as it gets for al Qaeda's chances to launch a large-scale attack against the United States. Certainly, smaller, less complex attacks could be planned without "Afghan real estate," but any such plot's death toll and long-term effect on American society will be far more limited. Unfortunately, that's a risk President Barack Obama has to accept -- no amount of intelligence or counterterrorism operations can provide 100 percent security. But to avoid the Big One, the U.S. president's best bet is to deny al Qaeda the only physical space it can access.

Terrorism causes extinction

Martin E. Hellman 8, Professor @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also **significant**. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of **85 national security experts**, Senator Richard Lugar **found** a median estimate of 20 percent for the “probability of **an attack involving a nuclear explosion occurring** somewhere in the world **in the next 10 years**,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a **full-scale nuclear war**, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western **civilization will be destroyed**” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a **nuclear winter** that might **erase homo sapiens from** the face of the **earth**, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have **devastating** long-lasting c**limatic consequences** due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

Plan’s key to prevent their inevitable release and terrorism

WP 12/18 Washington Post, December 18, 2013 "U.S. considers military trial for Russian detainee," www.japantimes.co.jp/news/2013/12/18/world/u-s-considers-military-trial-for-russian-detainee/#.Us3YHmRDu6o

But administration officials said that not every case can be made in federal court and that military tribunals are the proper forum for war crimes. Moreover, they said, inaction risks the release of dangerous terrorists, especially if no agreement is reached with Afghanistan over a reduced, long-term U.S. military presence there after next year.¶ Among the many lessons of the Iraq withdrawal that the administration does not want to repeat was the transfer to Iraqi custody of third-country nationals. Officials frequently cite the case of Ali Musa Daqduq, a Lebanese citizen suspected of ties to the Hezbollah militant group and Iran, who was captured in 2007 over his alleged involvement in an attack in southern Iraq that killed a U.S. soldier. Four others were kidnapped and later found dead.¶ Daqduq, the last prisoner held by U.S. forces in Iraq, was turned over to the Iraqi government just days before the final American withdrawal in December 2011. In May 2012, an Iraqi court released him for what it said was lack of evidence.¶ The Kabul government’s release of many of the 3,000 Afghan prisoners turned over this year, most of them captured on the battlefield, has been taken as a warning by U.S. officials about the future status of the non-Afghans still in American custody. Some of them have been held from the early days of the 12-year-old war.¶ Unlike in the case of detainees at Guantanamo, U.S. courts have ruled that these prisoners have no right to lodge habeas corpus challenges to their imprisonment. Military officers conduct twice-yearly reviews of their cases in proceedings at which they have no right to outside legal representation, and none has been granted a civilian or full-fledged military judicial process. Although the International Commission of the Red Cross pays them visits, their names and nationalities are officially secret.¶ Even the number of detainees had been secret until recently. After the prisoner-transfer agreement with Afghanistan in March, President Barack Obama for the first time acknowledged their existence in his biannual letter to Congress, reporting military action under the War Powers Resolution. At that point, they numbered 66. In his most recent report, on Friday, Obama put the number at 53, providing no explanation of what happened to the others.¶ Six were repatriated last month to Pakistan, a fact revealed only because of a court case in which advocates for the men demanded more information. The case was dismissed by the U.S. Court of Appeals for the D.C. Circuit, although documents submitted to the court included a declaration by Paul Lewis, the administration’s newly appointed special envoy for detainee transfers. He said Pakistan agreed to “take responsibility for ensuring, consistent with Pakistan law, that the transferred detainees will not pose a continuing threat to the United States and its allies.”¶ The bulk of the foreign nationals in U.S. custody in Afghanistan are Pakistani; the others are known to be from Tunisia, Yemen, Uzbekistan and elsewhere.¶ Military prosecutors have examined the evidence against Hamidullan and consider the case among the strongest that can be brought against any of the foreigners held at the Parwan Detention Facility near Bagram.¶ “He’s pretty well-connected in the terrorist world,” said one official with firsthand knowledge of the case. Hamidullan is thought to have links to one or more insurgent groups and ties to Chechnya, a part of the Russian Federation where rebels have fought two unsuccessful wars for independence.

### Solvency

Contention 3: Solvency

Congressional approval of military commissions in the US for Bagram detainees solves --- federal courts or inaction risk release and terrorism

Adam Goldman 13 and Karen DeYoung, Washington Post, 12/17/13, Military trial in U.S. being considered for Russian detained in Afghanistan, <http://www.washingtonpost.com/world/national-security/foreign-detainees-from-afghanistan-are-being-considered-for-military-trial-in-us/2013/12/17/d38f9254-6723-11e3-a0b9-249bbb34602c_story.html>

The Obama administration is actively considering the use of a military commission in the United States to try a Russian who was captured fighting with the Taliban several years ago and has been held by the U.S. military at a detention facility near Bagram air base in Afghanistan, former and current U.S. officials said.¶ The Russian is a veteran of the Soviet war in Afghanistan in the 1980s who deserted and ended up fighting U.S. forces after the Sept. 11, 2001, attacks. U.S. officials said the man, thought to be in his mid- to late 50s, is suspected of involvement in several 2009 attacks in which U.S. troops were wounded or killed. He was wounded during an assault on an Afghan border post that year and later captured.¶ Little else is known about him except for his nom de guerre, Irek Hamidullan.¶ A decision to move him to the United States would mark the first time a post-Sept. 11 detainee was brought before a military tribunal here and could lead to a clash with Congress, which has barred transfer to the United States of prisoners held at Guantanamo Bay, Cuba. No similar barrier has been enacted to prohibit the transfer of detainees from Afghanistan, largely because the question has never arisen.¶ But as it nears the deadline for the drawdown of U.S. forces in Afghanistan by the end of 2014, the administration is faced with what to do with several dozen non-Afghans it retained custody of when it turned over thousands of Afghan prisoners to the Kabul authorities under an agreement signed in March. The remaining 53 third-country nationals are deemed a continuing threat to the United States, according to U.S. officials who spoke on the condition of anonymity to discuss internal deliberations.¶ A senior administration official declined to discuss individual cases and emphasized that no final decisions had been made on how to deal with any of the detainees. “All possible options are under consideration,” the official said.¶ Because of evidentiary and other problems, only a handful of the detainees, described by officials as in the single digits, are being considered for trial in the United States. Officials think most can be sent back to their home countries, with security guarantees. “Repatriation would be our first option with respect to the vast majority,” the senior official said.¶ In recent years, the United States has secretly charged and moved to this country for civilian trial several terrorism suspects captured overseas. But it has never attempted to bring a detainee into the United States, from Bagram or elsewhere, for prosecution by the military.¶ A military trial is likely to draw flak from human rights activists, who say that only federal criminal courts offer a full measure of justice. Andrea Prasow of Human Rights Watch said the military commissions system at Guantanamo Bay has been plagued with problems and should be shut down, not imported into the United States.¶ “You can charge people with material support [in federal court] and get a conviction,” she said. “It’s not hard.”¶ But administration officials said that not every case can be made in federal court and that military tribunals are the proper forum for war crimes. Moreover, they said, inaction risks the release of dangerous terrorists, especially if no agreement is reached with Afghanistan on a reduced, long-term U.S. military presence there after next year.¶ Among the many problems of the Iraq withdrawal that the administration does not want to repeat was the transfer to Iraqi custody of third-country nationals. Officials frequently cite the case of Ali Musa Daqduq, a Lebanese citizen suspected of ties to the Hezbollah militant group and Iran, who was captured in 2007 over his alleged involvement in an attack in southern Iraq that killed a U.S. soldier. Four others were kidnapped and later found dead.¶ Daqduq, the last prisoner held by U.S. forces in Iraq, was turned over to the Iraqi government just days before the final American withdrawal in December 2011. In May 2012, an Iraqi court released him for what it said was lack of evidence.¶ The Kabul government’s release of many of the 3,000 Afghan prisoners turned over this year, most of them captured on the battlefield, has been taken by U.S. officials as a warning about the future status of the non-Afghans still in American custody. Some of them have been held from the early days of the 12-year-old war.¶ Unlike in the case of detainees at Guantanamo, U.S. courts have ruled that these prisoners have no right to lodge habeas corpus challenges to their imprisonment. Military officers conduct twice-yearly reviews of their cases in proceedings at which they have no right to outside legal representation, and none has been granted a civilian or full-fledged military judicial process. Although the International Committee of the Red Cross pays them visits, their names and nationalities are officially secret.¶ Even the number of detainees had been secret until recently. After the prisoner-transfer agreement with Afghanistan in March, President Obama for the first time acknowledged their existence in his bi­annual letter to Congress reporting military action under the War Powers Resolution. At that point, they numbered 66. In his most recent report, on Friday, Obama put the number at 53, providing no explanation of what happened to the others.¶ Six were repatriated last month to Pakistan, a fact revealed only because of a court case in which advocates for the men demanded more information. The case was dismissed by the U.S. Court of Appeals for the D.C. Circuit, although documents submitted to the court included a declaration by Paul Lewis, the administration’s newly appointed special envoy for detainee transfers. He said Pakistan agreed to “take responsibility for ensuring, consistent with Pakistan law, that the transferred detainees will not pose a continuing threat to the United States and its allies.”¶ The six are reportedly being held in a prison in Peshawar.¶ The bulk of the foreign nationals in U.S. custody in Afghanistan are Pakistani; the others are known to be from Tunisia, Yemen, Uzbekistan and elsewhere.¶ “The people the U.S. houses in Bagram are pretty bad,” said Rep. Mike Rogers (R-Mich.), chairman of the House Intelligence Committee, who has visited the prison in Afghanistan. “They are the worst.”¶ Military prosecutors have examined the evidence against Hamidullan and consider the case among the strongest that could be brought against any of the foreigners held at the Parwan Detention Facility near Bagram.¶ “He’s pretty well-connected in the terrorist world,” said one official with firsthand knowledge of the case. Hamidullan is thought to have links to one or more insurgent groups and ties to Chechnya, a part of the Russian Federation where rebels have fought two unsuccessful wars for independence.¶ Officials said Hamidullan remains committed to violent jihad and has sworn that he will return to the battlefield if he is released from prison. U.S. officials said that they have discussed the case with Moscow but that the Russians displayed little or no interest in his return. The senior official said transfers “are not always just up to us. Other countries have a say. Detainees have a say” in cases in which there are concerns about inhumane treatment.¶ The Russian could be tried at a U.S. military facility, such as the Naval Brig in Charleston, S.C., officials said.¶ Some in the administration say that conducting a successful commission case in the United States could help persuade Congress to lift its ban on bringing Guantanamo detainees here for prosecution or imprisonment. Obama remains committed to closing the facility in Cuba, and officials said there is no long-term alternative for about 20 of the remaining Guantanamo prisoners other than bringing them here.¶ The administration initially hoped to at least put off resolving the issue of third-country detainees in Afghanistan by including continued U.S. custody of them under the recently negotiated bilateral security accord with the Kabul government. The idea was that each country would recognize a joint right to detain foreign nationals as unlawful combatants.¶ “There were a couple of different drafts that addressed this issue, but it was removed because they couldn’t reach agreement on it,” said Rep. Adam B. Schiff (D-Calif.), a member of the House Intelligence Committee. Although U.S. officials said the question of the foreign detainees is still being discussed with Afghan representatives, it will be moot if Afghanistan continues to refuse to sign the overall security agreement and there is no American military presence there after 2014.¶ If the administration moves to a “zero option” and withdraws all U.S. forces, Schiff said, “our ability to continue any kind of role in their detention in Afghanistan will evaporate.”

Plan’s statute prevents circumvention

David J. Barron 8, Professor of Law at Harvard Law School and Martin S. Lederman, Visiting Professor of Law at the Georgetown University Law Center, “The Commander in Chief at the Lowest Ebb -- A Constitutional History”, Harvard Law Review, February, 121 Harv. L. Rev. 941, Lexis

In addition to offering important guidance concerning the congressional role, our historical review also illuminates the practices of the President in creating the constitutional law of war powers at the "lowest ebb." Given the apparent advantages to the Executive of possessing preclusive powers in this area, it is tempting to think that Commanders in Chief would always have claimed a unilateral and unregulable authority to determine the conduct of military operations. And yet, as we show, for most of our history, the presidential **practice was otherwise**. Several of our most esteemed Presidents - Washington, Lincoln, and both Roosevelts, among others - never invoked the sort of preclusive claims of authority that some modern Presidents appear to embrace without pause. In fact, no Chief Executive did so in any clear way until the onset of the Korean War, even when they confronted problematic restrictions, some of which could not be fully interpreted away and some of which even purported to regulate troop deployments and the actions of troops already deployed. Even since claims of preclusive power emerged in full, the practice within the executive branch has waxed and waned. No consensus among modern Presidents has crystallized. Indeed, rather than denying the authority of Congress to act in this area, some **modern Presidents**, like their predecessors, have **acknowledged** the **constitutionality of legislative regulation**. They have therefore concentrated their efforts on making effective use of other presidential authorities and institutional [\*949] advantages to shape military matters to their preferred design. n11 In sum, there has been much less executive assertion of an inviolate power over the conduct of military campaigns than one might think. And, perhaps most importantly, until recently there has been almost no actual defiance of statutory limitations predicated on such a constitutional theory. This repeated, though not unbroken, deferential executive branch stance is not, we think, best understood as evidence of the timidity of prior Commanders in Chief. Nor do we think it is the accidental result of political conditions that just happened to make it expedient for all of these Executives to refrain from lodging such a constitutional objection. This consistent pattern of executive behavior is more accurately viewed as reflecting deeply rooted norms and understandings of how the Constitution structures conflict between the branches over war. In particular, this well-developed executive branch practice appears to be premised on the assumption that the constitutional plan requires the nation's chief commander **to guard his supervisory powers** over the military chain of command **jealously**, to be willing to act in times of exigency if Congress is not available for consultation, and to use the very powerful weapon of the veto to forestall unacceptable limits proposed in the midst of military conflict - but that otherwise, the Constitution compels the Commander in Chief to comply with legislative restrictions. In this way, the founding legal charter itself exhorts the President to justify controversial military judgments to a sympathetic but sometimes skeptical or demanding legislature and nation, not only for the sake of liberty, but also for effective and prudent conduct of military operations. Justice Jackson's famous instruction that "with all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations" n12 continues to have a strong pull on the constitutional imagination. n13 What emerges from our analysis is how much pull it seemed to [\*950] have on the executive branch itself for most of our history of war powers development.

Nuclear terrorism is feasible---high risk of theft and attacks escalate

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Military commissions are effective post reforms---no DA’s

Jon Andrew Mellis 11, J.D. and candidate for Masters of IR at Georgetown (at time submitted) COURTS, COMMISSIONS AND DETENTION AS TOOLS IN COMBATING OVERSEAS TERRORISM: CRITERIA FOR CHOOSING THE CORRECT FORUM, https://repository.library.georgetown.edu/bitstream/handle/10822/558173/Mellis\_georgetown\_0076M\_11427.pdf?sequence=1

Supporters of military commissions note that the forum provides a degree of flexibility necessary to handle the challenges uniquely inherent to a terrorism prosecution. For example, since the more restrictive Federal Rules of Evidence are not applicable to a military commission, evidence can be presented against an accused under relaxed admissibility and relevance standards. To advocates of the commission process, this departure from traditional evidentiary rules represents a “common-sense step toward realistic standards of evidence” in the context of terrorist suspects apprehended on a foreign battlefield or through the cooperative efforts of a foreign government.65 Overall, those favoring military commissions contend that a suspected terrorist is more likely to be convicted in this forum than in federal civilian court.66 One such difference that military commission advocates highlight to illustrate this “flexibility” is that hearsay evidence is admissible as long as the proponent of the statement can adequately demonstrate to the tribunal that the hearsay evidence is reliable, material and probative of the fact that it is offered to prove. In determining whether to admit hearsay statements, the military commission judge is specifically required to consider the “adverse impacts on military or intelligence operations” that would likely result by requiring the production of the witness. This requirement is designed to prevent the need for witnesses of the military and intelligence services to abandon ongoing operations in order to testify in court.67 It is significant that the rule is reciprocal; a terrorist suspect may offer hearsay evidence to support his defense, an approach that could not be employed under the evidentiary rules governing Article III courts.68 If admitted, the commission jurors can decide what weight, if any, they will assign to the hearsay evidence.69 ¶ Those in favor of using military commissions emphasize that the reformed system codified in the MCA provides “robust protections to detainees, more so than any other international war crimes tribunal ever created.”70 Accordingly, unlawful enemy combatants who violated the laws of war still receive a degree of due process protections that are “unparalleled in the history of war crimes tribunals,” to include the right to counsel, the presumption of innocence throughout the proceeding, proof beyond a reasonable doubt is required to convict, the right to present and call witnesses, and a myriad of other trial rights that closely mirror those afforded U.S. military personnel being tried by a court-martial.71 ¶ Military commissions serve to alleviate two other concerns associated with prosecuting transnational terrorists in an Article III court: (1) revealing classified and sensitive information to our adversaries; and (2) hampering intelligence gathering. Military commissions are designed to diminish these risks in a fashion that Article III courts cannot, while still affording substantial procedural protections to the suspected terrorist.72 In a military commission the government cannot be compelled to disclose classified information to any person without a security clearance; if the judge determines that the information is necessary, then redacted portions, summaries or a substitute admitting facts that the classified material would tend to prove can be provided to the defendant. Because the open, public nature of federal criminal trials may undermine the goal of protecting sensitive national security information, the military commission judge has the prerogative to limit public access to the hearing and can require that classified or sensitive evidence be presented during closed proceedings, so as to ensure that intelligence sources, methods and activities are safeguarded.73 Military commissions are largely premised on the assumption that providing terrorists Miranda warnings would curtail counterterrorism efforts by foreclosing vital intelligence collection opportunities from the suspect. Thus, in this forum a detainee’s statements are admissible if the judge finds that they are reliable, probative and made incident to lawful conduct during military operations at the point of capture or during closely related active combat engagement. They are also admissible if provided voluntarily, even in the absence of a rights advisement.74 ¶ To those commentators who have expressed reticence that a federal criminal trial for terrorism endangers those civilians randomly selected for jury duty because of an increased risk of retaliation, supporters of military commissions claim that this concern is largely alleviated in the commission forum, where military officers comprise the potential juror pool.75 Similarly, the security concerns voiced by Article III critics are seemingly not applicable to military commissions, where the tribunal’s locus on a military installation purportedly provides a greater degree of safety and capability to limit access to the commission and detention facilities.

#### BSA impact happens in weeks --- o/w on timeframe

Reuters 1-6, “U.S. wants Afghanistan to sign security deal in 'weeks not months'”, http://www.reuters.com/article/2014/01/06/us-afghanistan-usa-idUSBREA050Z520140106

Reuters) - The United States wants the Afghanistan government to sign a bilateral security agreement in matter of weeks if a contingent of U.S. troops is to remain there after 2014, the White House said on Monday.¶ The Afghan government had ignored U.S. demands for it to sign a framework security agreement by the end of 2013, after protracted negotiations that have strained relations between the two countries.¶ U.S. officials say unless a deal is reached to keep upwards of 8,000 U.S. troops inside the country after 2014, the United States might instead completely withdraw from the country.¶ Afghanistan President Hamid Karzai has expressed skepticism at the U.S. threat for a complete withdrawal.¶ "Our position continues to be that if we cannot conclude a bilateral security agreement promptly, then we will be forced to initiate planning for a post-2014 future in which there would be no U.S. or NATO troop presence in Afghanistan," White House spokesman Jay Carney told reporters.¶ Without a deal, the United States could pull out all troops, the so-called "zero option," leaving Afghan forces to battle the Taliban on their own.¶ Carney said the longer the issue drags into 2014, "the more likely that outcome will come to pass" in which the United States would leave no troops behind for the training of Afghan forces or counter-terrorism purposes.¶ "Look, I don't have specific deadlines or other policy decisions to announce today. But I can tell you that we are talking about weeks, and not months. And, you know, the clock is ticking," Carney said.

#### Bagram indefinite detention is the biggest issue --- o/w alt causes --- saves the BSA

Kate Clark 13, Afghanistan Analysts Network The Other Guantanamo 5: A New MoU for Bagram and, Finally, a Handover?, 3-24, http://www.afghanistan-analysts.org/the-other-guantanamo-5-a-new-mou-for-bagram-and-finally-a-handoverhttp://www.afghanistan-analysts.org/the-other-guantanamo-5-a-new-mou-for-bagram-and-finally-a-handover

The detention centre on the Bagram air base has been like piece of grit between President Karzai and the US, for years, inflaming and exacerbating tensions in their relationship. Since a MoU on handing over Bagram was signed in March 2012, we have seen transfers stop and start, deadlines broken and two handovers delayed. Each agreement on transferring the detention facility, hailed as a victory for Afghan sovereignty by President Karzai, has been transformed into a slap in his face after it was derailed or delayed. The same points of contention have repeatedly arisen: Afghan demands for sovereignty over Afghan prisoners, US fears that dangerous men will slip out of a leaky Afghan justice system back onto the battlefield and an Afghan reluctance to hold its citizens without trial. This deal, then, is crucial as patience has been wearing thin on both sides.¶ New negotiations were necessary, it seems, because the original MoU signed in March 2013 (see text and analysis here) has come so badly adrift. It was issued on the last day of an ultimatum delivered by Karzai demanding Bagram be handed over and, along with a second MoU on night operations (see here), committed the Afghans to use detention without trial also known as internment and administrative detention) on the basis of the 2nd Additional Protocol (APII) of the Geneva Conventions. APII recognises that a state may detain its citizens without trial during war time. (1)¶ APII was referred to, not only in the two MoUs, but also in a secret document, an inter-ministerial agreement on the procedure or the handover which was signed by the most senior Afghan officials – the ministers of defence, interior and justice, the director of the NDS, the chief justice and the attorney general (read the text here). The Procedure, in turn, referred to an unpublished presidential decree, the contents of which AAN has not been able to see. AAN checked with the president’s legal advisor in March 2012 and he confirmed that Afghans would be using administrative detention at Bagram.¶ However, what is legal under the laws of armed conflict may still be illegal under domestic law and in this case, there appeared to be an inherent clash between the MoU and an Afghan constitutional requirement that anyone who is detained must either be released within 72 hours or handed over to the Attorney General’s Office. Problems with the MoU on the Afghan side began to emerge, but only belatedly. Two months after it was signed, when transfers had already started and the Afghan authorities had started to hold some of its citizens without trial, the president’s spokesman flatly denied they were doing so (see report here):¶ … we are against any detention without trial. For us, nobody can be held without trial. Everything has to be in accordance to the Afghan laws.¶ The agreement on Bagram started to unravel, it seems, because the Afghan president was reluctant to implement what his government had agreed to, ie detention without trial, although some ambiguities in the text had also allowed room for differing interpretations. A handover ceremony did go ahead in September, but by then, the US military had halted transfers and was refusing to hand over the 38 particularly dangerous detainees against whom it only had classified evidence and whom it feared might subsequently be released. The US has believed all along that detention without trial is the only option for such men. President Karzai has been adamantly opposed to this and was furious at the halt to the transfers.¶ In January, after Presidents Karzai and Obama met in Washington, it was clear they had sorted out at least the bones of a new deal on Bagram. Karzai said: ‘Concerning Afghan sovereignty, we agreed on the complete return of detention centres and detainees to Afghan sovereignty, and that this will be implemented soon after my return to Afghanistan.’(2) (See AAN reporting here).¶ When AAN spoke to the Afghan director of Bagram, General Farouq Barakzai, in late February, he said transfers were again in full swing and negotiations on a few final issues were underway. He said the transfer of the facility was scheduled for 9 March. Three days before that date, President Karzai announced the handover to Parliament. Then, once again, it was delayed. The trigger for this may well have been Karzai’s own remarks to members of parliaments (as reported here) which suggested that he, himself, and not judges or indeed the various panels set out in the MoU, would decide on releases:¶ We know that many innocents are languishing in this prison. Despite all the expected criticism, I will order the release of innocents so they can go to their homes… But people who are involved in killing Afghans by shooting them or bombing them will meet their punishment. ¶ Given the President’s power to pardon detainees, including in secret (for details, see here), it is not surprising the US may have backed down from the handover at this point. However, according to Faizy, the delay came from the Afghan side. He said the president had only got to see the text of the new MoU on the 8th - it had been negotiated by the Afghan in charge of Transition, Ashraf Ghani and the head of the National Security Council, Dadfar Spanta – and Karzai objected to the US military continuing to have an effective veto on releases and access to detainees for the purposes of interrogation once they had been handed over. So the negotiators were, once again, set to try to thrash out a final, acceptable text of the MoU. ¶ On Monday, in Washington DC, the Pentagon announced an agreement had been reached and the detention facility would be handed over to the ‘sovereign control of Afghanistan on Monday’:¶ The secretary [of state, Chuck Hagel] welcomed President Karzai’s commitment that the transfer will be carried out in a way that assures the safety of the Afghan people and coalition forces by keeping dangerous individuals detained in a secure and humane manner in accordance with Afghan law.¶ It has given no further details and a US military spokesman in Kabul declined to speak about the handover so, it has to be stressed, information about the contents of the MoU is based solely on an interview with Faizy. He gave AAN the following overview:¶ The new MoU does not use administrative detention under APII to deal with detainees, including those the US deems most dangerous. The highest Afghan legal authorities, he said, including the minister of justice and head of the supreme court, had been looking at how to work within appropriate and ‘existing Afghan laws’. They believe existing court powers to order extensions of the period a detainee is held at various stages of the investigation and trial periods could mean, if all were used, an accused person held for a maximum of about 10 months, although he would then have to be convicted or released. He said the legal authorities were also looking into an article in the anti-terrorism law which might well provide a ‘special mechanism’. The text of this clause is vague in the extreme; (4) it allows the attorney general to secretly provide the court with documents and evidence on a terrorist case and ask for ‘temporary provisions’ – something which is left undefined.¶ This looks like a fudge, but one which, it seems, both sides are happy enough with. Human rights activists concerned with due process and fair trials, however, may well have objections.¶ Faizy said the US would not enjoy a veto over the release of any detainees in the future. As for the 38 individuals, it seems the current arrangement in the March 2012 MoU may hold, ie the ‘Joint Committee’, made up of the Afghan Minister of Defence and the Commander of US forces may get to review files together of any whom the Afghan authorities wanted to release. This would be the only joint US-Afghan body operating at Bagram and would have very limited powers.¶ Faizy said all the Afghan detainees (5) held at Bagram would have been transferred by tomorrow: ‘We are committed not to set those 38 free,’ he said, ‘but to detain them in accordance with Afghan laws.’¶ He said the US military had wanted access to detainees after they had been transferred, but the president vetoed this. Instead, the US would be able to pass on any intelligence to the NDS for investigation and forwarding to the Afghan Review Board. Under the March 2012 MoU and the Inter-Ministerial Procedure and according to interviews with General Barakzai, the Board has operated for much of the last year. It is made up two people each from the Ministries of Interior, Defence and NDS and has the job of investigating, developing and assessing detainees’ cases, with the help of the NDS and Attorney General. At a detainees’ hearing by the Board, he has a defence lawyer and legal advisor and can bring elders or witnesses to vouch for him. The Board, which has been seeing about 7 detainees every day, can recommend their release, trial or administrative detention. The new MoU will take away that last option and it is not yet clear if its role will be changed in any other way.(6)¶ It should be said again that the information for this blog has come from the Afghan government only. On the face of it, however, it does look like the US has backed down. However, in previous agreements, the US has shown itself adept at appearing to back down, to give the Afghans the language they want, but to work with textual ambiguities to keep doing what it wants to do. In other words, only when we see the text of the MoU and how it actually works will it become clear where and how far compromises have been made.¶ It has become imperative for the two sides to reach a working agreement on Bagram that satisfies both governments enough so that it will not again be derailed. Bagram is important. It is a symbol of the US military presence, infamous in its early days for torture by US forces (see reporting here). Although conditions and due process have improved under US control, it remains a rallying cry for the Taleban and indeed any Afghan upset with foreigners being in his or her land (see for example recent comments by the pro-government Ulama Council, reported here which just stopped short of calling for a jihad against the ‘infidels’). Getting control of it is key to President Karzai’s sense of himself as a sovereign leader. The detainees there may also become important bargaining chips in any of his dealings with the Taleban. Moreover, if the US and Afghanistan cannot sort out a working deal on Bagram, the chances of them reaching a Bilateral Security Agreement to govern a US military presence after 2014 must surely be close to zero.

#### Other issues have been resolved --- detention’s the main sticking point

Reuters 1-2, “Senators press Afghan president over security agreement, prisoner release”, http://worldnews.nbcnews.com/\_news/2014/01/02/22147690-senators-press-afghan-president-over-security-agreement-prisoner-release

KABUL — Three U.S. senators visited the Afghan president on Thursday to try to push forward talks to sign a crucial bilateral security deal and halt the release of prisoners the United States considers a threat to security. ¶ Afghanistan plans to release hundreds of prisoners from Bagram prison, which was handed over from U.S. control only after a deal was reached in March after intense negotiations because Washington feared dangerous inmates would be freed. ¶ The disagreement further strains relations between the two countries, which are already at breaking point over President Hamid Karzai's refusal to sign a bilateral security deal to shape the post-2014 U.S. military presence in the country.¶ Without the pact, Washington could pull most of its troops out after this year, when most foreign troops are due to exit. ¶ The senators told Karzai that releasing dangerous prisoners would irreparably damage ties with the United States, but stopped short of saying it would prompt a full military withdrawal after 2014. ¶ "If these releases go ahead, it will do irreparable damage to the relationship," said Sen. Lindsey Graham, R-S.C., at a news conference in Kabul. ¶ Washington considers 88 of some 650 prisoners marked for release a serious threat to security, saying they are responsible for wounding or killing 57 Afghans and 60 U.S. and coalition troops. ¶ It wants them to be investigated and tried. Afghanistan says there is not enough evidence to keep them detained. ¶ Karzai has called the so-called "zero option" over the pact an empty threat and suggested any deal can wait until after the presidential elections in April. The United States says it needs time to prepare a post-2014 mission and set an end of year deadline that has now passed. ¶ The visiting officials gave no indication of how much longer the government might wait to sign the security deal but stopped short of saying releasing the prisoners would drive a final nail in the coffin of talks. ¶ "We're going to have to just wait and see what happens ... we can't go any further in our comments except that it does damage," said Sen. John McCain, R-Ariz., a member of the Senate Foreign Relations Committee. ¶ "As a result of our long meeting with president Karzai we have narrowed those differences and I believe we can look forward to signing the Bilateral Security Agreement ... sooner rather than later." ¶ Sen. John Barrasso, R-Wyo., joined McCain and Graham on the trip.

### Plan

#### The United States Federal Government should restrict the President’s war powers authority to indefinitely detain third-country nationals at the Parwan Detention Facility by statutorily requiring that they be tried by military commission in the United States.

# 2AC

## Terrorism Adv

### Yes Nuke Terror

#### High risk of nuke terror---there’s motivation and capability

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Terrorists exploit gaps in security. The current global regime for protecting the nuclear materials that terrorists desire for their ultimate weapon is far from seamless. It is based largely on **unaccountable**, voluntary arrangements that are **inconsistent** across borders. Its weak links make it **dangerous and inadequate to prevent nuclear terrorism.**¶ Later this month in Seoul, the more than 50 world leaders who will gather for the second Nuclear Security Summit need to seize the opportunity to start developing an accountable regime to prevent nuclear terrorism.¶ There is a **consensus** among international leaders that the threat of nuclear terrorism is real, not a Hollywood confection. President Obama, the leaders of 46 other nations, the heads of the International Atomic Energy Agency and the United Nations, and numerous experts have called nuclear terrorism one of the most serious threats to global security and stability. It is also **preventable with more aggressive action**.¶ At least four terrorist groups, including Al Qaeda, have demonstrated interest in using a nuclear device. These groups operate in or near states with histories of questionable nuclear security practices. Terrorists do not need to steal a nuclear weapon. It is quite possible to make an improvised nuclear device from highly enriched uranium or plutonium being used for civilian purposes. And there is a black market in such material. There have been 18 confirmed thefts or loss of weapons-usable nuclear material. In 2011, the Moldovan police broke up part of a smuggling ring attempting to sell highly enriched uranium; one member is thought to remain at large with a kilogram of this material.

#### Their evidence is all just like “there are a lot of steps”---our authors considered all of them --- the risk is real

Peter Beinart 8, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 106-7

For all these reasons, jihadists seem less intent on acquiring a finished nuclear weapon than on acquiring weapons- grade uranium and building the bomb themselves. In the early 1990s, Al Qaeda bought a 3- foot- long cylinder from a Sudanese military officer who said it contained South African highly enriched uranium. It turned out to be a hoax. Jihadists have reportedly made other failed attempts as well. Eventually, however, they could succeed. Moscow may adequately protect its nuclear weapons, but the National Academy of Sciences has warned that “large inventories of SNM [fissile material] are stored at many sites that apparently lack inventory controls.” And the Russians reportedly experience one or two attempted thefts of that material a year—that they know of. ¶ If Al Qaeda obtained 50 kilograms of weapons-g rade uranium, the hardest part would be over. The simplest nuke to build is the kind the United States dropped on Hiroshima, a “gun- type,” in which a mass of highly enriched uranium is fired down a large gun barrel into a second uranium mass. Instructions for how to make one are widely available. Just how widely available became clear to an elderly nuclear physicist named Theodore Taylor in 2002, when he looked up “atomic bomb” in the World Book Encyclopedia in his upstate New York nursing home, and found much of the information you’d need. ¶ Even with directions, building a nuclear bomb would still be a monumental task. According to a New York Times Magazine article by Bill Keller, in 1986 five Los Alamos nuke builders wrote a paper called “Can Terrorists Build Nuclear Weapons?” They concluded that it would require people who understood “the physical, chemical and metallurgical proper-¶ 107¶ ties of the various materials to be used, as well as characteristics affecting their fabrication; neutronic properties; radiation effects, both nuclear and biological; technology concerning high explosives and/or chemical pro- pellants; some hydrodynamics; electrical circuitry.” That sounds daunting. **Yet, at the end of the paper, the scientists answered their question: “Yes, they can.”** ¶Finally, once terrorists built a nuclear weapon, they’d still have to smuggle it into the United States. The best way might be to put it in a shipping container, on one of the many supertankers that bring oil into American ports every day. The containers are huge, more than big enough to fit a gun-t ype nuke, which could be as small as 6 feet in length and 6 inches in diameter. Highly enriched uranium emits much less radiation than plutonium, and inside a supertanker’s thick double-steel hull it would be hard for sensors to detect. What’s more, a single ship can carry several thousand containers, most of which are never searched. On September 11, 2002, ABC News smuggled a 15- pound cylinder of depleted uranium in a cargo container past U.S. customs. On September 11, 2003, they performed the same exercise—and got the uranium past customs again.

#### Al Qaeda’s actions, statements, and internal documents prove they want nuclear weapons and mass casualty attacks---\*\*if the US relents, it guarantees nuclear attacks

Larry J. Arbuckle 8, Naval Postgraduate School, "The Deterrence of Nuclear Terrorism through an Attribution Capability", Thesis for master of science in defense analysis, approved by Professor Robert O'Connell, and Gordon McCormick, Chairman, Department of Defense Analysis, Naval Postgraduate School, June

However, there is evidence that a small number of terrorist organizations in recent history, and at least one presently, have nuclear ambitions. These groups include Al Qaeda, Aum Shinrikyo, and Chechen separatists (Bunn, Wier, and Friedman; 2005). Of these, Al Qaeda appears to have made the most serious attempts to obtain or otherwise develop a nuclear weapon. Demonstrating these intentions, in 2001 Osama Bin Laden, Ayman al Zawahiri, and two other al Qaeda operatives met with two Pakistani scientists to discuss weapons of mass destruction development (Kokoshin, 2006). Additionally, Al Qaeda has made significant efforts to justify the use of mass violence to its supporters. Sulaiman Abu Ghaith, an al Qaeda spokesman has stated that al Qaeda, “has the right to kill 4 million Americans – 2 million of them children,” in retaliation for deaths that al Qaeda links to the U.S. and its support of Israel (as cited in Bunn, Wier, and Friedman; 2005). Indeed Bin Laden received a fatwa in May 2003 from an extreme Saudi cleric authorizing the use of weapons of mass destruction against U.S. civilians (Bunn, Wier, and Friedman; 2005). Further evidence of intent is the following figure taken from al Qaeda documents seized in Afghanistan. **It depicts a workable design for a nuclear weapon.** Additionally, the text accompanying the design sketch includes some **fairly advanced weapons design parameters** (Boettcher & Arnesen, 2002). Clearly **maximizing the loss of life is key among al Qaeda’s goals**. Thus their use of conventional means of attack presently appears to be a **result of their current capabilities** and not a function of their pure preference (Western Europe, 2005).

### 2AC T – Indefinite Detention

#### We meet

Omran Belhadi 13, Casework Lawyer at Justice Project Pakistan, "Closing Bagram: The Other Guantanamo", September 4, www.reprieve.org.uk/static/downloads/2013\_09\_04\_PUB\_Closing\_Bagram\_The\_Other\_Guantanamo\_1.pdf

In March 2013, after years of negotiation, the U.S. military finally handed over the DFIP and Afghan detainees to Afghan authorities.6 However, despite commitments that the United States is no longer operating prisons on Afghan soil, the United States continues to hold more than 60 non-Afghan detainees or Third Country Nationals (TCNs), in indefinite detention without charge, trial, or access to a lawyer.7 After years of detention, and with U.S. forces withdrawing from Afghanistan, these detainees are at grave risk of falling into the kind of indefinite detention limbo that has befallen those at Guantanamo Bay.

#### C/I: Indefinite detention is just detention without trial

USLegal.com no date http://definitions.uslegal.com/i/indefinite-detention/

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seema to violate many national and international laws. It also violates human rights laws.

#### Bagram is the key detention debate

Samira Shackle 13, 9-13, “The Other American Gulag: Bagram Prison's Legal Black Hole Locks Detainees in Nightmarish Limbo,” AlterNet, http://www.alternet.org/world/bagram-prisons-legal-black-hole-keeps-detainees-nightmarish-limbo

Ayaz, now in his early 20s, lost six years of his life, but he was one of the lucky ones. Of the 3,000 prisoners currently held at Bagram prison, there remain around 67 foreign nationals, who are caught in a legal black hole and held without charge, trial or even access to a lawyer. As the US prepares to withdraw from Afghanistan in 2014, the question of what will happen to this notorious prison is becoming more pressing. Is it about to become the next Guantanamo? The prison is the largest of the detention centers opened by the US as part of its military operations in Afghanistan. Located around 60 kilometers north of Kabul, it gets its name from the Bagram Air Base, to which the original site was adjacent. The prison came into use soon after the US invaded Afghanistan in 2001, but in 2004—because of difficulties detaining extra prisoners at Guantanamo Bay—it became the primary detention site for suspected militants and terrorists. This included Afghans and non-Afghans captured as part of the war on terror. By 2008, it held 630 detainees, double the numbers held at Guantanamo. With resources under strain, it was replaced by a permanent facility at Parwan in 2009, where the several thousand prisoners now reside. (Its official name is the Detention Facility in Parwan (DFIP), but the prison is still colloquially referred to as Bagram.)

### 2AC T – Statutory

#### The plan restricts armed conflict authority, which the AUMF is a subset of—we are a specific statute that applies to the AUMF—they are just a bad spec arg

Jack Goldsmith 13, Harvard Law School, 9/1, A Quick Primer on AUMFs, www.lawfareblog.com/2013/09/a-quick-primer-on-aumfs/

Via Ilya Somin at Volokh, I see that the administration has proffered its proposed Authorization for the Use of Military Force (AUMF) for Syria. Now it is Congress’s turn to decide what proposal(s) it wants to debate and possibly approve. And it appears that the scope of the authorization will be an issue in Congress. For example, Senators Graham and McCain have announced that they will not support a narrow AUMF supporting only isolated strikes, and some members of Congress surely will not support one that is that broad.¶ An article that I wrote with Curt Bradley, which examined AUMFs throughout American history, provides a framework for understanding AUMFs. (And the Lawfare Wiki collects many historical AUMFs and declarations of war, here.) AUMFs can (as Bradley and I argued on pp. 2072 ff.) be broken down into five analytical components:¶ (1) the authorized military resources;¶ (2) the authorized methods of force;¶ (3) the authorized targets;¶ (4) the purpose of the use of force; and¶ (5) the timing and procedural restrictions on the use of force¶ Most AUMFs in U.S. History – for example, AUMFs for the Quasi-War with France in the 1790s, for repelling Indian tribes, for occupying Florida, for using force against slave traders and pirates, and many others – narrowly empower the President to use particular armed forces (such as the Navy) in a specified way for limited ends. At the other extreme, AUMFs embedded within declarations of war (here is the one against Germany in World War II) typically authorize the President to employ the entire U.S. armed forces without restriction except for the named enemy. The Gulf of Tonkin Resolution for Vietnam was also famously broad, as was the 2002 AUMF for Iraq, although the latter did require the President to make certain diplomatic and related determinations, and to report to Congress. Narrower AUMFs in the post-World War II era include the one in 1955 for Taiwan (narrow purpose and timing limitations) and the 1991 Iraq AUMF (narrow purpose and many procedural restrictions). Narrower yet were AUMFs for Lebanon in 1983 and Somalia in 1993, both of which had a very narrow and restrictive purpose, and which contained time limits on the use of force. And of course there is the relatively broad AUMF that everyone knows, from September 18, 2001.¶ Bradley and I summarized historical AUMFs as follows:¶ This survey of authorizations to use force shows that Congress has authorized the President to use force in many different situations, with varying resources, an array of goals, and a number of different restrictions. All of the authorizations restrict targets, either expressly (as in the Quasi-War statutes’ restrictions relating to the seizure of certain naval vessels), implicitly (based on the identified enemy and stated purposes of the authorization), or both. Such restrictions may be constitutionally compelled. Congress’s power to authorize the President to use force, whatever its scope, arguably could not be exercised without specifying (at least implicitly) an enemy or a purpose.¶ The primary differences between limited and broad authorizations are as follows: In limited authorizations, Congress restricts the resources and methods of force that the President can employ, sometimes expressly restricts targets, identifies relatively narrow purposes for the use of force, and sometimes imposes time limits or procedural restrictions. In broad authorizations, Congress imposes few if any limits on resources or methods, does not restrict targets other than to identify an enemy, invokes relatively broad purposes, and generally imposes few if any timing or procedural restrictions.

#### “Statutory” means enacted by statute

Merriam Webster No Date

stat·u·to·ry adjective \ˈsta-chə-ˌtȯr-ē\

Definition of STATUTORY¶ 1: of or relating to statutes¶ 2: enacted, created, or regulated by statute <a statutory age limit>

#### That’s a law enacted by Congress

The Oxford Guide to the U.S. Government 12

(Oxford University Press via Oxford Reference, Georgetown Library)

statute¶ A statute is a written law enacted by a legislature. **A federal statute is a law enacted by Congress**. State statutes are enacted by state legislatures; those that violate the U.S. Constitution may be struck down by the Supreme Court if the issue is appealed to the Court.

#### They overlimit – they allow only zone one cases – Congressional silence also creates authority in zone two – and the Constitution does in zone three – their author:

Colby P. Horowitz 13 “CREATING A MORE MEANINGFUL DETENTION STATUTE: LESSONS LEARNED FROM HEDGES V. OBAMA,” FORDHAM L.R. Vol. 81, <http://fordhamlawreview.org/assets/pdfs/Vol_81/Horowitz_April.pdf>

2. The Relational Theory of Presidential War Powers ¶ Justices Jackson and Frankfurter both wrote concurring opinions in Youngstown expressing the idea that presidential powers can change over time based on action or inaction by Congress. Justice Jackson stated, in his famous concurrence, that “[p]residential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress.”120 Justice Jackson established a three-category framework for evaluating presidential power in relation to Congress. In the first category, or Zone 1, the President’s authority is the greatest because he is acting “pursuant to an express or implied authorization of Congress . . . .”121 If the President’s action falls within Zone 1, he “personif[ies] the federal sovereignty” and has the full power of the federal government.122 In the second category, called Zone 2 or the “zone of twilight,” the President “acts in absence of either a congressional grant or denial of authority . . . .”123 Here, the President’s power is less, but “congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility.”124 In the third category, the President’s “power is at its lowest ebb” because he is pursuing “measures incompatible with the expressed or implied will of Congress . . . .”125 In Zone 3, the President “can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.”126

## DOJ CP

### AT: CP

#### 2 --- Congressional rollback --- Obama literally tried to the do the CP and Congress rolled it back

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

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

#### 3 --- CP links more to politics

Adam Goldman 13 and Karen DeYoung, Washington Post, 12/17/13, Military trial in U.S. being considered for Russian detained in Afghanistan, <http://www.washingtonpost.com/world/national-security/foreign-detainees-from-afghanistan-are-being-considered-for-military-trial-in-us/2013/12/17/d38f9254-6723-11e3-a0b9-249bbb34602c_story.html>

But Schiff, who said he had no specific knowledge of the administration’s plans, warned of significant political fallout if Obama attempted an end run around Congress.¶ “I think the political reality is that there is so much resistance to bringing Guantanamo detainees here to be tried, we would face the same kind of resistance to bringing third-country nationals here from Afghanistan,” he said.

#### 5 --- Legitimacy DA

A --- Continued detention of TCNs at Bagram wrecks U.S. regional influence and soft power --- causes substantial rifts with key allies

Omran Belhadi 13, Casework Lawyer at Justice Project Pakistan, Closing Bagram: The Other Guantanamo, Justice Project Pakistan, http://www.reprieve.org.uk/static/downloads/2013\_09\_04\_PUB\_Closing\_Bagram\_The\_Other\_Guantanamo\_1.pdf

Without meaningful involvement of their relatives, legal counsel or the Pakistani government, Pakistani detainees are left to fend for themselves, unable to present exculpatory evidence or mitigate U.S. threat perceptions. Furthermore, information available to the U.S. military regarding a detainee’s character or the ability of the Pakistani government to implement security measures is partial at best, and non-existent at worst. Consequently, security assessments of Pakistani detainees are incomplete, based not on a comprehensive and detailed understanding of a detainee’s propensity to engage in militancy or terrorism and of existing mechanisms mitigating perceived threats, but a wholly one-sided impression built on evidence that is near impossible for the detainee to challenge.¶ Crucially, it also appears that an overemphasis on the alleged security threat detainees may pose, worsened by the systematic lack of adequate due process provided to detainees, leads to too little consideration of the profound legal, moral and political consequences of indefinite detention. By continuing to detain individuals to guard against the statistically low possibility of recidivism, and denying detainees fundamental due process rights, the United States deals a serious blow to its international credibility and moral authority.185 As a result, the U.S. government will find it increasingly difficult to engage with its partners in the region as many will perceive a double- standard in the U.S. government’s line of thought: advocating respect for human rights, yet detaining individuals without charge or trial.186 In the past, disagreements regarding Guantanamo Bay and the practice of indefinite detention have caused substantial rifts between the U.S. and allied governments.187 With little progress on their cases, the continued detention of TCNs at the DFIP has the potential to be as divisive as Guantanamo Bay and cause profound discord between the United States and key allies.

**B – Only Congressional codification sets a clear precedent that other states can perceive**

**Maxwell 12** - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

Once a state demonstrates membership in an organized armed group, the members can be presumed to be a continuous danger. **Because this danger is worldwide**, the state can now act in areas **outside** the traditional **zones of conflict**. It is the individual’s conduct over time—**regardless of location**— that gives him the status. Once the status attaches, the member of the organized armed group can be targeted. ¶ Enter Congress ¶ The weakness of this theory is that **it is not codified in U.S. law**; it is merely the extrapolation of international theorists and organizations. The **only entity under the Constitution** that can frame and settle Presidential power regarding the enforcement of international norms is **Congress**. As the check on executive power, Congress must amend the AUMF to **give the executive a statutory roadmap that articulates when force is appropriate** and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the **proper conduct of the military** under the law of war.¶ Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74¶ The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order **targeted killing without congressional limits** means the President can manipulate force in the name of national security without **tethering it to** the law advanced by international **norms**. The potential consequence of such **unilateral executive action** is that it gives other states, such as **North Korea** and **Iran**, the **customary precedent to do the same**. Targeted killing **might be required in certain circumstances**, but if the guidelines are debated and understood, the decision can be executed **with** the full faith of the people’s representative, **Congress**. When the decision is made **without Congress**, the result might make the United States feel safer, but the process **eschews** what gives a state its greatest safety: the **rule of law**.

#### C --- The impact’s global nuclear and biological war

Ziad Asali 9, President and Founder of the American Task Force on Palestine, et al., “Changing Course: A New Direction for U.S. Relations with the Muslim World”, February, p. 9-16

Improving relations with Muslim majority countries and communities is one of the most important foreign policy and national security challenges facing the United States. In the wake of the September 11, 2001 terrorist attacks, the U.S. sought to strengthen its own security. Despite our leaders' insistence that we had no conflict with Islam or Muslims, and despite a long history of U.S. action to protect and aid Muslims affected by war or natural disaster, our responses to 9/11 have sparked fear, mistrust, and hostility among many Muslims. Antipathy toward the U.S. has risen not only in the countries most directly affected by U.S. military action (Iraq, Afghanistan, Iran, and Pakistan), but in many others around the world. In turn, violent extremist groups that claim to act in the name of Islam have used the climate of distrust to gain support for further attacks on U.S. assets and allies. Though majorities in both the U.S. and Muslim countries around the world want to reverse this spiral of violence, many fear that it will continue to escalate. The extremists who seek to harm and destroy the U.S. represent a very small minority of Muslims, operating, for the most part, independent of governments, through loose networks of social, financial, and logistical support. Given their strong convictions, and the limited ability of the U.S. and its allies to identify and target them, they are difficult to dissuade or deter. Were an extremist group to use a nuclear, chemical, or biological weapon, or sabotage a hazardous facility in a populated area in the U.S., it could kill tens of thousands or more.1 This Report begins with the premise that the U.S. must work with Muslim counterparts who share our interest in improving mutual security to minimize the risk of such a scenario. Responsibility for peaceful coexistence rests equally with U.S. and Muslim leaders worldwide. For the U.S., counterterrorism operations are a necessary part of the strategy to keep Americans safe. However, these operations treat the symptoms rather than the causes of conflict. There is a deep reservoir of grievances against the U.S. among Muslims around the world. Whether or not these grievances are justified, the climate of hostility makes it possible for extremist groups to recruit and operate with relative ease in many countries and communities. To reduce the risk of conflict, now and in the future, the U.S. must not only defend itself against attacks, but also build more positive relations with key countries and counterparts across the Muslim world. Today, the U.S. stands at a crossroads in its relations with the global Muslim community There is still a strong set of shared values and interests among American and Muslim leaders and publics. Together, we can rebuild trust and address the core causes of tension. There are numerous diplomatic, political, economic, and people-to-people initiatives on which to build. But if we continue on our current course, time is not on our side. The U.S. government, in concert with business, faith, education, and civic leaders, needs to undertake major initiatives to address the causes of tension. Working with Muslim counterparts, we can achieve substantial joint gains in peace and security, political and economic development, and respect and understanding. The alternative is to increase our reliance on military action and counterterrorism in alliance with unpopular authoritarian governments. Doing so will raise the risk that our wrorst fears will be realized. For the sake of our own national security, values, and aspirations, and those of more than a billion Muslims around the world, we must forge a new approach. The Leadership Group and the U.S.-Muslim Engagement Project This Report presents the consensus of 34 American leaders in the fields of foreign and defense policy, politics, business, religion, education, public opinion, psychology, philanthropy, and conflict resolution. We come from different walks of life, faiths, political perspectives, and professional disciplines. Our shared goal is to develop and work to implement a wise, widely supportable strategy to make the U.S. and the world safer, by responding to the primary causes of tension with Muslims around the world. We believe that a strategy that builds on shared and complementary interests with Muslims in many countries is feasible, desirable, and consistent with core American values. The Report also reflects dialogue with hundreds of American leaders and counterparts in Muslim countries, and research on the views of millions of citizens in the U.S. and in Muslim countries whose perspectives and preferences we have explored. We have used the process of dialogue and public opinion research not only to build a leadership consensus, but also to craft a strategy that can win broad public and political support in the U.S., and build partnerships with Muslim leaders and people across the world. This project was convened, facilitated, and supported by two organizations with expertise in building consensus on difficult public issues: Search for Common Ground and the Consensus Building Institute. In addition, more than a dozen foundations, corporations and individuals have generously funded our work. Why Are U.S. Relations with Muslim Countries and Communities Important? U.S. relations with Muslim countries and communities are critically important for several reasons: the size of the global Muslim population; the geopolitical significance of key Muslim countries and regions; the persistence of conflict in these strategically important regions over several decades; the dramatic rise in tension and violence between the U.S. and a number of Muslim countries and groups during the past decade, and the risk of further conflict escalation; and the potential for both the U.S. and Muslim countries to prosper from improved relations and new partnerships. Roughly one-fifth of the world's population, or about 1.3 billion people, is Muslim. Muslims form the majority in 56 countries across North Africa; the Middle East; Asia Minor; and Central, South and Southeast Asia.' That geography spans major oil producing regions, key land and sea trade routes, and areas of high political sensitivity and instability. Muslims also form important minority communities in countries across Europe, North America, Sub-Saharan Africa, Australia, and parts of Asia. As with all major religious and ethnic communities, there is great diversity in beliefs, values, cultures, political systems, and living standards among the world's Muslim communities. Given this broad range of circumstances and the equally broad range of U.S. interests and relations with Muslim countries, Muslims' views about U.S. policy have traditionally varied widely. There is, however, a clear trend. Since the 1940s, and more rapidly since the first Gulf War in the early 1990s, more Muslims have become concerned about the U.S. role in supporting authoritarian governments. More have become angry at the U.S. and its allies for their presence in Muslim lands. More feel resentful over the U.S. role in the Israeli-Palestinian conflict, and more feel humiliated by the sense that Americans do not understand or respect Islamic values or cultures. During the past six years, this set of concerns has become even more widespread, consistent and intense. Today, the U.S. faces an extraordinarily strong and widely shared set of negative perceptions among Muslim peoples and their leaders.' From a security standpoint, the primary U.S. focus is on armed extremist groups in Iraq, Pakistan, Afghanistan, Iran, Lebanon, Syria, and Palestine.' However, the U.S. must also consider how our policies and actions in those countries, their neighbors, and other Muslim countries around the world shape the ability of extremists to recruit, operate and destabilize governments and societies. Addressing not only the immediate threat of terrorist and insurgent groups, but also their broader bases of support and sympathy, should be a top national priority\* for four reasons: • Muslim public hostility" toward the U.S. is generating resources, recruits, and operational opportunities for extremist groups that seek to harm the U.S., Its allies, and assets. It is also undermining mainstream Muslim leaders who seek tolerance, nonviolence, and constructive change in relations with the U.S.\* • Most Muslims' primary grievances and concerns are about "what the U.S. does," rather than "who we are." At the same time, the U.S. has options for meeting its own interests in ways that are more compatible with most Muslims1 Interests and values. It is possible to change our relationships to enhance mutual security, meet shared and complementary political goals, generate joint economic gains, and demonstrate mutual respect for each others' core values. • By adopting a comprehensive strategy and implementing it now, it is likely that the U.S. can significantly change perceptions and behavior among mainstream and politically activist Muslims in key countries before attitudes and beliefs become "locked in" for a generation. On the other hand, failure to act soon will likely lead to a hardening of attitudes, reinforcing extremists' claims that violent resistance to the U.S. is the best path to autonomy, respect, and justice. • Fighting a long-term conflict with extremists in many Muslim countries will demand continued sacrifice from the U.S. military, carry high economic costs, continue the political acrimony that has divided the country for the past several years, and require the U.S. to use much of Its international political capital to maintain alliances. As a result, the U.S. will have fewer resources to address pressing needs at home or other critical challenges abroad.

#### 6 --- Congress is key

Kate Hammond 12, J.D. Candidate, Fall, University of Southern California Gould School of Law; B.S. Environmental Economics and Policy 2009, University of California, Berkeley., Note: The National Defense Authorization Act And The Unbound Authority To Detain: A Call To Congress, Southern California Interdisciplinary Law Journal, 22 S. Cal. Interdis. L.J. 193, Lexis

CONGRESS CAN CONSTRAIN THE EXECUTIVE'S AUTHORITY¶ As demonstrated above, Congress is in the best position to constrain the executive's authority to detain. In addition, Congress also holds other advantages over the judiciary and executive with respect to constraining the executive's detention authority. For instance, Congress is best situated to bring the issue of constraining the executive's detention authority to the public debate.1 65 Congressional representatives are closer to the people than both the judiciary and the executive; consequently, Congress is in the best position to bring military detention-a matter of national concern-into the public debate.166 Congress will also be able to address the issues regarding military detention more quickly than the courts.' 67 While the courts must wait for a detention case to come before them before they can change the current detention law, Congress can address the issues plaguing the detention authority immediately.'68 Additionally, Congress can address the detention authority in a much more flexible manner than the courts.169 In the event that legislation fails to adequately constrain the executive's authority or fails to adequately define who may be detained, Congress can include a sunset provision within the legislation.'70 A sunset provision would allow Congress to return to the legislation and reframe it to adequately address any unresolved issues."

### AT: Solicitor General

#### The SG’s seen as politicized---links to politics and can’t solve cred

Patrick Wohlfarth 9, UNC at Chapel Hill, The Tenth Justice? Consequences of Politicization in the Solicitor General’s Office, www.gvpt.umd.edu/wohlfarth/Wohlfarth%202009%20JOP.pdf

Judicial scholars offer several explanations for the Court’s disproportionate attention to the ofﬁce’s arguments and commonly view the S.G. as a representative of both executive and judicial interests. Historically, solicitors general have acknowledged and respected the ofﬁce’s reputation for legal integrity and relative independence from partisan inclinations. Yet by many accounts, recent solicitors general have increasingly politicized the ofﬁce by frequently behaving as a direct advocate of the executive’s often narrow legal philosophy (Caplan 1987; Ubertaccio 2005). Solicitors general commonly enter the ofﬁce with a reservoir of decision-making capital. The ofﬁce’s esteemed reputation affords the S.G. a degree of freedom to act as the president’s political advocate. The heightened sense of political behavior within the contemporary ofﬁce suggests that solicitors general are indeed willing to utilize this discretion and expend such resources. However, the S.G. who exhausts that capital and excessively politicizes the ofﬁce might jeopardize both the president’s immediate ability to advance the administration’s policy agenda through the Court as well as the longterm integrity of the S.G.’s ofﬁce as an institution.¶ The recent controversy surrounding the ﬁring of several U.S. attorneys and Attorney General Alberto Gonzales’ eventual resignation further illustrates the consequences that may arise when perceptions of excessive political bias pervade the Justice Department. The S.G., even more so than the attorney general, stands at the intersection of law and politics. This unique position carries an expectation that its ofﬁce holders will maintain an independent balance. Existing empirical accounts of the S.G.’s behavior have not fully explored the degree to which the Court’s perceptions of political bias may jeopardize the ofﬁce’s reputation as an unbiased informational cue. In this article, I examine the extent to which the S.G.’s politicization adversely affects the ofﬁce’s credibility. If the Court perceives that solicitors general repeatedly abuse their discretion by acting as the president’s political advocate, then it should not trust the information provided and, thus, discount the ofﬁce’s arguments. I employ an individual-level analysis of all solicitor general amici between 1961 and 2003. The results reveal that increased politicization diminishes the likelihood that the Court will support the S.G.’s positions on the merits. In addition, I demonstrate that politicization’s negative impact yields a spillover effect by endangering the success of the United States as a litigant beginning with Reagan’s solicitors general.

### 2AC Flex DA

#### Restrictions inevitable---only a question of whether they are deliberate or haphazard

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

#### No impact---flex is self-defeating

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Here it is worth reviewing the positions Yoo advocated while in the executive branch and since, and their consequences in the "war on terror." At every turn, Yoo has sought to exploit the "flexibility" he finds in the Constitution to advocate an approach to the "war on terror" in which legal limits are either interpreted away or rejected outright. Just two weeks after the September 11 attacks, Yoo sent an extensive memo to Tim Flanigan, deputy White House counsel, arguing that the President had unilateral authority to use military force not only against the terrorists responsible for the September 11 attacks but against terrorists anywhere on the globe, with or without congressional authorization.¶ Yoo followed that opinion with a series of memos in January 2002 maintaining, against the strong objections of the State Department, that the Geneva Conventions should not be applied to any detainees captured in the conflict in Afghanistan. Yoo argued that the president could unilaterally suspend the conventions; that al-Qaeda was not party to the treaty; that Afghanistan was a "failed state" and therefore the president could ignore the fact that it had signed the conventions; and that the Taliban had failed to adhere to the requirements of the Geneva Conventions regarding the conduct of war and therefore deserved no protection. Nor, he argued, was the president bound by customary international law, which insists on humane treatment for all wartime detainees. Relying on Yoo's reasoning, the Bush administration claimed that it could capture and detain any person who the president said was a member or supporter of al-Qaeda or the Taliban, and could categorically deny all detainees the protections of the Geneva Conventions, including a hearing to permit them to challenge their status and restrictions on inhumane interrogation practices.¶ Echoing Yoo, Alberto Gonzales, then White House counsel, argued at the time that one of the principal reasons for denying detainees protection under the Geneva Conventions was to "preserve flexibility" and make it easier to "quickly obtain information from captured terrorists and their sponsors." When CIA officials reportedly raised concerns that the methods they were using to interrogate high-level al-Qaeda detainees -- such as waterboarding -- might subject them to criminal liability, Yoo was again consulted. In response, he drafted the August 1, 2002, torture memo, signed by his superior, Jay Bybee, and delivered to Gonzales. In that memo, Yoo "interpreted" the criminal and international law bans on torture in as narrow and legalistic a way as possible; his evident purpose was to allow government officials to use as much coercion as possible in interrogations.¶ Yoo wrote that threats of death are permissible if they do not threaten "imminent death," and that drugs designed to disrupt the personality may be administered so long as they do not "penetrate to the core of an individual's ability to perceive the world around him." He said that the law prohibiting torture did not prevent interrogators from inflicting mental harm so long as it was not "prolonged." Physical pain could be inflicted so long as it was less severe than the pain associated with "serious physical injury, such as organ failure, impairment of bodily function, or even death."¶ Even this interpretation did not preserve enough executive "flexibility" for Yoo. In a separate section of the memo, he argued that if these loopholes were not sufficient, the president was free to order outright torture. Any law limiting the president's authority to order torture during wartime, the memo claimed, would "violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."¶ Since leaving the Justice Department, Yoo has also defended the practice of "extraordinary renditions," in which the United States has kidnapped numerous "suspects" in the war on terror and "rendered" them to third countries with records of torturing detainees. He has argued that the federal courts have no right to review actions by the president that are said to violate the War Powers Clause. And he has defended the practice of targeted assassinations, otherwise known as "summary executions."¶ In short, the flexibility Yoo advocates allows the administration to lock up human beings indefinitely without charges or hearings, to subject them to brutally coercive interrogation tactics, to send them to other countries with a record of doing worse, to assassinate persons it describes as the enemy without trial, and to keep the courts from interfering with all such actions.¶ Has such flexibility actually aided the U.S. in dealing with terrorism? In all likelihood, the policies and attitudes Yoo has advanced have made the country less secure. The abuses at Guantánamo and Abu Ghraib have become international embarrassments for the United States, and by many accounts have helped to recruit young people to join al-Qaeda. The U.S. has squandered the sympathy it had on September 12, 2001, and we now find ourselves in a world perhaps more hostile than ever before.¶ With respect to detainees, thanks to Yoo, the U.S. is now in an untenable bind: on the one hand, it has become increasingly unacceptable for the U.S. to hold hundreds of prisoners indefinitely without trying them; on the other hand our coercive and inhumane interrogation tactics have effectively granted many of the prisoners immunity from trial. Because the evidence we might use against them is tainted by their mistreatment, trials would likely turn into occasions for exposing the United States' brutal interrogation tactics. This predicament was entirely avoidable. Had we given alleged al-Qaeda detainees the fair hearings required by the Geneva Conventions at the outset, and had we conducted humane interrogations at Guantánamo, Abu Ghraib, Camp Mercury, and elsewhere, few would have objected to the U.S. holding some detainees for the duration of the military conflict, and we could have tried those responsible for war crimes. What has been so objectionable to many in the U.S. and abroad is the government's refusal to accept even the limited constraints of the laws of war.¶ The consequences of Yoo's vaunted "flexibility" have been self-destructive for the U.S. -- we have turned a world in which international law was on our side into one in which we see it as our enemy. The Pentagon's National Defense Strategy, issued in March 2005, states,¶ "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak, using international fora, judicial processes, and terrorism."¶ The proposition that judicial processes -- the very essence of the rule of law -- are to be dismissed as a strategy of the weak, akin to terrorism, suggests the continuing strength of Yoo's influence. When the rule of law is seen simply as a device used by terrorists, something has gone perilously wrong. Michael Ignatieff has written that "it is the very nature of a democracy that it not only does, but should, fight with one hand tied behind its back. It is also in the nature of democracy that it prevails against its enemies precisely because it does." Yoo persuaded the Bush administration to untie its hand and abandon the constraints of the rule of law. Perhaps that is why we are not prevailing.

## Resolution CP

### AT: CP

#### Perm do the CP – it’s a way to restrict war power authority

Louis Fisher 9, Scholar in Residence at the Cato Constitution Project, The Law: The Baker-Christopher War Powers Commission, Presidential Studies Quarterly Volume 39, Issue 1

The commission devotes a section to the War Powers Resolution (WPR), summarizing the objections that have been directed to it. Elsewhere, I have criticized the WPR as an abdication of congressional power. It is constitutionally indefensible to permit the president to go to war for whatever reason, whenever and wherever, for up to 60 to 90 days (Fisher and Adler 1998). The commission report does not offer that objection. Instead, it states that constitutional scholars “generally agree that Section 5(c) of the Resolution is unconstitutional in light of the Supreme Court's subsequent decision in INS v. Chadha, 462 U.S. 919 (1983). Section 5(c) provides that Congress may compel the President to remove troops—otherwise lawfully committed to the battlefield—merely by passing a concurrent resolution” (National War Powers Commission 2008, 23). A concurrent resolution must pass each chamber but is not presented to the president for signature or veto. Therefore, it has no force of law. Oddly, the commission's draft bill relies on congressional action through a concurrent resolution.

#### Links to politics

Jacob Gerson 8, U. Chicago Ast. Professor Law, Eric Posner, U. Chicago Law Professor, December, Article: Soft Law: Lessons from Congressional Practice, 61 Stan. L. Rev. 573

But why is Congress's statement credible? Maybe Congress does not really mean that it disapproves of the Iraq war, but is trying to obtain some short-term political advantage by pandering to temporary passions. Perhaps the legislature is exploiting a transient public mood in the hope of pressuring the President to yield in some other political disputes between the two branches.¶ [\*589] A standard insight of the signaling theory literature in economics is that as a general matter, a statement is credible when it is accompanied by a costly action in particular, an action that is more costly for a dishonest speaker to engage in. n66 Passing resolutions is costly: it takes time that could be used for other things passing legislation, engaging in constituent service, meeting supporters, enjoying leisure. These other activities benefit members of Congress either directly or by improving their chances for reelection. If Congress spends resources to enact a resolution disapproving the Iraq war, observers will rationally infer that Congress cares more about this issue than it cares about other issues for which it does not enact resolutions. In turn, people who are taking actions with an eye toward how Congress might, in the future, regulate the Iraq intervention or other military interventions would do well to take note of the resolution.

#### Perm do both

#### Hard law is key to legal certainty---Congress key

Gregory Shaffer 11, Professor of Law, University of Minnesota Law School, and Mark Pollack, Professor of Political Science and Jean Monnet Chair, Temple University., Sept, ARTICLE: HARD VERSUS SOFT LAW IN INTERNATIONAL SECURITY, 52 B.C. L. Rev 1147

To effect specific policy goals, state and private actors increasingly turn to legal instruments that are harder or softer in manners that best align with such proposals. n79 These variations in precision, obligation, and third-party delegation can be used strategically to advance both international and domestic policy goals. Much of the existing literature examines the relative strengths and weaknesses of hard and soft law for the states that make it. It is important, for our purposes, to address these purported advantages in order to assess the implications of the interaction of hard and soft law on each other.¶ Hard law as an institutional form features a number of advantages. n80 Hard law instruments, for example, allow states to commit themselves more credibly to international agreements by increasing the costs of reneging. They do so by imposing legal sanctions or by raising the costs to a state's reputation where the state has acted in violation of its legal commitments. n81 In addition, hard law treaties may have the advantage of creating direct legal effects in national jurisdictions, again increasing the incentives for compliance. n82 They may solve problems of incomplete contracting by creating mechanisms for the interpretation and elaboration of legal commitments over time, n83 including through the use of dispute settlement bodies such as courts. n84 In different ways, they thus permit states to monitor, clarify, and enforce their commitments. Hard law, as a result, can create more legal certainty. States, as well as private actors working with and through state representatives, [\*1163] should use hard law where "the benefits of cooperation are great but the potential for opportunism and its costs are high." n85

## Iran DA

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#### Sanctions will have a veto-prove majority---vote counts

Bridget Johnson 1/8/14, PJ Media, “Veto-Proof Majority on Iran Sanctions Bill Looking More Likely,” http://pjmedia.com/tatler/2014/01/08/veto-proof-majority-on-iran-sanctions-bill-looking-more-likely/

The number of co-sponsors backing the Iran sanctions bill introduced before the holiday by Senate Foreign Relations Committee Chairman Robert Menendez (D-N.J.) and Sen. Mark Kirk (R-Ill.) has now reached 50, according to the Jerusalem Post.¶ The last recorded number in the Library of Congress database is 47 co-sponsors. The most recent bump shows that not only would the bill that angers the White House pass on a bipartisan basis, but would likely hit a veto-proof majority on a bipartisan basis.¶ At least 14 Democrats have signed on board the bill, including Sens. Mark Begich (D-Alaska), Richard Blumenthal (D-Conn.), Cory Booker (D-N.J.), Ben Cardin (D-Md.), Bob Casey (D-Pa.), Chris Coons (D-Del.), Joe Donnelly (D-Ind.), Kirsten Gillibrand (D-N.Y.), Kay Hagan (D-N.C.), Mary Landrieu (D-La.), Joe Manchin (D-W.Va.), Mark Pryor (D-Ark.), Chuck Schumer (D-N.Y.) and Mark Warner (D-Va.).¶ Supporters need 67 votes for a veto-proof majority. Assuming all Republicans vote for the bill, that leaves 22 Democrats needed come voting time.¶ Both Colorado senators –Mark Udall (D) and Michael Bennet — have previously supported sanctions legislation. Other potential votes could include Dick Durbin (D-Ill.), Tim Kaine (D-Va.), Heidi Heitkamp (D-N.D.), Jon Tester (D-Mont.), Tom Udall (D-N.M.), Martin Heinrich (D-N.M.), Brian Schatz (D-Hawaii), Clarie McCaskill (D-Mo.), Max Baucus (D-Mont.), Debbie Stabenow (D-Mich.) and Bill Nelson (D-Fla.).

#### AIPAC outweighs PC

Philip Weiss 1/6/14, Mondoweiss a news website devoted to American foreign policy in the Middle East, "Why are no Democrats coming down on Republicans who are crossing up Kerry in Jerusalem?," http://mondoweiss.net/2014/01/democrats-republicans-jerusalem.html

I’ve only seen one politician raising an eyebrow about this, actually a former pol, Jane Harman, the former California Democratic congressperson now at the Wilson Center. She had the temerity to call Graham a “mouthpiece” for Netanyahu on MSNBC. Harman is a member in good standing of the Israel lobby, but she was disturbed by the conduct.¶ Now compare the complete silence from the Democratic Party to another foreign policy issue. Back in ’02, two Democratic congressmen visited Iraq and raised serious questions about George W. Bush’s misrepresentations on the path to war. Jim McDermott and David Bonior were great antiwar congressmen who did their duty (and McDermott is still a leader in the House). And the Republican Party came down on them like a ton of bricks.¶ The reason the Democratic Party is silent is because it’s also dependent on the Israel lobby. As Jim Lobe notes in a piece titled, “47 Senators Take AIPAC’s Word Over U.S. Intel Community,” more than a dozen Democratic senators, including blue state “liberals” Booker, Blumenthal, Gillibrand, Schumer, and Casey (see MJ Rosenberg’s character judgment) have defied their president and signed on to wag-the-tail legislation saying Israel’s war on Iran must be our war. That is also the reason UN Ambassador Samantha Power can carry no water for Kerry on the Iran deal or the peace talks. She avoids both subjects because that’s a political liability; her base is northeast liberals and many of them support Israel no matter what. The same lesson is contained in the above photo, put out by the State Department. John Kerry couldn’t be angry about the renegade Republican senators’ work. No; he had to meet with them.¶

#### Talks will fail because of a new dispute over centrifuges---also guarantees sanctions

Jennifer Rubin 1-9, Washington Post columnist, 1/9/14, “Obama Iran gambit is unraveling,” <http://www.washingtonpost.com/blogs/right-turn/wp/2014/01/09/obama-iran-gambit-is-unraveling/>

Some “snag.” That is how a Reuters headline characterizes its report that there is an impasse in talks with Iran over the implementation agreement for an interim deal:¶ Negotiations between Iran and six world powers on implementing a landmark November deal to freeze parts of Tehran’s nuclear program in exchange for easing some sanctions have run into problems over advanced centrifuge research, diplomats said.¶ The dispute over centrifuges highlighted the huge challenges facing Iran and the six powers in negotiating the precise terms of the November 24 interim agreement. If they succeed, they plan to start talks on a long-term deal to resolve a more than decade-long dispute over Tehran’s nuclear ambitions.¶ Among the issues to be resolved in political discussions due to begin in Geneva later this week is that of research and development of a new model of advanced nuclear centrifuge that Iran says it has installed, diplomats said on condition of anonymity.¶ Centrifuges are machines that purify uranium for use as fuel in atomic power plants or, if purified to a high level, weapons.¶ “This issue (centrifuges) was among the main factors in stopping the previous technical discussions on December 19-21,” a Western diplomat told Reuters on condition of anonymity. Other Western diplomats confirmed that centrifuges remained a “sticking point” in the talks with Iran but noted that last month’s discussions were understandably adjourned ahead of the December holidays – not because of the centrifuge issue.¶ The White House will never admit talks have broken off. That would confirm critics’ conclusion that this is all a giant stall by Iran to allow it to progress with its nuclear weapons program while getting sanctions relief. So far, the mullahs are achieving exactly what they want. And the Obama team oversold what it had achieved, a former U.S. official critical of the administration says, giving pro-sanctions lawmakers every reason to pass new legislation.¶ The centrifuge issue is no small matter. Mark Dubowitz, president of the Foundation for Defense of Democracies, has been closely involved in sanctions development and implementation. He tells me, “Permitting Iran to conduct research and development on advanced centrifuges is a dangerous proposition and fundamentally at odds with a peaceful civilian nuclear program. The verification of Iran’s current centrifuge production capabilities is already sufficiently challenging without opening the door to Iranian development of even smaller and more efficient centrifuges that are easier to hide.” He adds, “This is further proof — as if more evidence is needed — that Iran is building an industrial-size nuclear infrastructure that will give it multiple overt and covert pathways to a bomb.”¶ It tells us several other things as well.¶ First, the interim deal is not a deal at all but a unilateral gift of sanctions relief for a deal that is vague and incomplete and that may never be implemented. Either president Obama was snookered or he is snookering us, trying to erect a barrier to military action by Israel and/or further sanctions by Congress.¶ Josh Block, a longtime Democrat and head of the Israel Project, observes via an e-mail to Right Turn, “Clearly there is growing concern and realization that the ‘interim deal’ is actually just another stalling tactic by Iran, but worse, one we are paying Iran billions of dollars to perpetrate. The six month ‘deal’ was announced in November, so either that is the moment the 6 month clock started or there is no ‘deal’ at all.”¶ Second, those demanding a new round of sanctions, including 53 Senate Democrats and Republicans co-sponsoring sanctions legislation, again have been proven to be savvier about the Iranians than the president and his State Department. Without reimposition of sanctions and passage of stringent banking sanctions, Iran will merely continue its pattern of delay, obfuscation and wordsmithing. The number of co-sponsors is up to 51, enough to pass the Senate by a majority; word of this latest Iranian gambit may persuade others to join. (The timing of a vote is still up in the air, although the delay has given pro-sanctions senators time to make their case and gain proof of Iran’s mendacity.) As Block put it, “Congress is not fooled. The American people are not fooled. Iran is playing us for the fool. Only more pressure backed by the credible threat of military force will bring Iran to recognize the costs of keeping their program outweigh any benefit.”¶ Third, the latest news is another blow to an administration already low on credibility. They had an “agreement,” but not really. And the document said Iran’s right to enrich would be the subject of mutual agreement in a final deal. Even this news reveals more spinning, as the State Department briefing yesterday revealed:

#### Obama pushing and spending capital on GITMO shutdown

David Klaidman 12/12/13, national political correspondent @ Newsweek and the Daily Beast, “Congress Cooperates, Obama Pushes Hard, and Closing Gitmo Has a Chance,” Daily Beast, http://www.thedailybeast.com/articles/2013/12/12/congress-cooperates-obama-pushes-hard-and-closing-gitmo-has-a-chance.html

Persistent hard work on Capitol Hill and a new push from the White House are moving the shuttering of Guantanamo a lot closer to reality.¶ Are we closer to closing Guantanamo? It’s beginning to look that way.¶ Earlier this week the Republican-led House and the Democratic-led Senate reached a compromise as part of an annual defense policy bill that would make it easier to transfer detainees from Guantanamo to foreign countries willing to take them. And while many in the press interpreted the news as evidence that Gitmo was here to stay, the bipartisan deal was actually a watershed moment in the long saga. It was the first time since Obama signed his original executive order that Congress moved to make it easier–not harder–to close the 12-year-old facility. ¶ “It’s as if the president finally decided to flip the on-switch and the White House and Defense Department got up and running to work towards closing Guantanamo,” says Christopher Anders, senior legislative counsel at the American Civil Liberties Union. “And it paid off, with a big Senate vote supporting easing some of the transfer restrictions.”¶ There were many factors that led to this rare bit of tangible progress on Gitmo. Among them was a political climate that had been steadily shifting away from concerns about national security--especially as the country absorbs the reality that U.S. forces will be largely out of Afghanistan by year’s end. Meanwhile, Washington has been preoccupied with all-consuming battles over debt ceilings and sequestration. And in a time of austerity, arguments about the high cost of maintaining the controversial prison started to gain considerable traction with moderate Democrats and even some Republicans.¶ But it is also the case that the Guantanamo stalemate began to give way to progress because of a resolute push by Obama as well as a willingness to spend political capital that was not always present during the president’s first term. Obama drove his advisers hard and pushed them to regularly update him on progress. And crucially, he made sure that his team engaged Congress, both to win the cooperation of lawmakers but also to signal that closing Guantanamo was one of the highest priorities of his second term.

#### PC fails --- Dems abandoning Obama now and will continue --- including Mikulski

Jennifer Rubin 1-9 “Tipping point on Iran sanctions?”, WaPo, http://www.washingtonpost.com/blogs/right-turn/wp/2014/01/09/tipping-point-on-iran-sanctions/

Several significant events Thursday suggest the Iran sanctions bill’s tipping point has been reached.¶ First, as the co-sponsors on the bill reached 53, a key Democrat — a moderate, not known for outspoken views on Israel — Sen. Michael Bennet (Colo.) signed on. There are now 15 Democratic co-sponsors, despite a virulent White House campaign to bury the bill. Bennet, the first Democrat to join since the main group in December, raises the possibility still more Democrats will defy the White House. It is rare that the Senate gets 54 bipartisan votes on anything, let alone foreign policy, but the news that Iran is still insisting on proceeding with advanced centrifuges and is dragging out the interim agreement may spur others to follow Bennet.¶ Second, J Street, the most visible anti-sanctions groups which prides itself on blocking and tackling for the president, panicked, sending out an emergency alert today, imploring members to call senators to tell them not to sign onto sanctions legislation. Plainly, Bennet’s decision unnerved the group which unlike every other mainstream Jewish organizations has opposed sanctions, attacked Israel for defending itself against the terrorist flotilla and even embraced the now discredited Goldstone report.¶ Certainly, J Street has reason to worry. If Bennet is on board then Democratic senators who fancy themselves as pro-Israel — like Maryland’s Barbara Mikulski — will be hard pressed to stick with the White House. (It is especially treacherous for Mikulski since her Maryland Democratic colleague Ben Cardin has signed on.) The long list of co-sponsors, both Democratic and Republican, also heightens pressure on Majority Leader Harry Reid (D-Nev.) to move the bill to the floor.¶ Interestingly, vulnerable red state Democrats like Mark Pryor (Ark.), Kay Hagan (D-N.C.), and Mary Landrieu (D-La.) quickly signed on, leaving the Democratic stragglers on the ballot like Sen. Jeanne Shaheen (D-N.H.) vulnerable to attack.¶

#### BUT Mikulski loves the plan –we enter this chart into evidence

PVS 13 Project Vote Smart “Barbara Mikulski's Voting Records “, http://votesmart.org/candidate/key-votes/53304/barbara-mikulski#.Us8vUWRDtcQ

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| --- | --- | --- | --- | --- |
| Nov. 19, 2013 | [S Amdt 2175](http://votesmart.org/bill/17399/46303/53304/authorizes-the-use-of-funds-for-the-transfer-or-release-of-guantanamo-detainees-to-the-united-states) | [Authorizes the Use of Funds for the Transfer or Release of Guantanamo Detainees to the United States](http://votesmart.org/bill/17399/46303/53304/authorizes-the-use-of-funds-for-the-transfer-or-release-of-guantanamo-detainees-to-the-united-states) | Amendment Rejected - Senate (52 - 46) | Yea |
| Nov. 19, 2013 | [S Amdt 2255](http://votesmart.org/bill/17398/46301/53304/prohibits-the-use-of-funds-for-the-transfer-or-release-of-guantanamo-detainees) | [Prohibits the Use of Funds for the Transfer or Release of Guantanamo Detainees](http://votesmart.org/bill/17398/46301/53304/prohibits-the-use-of-funds-for-the-transfer-or-release-of-guantanamo-detainees) | Amendment Rejected - Senate (43 - 55) | Nay |

#### Waivers solve their impact

Eric Auner 11/15/13, a senior analyst at Guardian Six Consulting, "In Congress, Obama Administration Faces Uphill Battle on Iran Sanctions," World Politics Review,http://www.worldpoliticsreview.com/trend-lines/13386/in-congress-obama-administration-faces-uphill-battle-on-iran-sanctions

Whether or not the Obama administration can convince Congress to hold off on new sanctions, the administration still has room to maneuver in offering some limited short-term relief to ease negotiations forward. Kenneth Katzman of the Congressional Research Service wrote in Al-Monitor in August that there is a “vibrant debate among experts” on whether the administration “has the latitude to ease U.S. sanctions to the point where a nuclear deal with Iran can be concluded.” Many of the sanctions give “substantial waiver authority” to the president, according to Katzman, though the standards for issuing such waivers have been steadily increased by Congress.¶ “In a first-phase agreement, sanctions relief would be limited and unlikely to address the core of the [congressionally mandated] sanctions in place, which are on the banking and oil sectors,” said Kelsey Davenport of the Arms Control Association in an email interview. This could take place “over the six months following a first-phase agreement.” Measures could also be taken to “ease restrictions on precious metals and petrochemicals, as well as parts for the automotive and airline industries,” she said. Waivers on some sanctions “could be implemented almost immediately,” said Ali Vaez of the International Crisis Group in an email interview.

#### Case turns the DA but DA can’t turn case --- Iran’s trying to block the BSA but it’s key to prevent Taliban takeover and regional instability

Kokab Farshori 13, VOA, “Iran Looks to Deepen Ties to Afghanistan”, 12-19, http://www.voanews.com/content/iran-looks-to-deepen-ties-to-afghanistan/1814074.html

WASHINGTON — Amid a dispute with the United States over a long-term security deal, Afghanistan is pursuing closer ties with neighboring Iran. The diplomacy could signal an increasing regional role for Tehran in Afghan affairs after most international troops leave Afghanistan in 2014.¶ When Afghan President Hamid Karzai recently visited Tehran, he received support for his delay in signing a security pact with the U.S. that would keep some American troops in Afghanistan beyond 2014.¶ To some experts, the move shows that Kabul is willing to let its neighbors have a stake in regional security.¶ Thomas Lynch, an analyst for Washington’s National Defense University, said, "As we come into 2014, there is this approach to try to find a more regional solution to the problems of violence in this part of the world. And there is interest that the United States has in this, as well, as the Iranians and Afghans."¶ But some experts warn that, if Karzai fails to finalize a deal with the U.S. and all international troops leave next year, Afghanistan's neighbors could be more a hindrance than a help.¶ Ahmad Majidyar, with Washington’s American Enterprise Institute, said, "The Afghan government and the United States have not finalized the security agreement. And if all the U.S. and NATO troops leave, the danger is that the neighboring countries will have a more negative influence and try to use Afghanistan as a proxy battlefield the way they used [it] in the 1990s."¶ U.S. troops leaving Afghanistan would appear to please Tehran, which rejects a foreign presence in the region. But it could also pave the way for a return of the Taliban to power in Kabul. That, said analyst Lynch, would be a problem not only for Afghans, but also for Iran.¶ "Iran had a very bitter and difficult time when the Taliban were in control from 1996 to 2001. So it is pretty clear Iranians do not wish to see the return of the Taliban... much as they do not like to see the remnants of a strong American presence that could, if not directly attack them, perhaps monitor and encourage their own internal dissenters to do things they would not like to have done," said Lynch.

# 1AR

## CP

### Welsh

#### US legitimacy is collapsing due to detention policy---it’s the key

David Welsh 11, J.D. from the University of Utah, “Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy”, http://law.unh.edu/assets/images/uploads/publications/unh-law-review-vol-09-no2-welsh.pdf

The Global War on Terror 1 has been ideologically framed as a struggle between the principles of freedom and democracy on the one hand and tyranny and extremism on the other. 2 Although this war has arguably led to a short-term disruption of terrorist threats such as al-Qaeda, it has also damaged America’s image both at home and abroad. 3 Throughout the world, there is a growing consensus that America has “a lack of credibility as a fair and just world leader.” 4 The perceived legitimacy of the United States in the War on Terror is critical because terrorism is not a conventional threat that can surrender or can be defeated in the traditional sense. Instead, this battle can only be won through legitimizing the rule of law and undermining the use of terror as a means of political influence. 5 ¶ Although a variety of political, economic, and security policies have negatively impacted the perceived legitimacy of the United States, one of the most damaging has been the detention, treatment, and trial (or in many cases the lack thereof) of suspected terrorists. While many scholars have raised constitutional questions about the legality of U.S. detention procedures, 6 this article offers a psychological perspective of legitimacy in the context of detention.

### AT: B+W

#### Brooks and Wohlforth are wrong

Loomis 8 [LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY A Dissertation submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Government, August 4, 2008]

Questioning Illegitimacy Costs: The Brooks-Wohlforth Challenge A nuanced perspective that avoids taking a paradigmatic position on the question of legitimacy costs is that recently advanced by Stephen Brooks and William Wohlforth.24 Brooks and Wohlforth focus their argument on the impact of U.S. unilateralism and insist that current international relations theory simply does not support an academic claim that U.S. unilateral behavior negatively impacts U.S. interests in the divergent ways that Neorealism, Neoliberal Institutionalism, and Constructivism predicts. United States unilateralism is a prime candidate for conduct perceived to be illegitimate and thus is a good test for my argument that perceived illegitimacy degrades U.S. influence. Given the extensiveness of U.S. power, the exaggerated levels of alarm that U.S. unilateralism presumably has generated, and the extent to which legal and social norms proscribe unilateral behavior, it is widely expected that U.S. unilateralism has a particularly strong deteriorating effect on U.S. authority. Brooks and Wohlforth conclude that the empirical evidence and the logical sequence of each of the three mainstream traditions of international relations theory provide insufficient evidence that the United States faces tangible costs as a result of unilateral behavior. Their analysis, however, suffers from a misspecification of the “costs” that they are looking for in response to U.S. unilateralism. Because the heart of their argument is that the costs of unilateral behavior are relatively low, a close inspection of the contours of these costs is required to evaluate their claim. First, challenging the Realist critique of U.S. unilateralism, the authors propose that balancing behavior against the United States is an expected cost of U.S. unilateralism. They conclude that because balancing is not observable, there are no tangible costs. Yet given the vastness of U.S. military preponderance, balancing is unlikely irrespective of U.S. behavior. Yet despite the fact that balancing is remote considering its short-term futility, the absence of balancing is not a fair test of the costs of illegitimate behavior. They do point to resistance strategies of key European states—notably Germany and France—as a form of “soft balancing”, but they suggest that this behavior was the result of German and French domestic politics and had little to do with unilateralism of the United States. Yet they do not make clear why ally domestic opposition to U.S. behavior, which restricts ally behavior vis-àvis U.S. requests, should not be considered a cost of U.S. unilateralism. This oversight is particularly problematic in cases in which domestic opposition generates real costs for the United States. Furthermore, irrespective of the fact that this behavior would be difficult to characterize as acts of balancing (soft or hard) in the definition they provide, their restriction of authority costs to balancing-type behavior renders an analysis of the impact of perceived illegitimacy incomplete.25 Second, Brooks and Wohlforth suggest that the paucity of evidence that unilateral behavior resulted in a major reduction in efficiency gains predicted in the neoliberal literature undermines the institutionalist critique of unilateralism. For one thing, they argue, there is no clear consensus in the literature on the impact of unilateral behavior on U.S. bargaining leverage. In addition, they argue, much of this literature is heavily empirical and devoid of theoretical content. Furthermore, the costs of multilateral action are significant and must be considered against the professed gains of multilateral coordination. Lastly, they suggest that the claim that the United States suffers from bad-faith behavior vis-à-vis institutional engagement is entangled with the emerging literature on reputation effects, which is, in their words, “woefully underdeveloped”.26 In sum, in their view, the theoretical and empirical evidence is insufficiently robust to identify the precise costs that the U.S. faces as a result of a unilateral foreign policy. It is not so much that the institutionalist literature is incorrect on the subject, but that the research agenda is incomplete. Yet by missing the costs in the form of degraded authority, they are prevented from assessing the full range of effects that U.S. unilateralism triggers. Third, Brooks and Wohlforth raise doubts about the constructivist argument that U.S. unilateralism degrades the legitimacy of the architecture of international order—an order from which the United States directly benefits—requiring increased U.S. costs for continued maintenance of the existing order. In establishing the contours of constructivism, they restrict this school of thought to its emphasis on the habituation of international rules, consistent with James March and Johan Olsen’s suggestion that a “logic of appropriateness” shapes decision-making processes.27 Brooks and Wohlforth then challenge constructivist 26 Brooks and Wohlforth, "International Relations Theory and the Case against Unilateralism," 516. 27 March and Olsen, Rediscovering Institutions : The Organizational Basis of Politics, 23. 24 claims that unilateral behavior toward Iraq in 2003 will generate unacceptable costs by suggesting there were other degrading effects of the onset of the Iraq war besides the fact that it was largely unilateral. Their criticism here, too, fails to explore the full range of authority costs, and thus fails to undermine the essential core of my argument. First, the argument I am advancing suggests that ideational factors—perceived fidelity to widely accepted international norms— influence decisions to resist U.S. authority. While legitimacy is widely considered to be the realm of constructivist scholarship, as discussed above, its effects are not dependent on the socialization effects and subsequent internalization of those norms. The argument here is that states can choose to comply with normative influences as a matter of strategic choice, which bypasses the centrality of identity transformation often identified with constructivists (and presumed by Brooks and Wohlforth as forming the outer boundary of constructivist thought). The main reason the Brooks and Wohlforth critique is unconvincing with respect to the constructivist expectation of legitimacy costs again turns on the subject of costs. They argue that because constructivist scholarship fails to satisfactorily answer three entangled complexities—that some forms of unilateralism are more costly than others, compensating strategies may mollify the possible costs, and unilateralism can shape the normative landscape to the hegemon’s advantage—constructivism cannot establish any generalities regarding the legitimacy effects of unilateralism with any degree of confidence. The problem is not that constructivist arguments about unilateralism are wrong, but rather that the scope 25 conditions have not been sufficiently specified. As a result, they argue, the constructivist perspective is deprived of analytical leverage. The 2003 Iraq war is a single data point, they suggest, exhibiting many features that may have degraded U.S. legitimacy. Here their entire argument hangs on the fact that constructivism has not provided sufficient purchase beyond the case of Iraq. How can one be certain that it was unilateralism that had the effect that constructivists now claim in retrospect? This question is valid. Yet in making this case they admit that “many other aspects of the (Iraq) case… are obviously corrosive of legitimacy.”28 Limiting constructivist arguments to unilateralism may be overly restrictive, but according to Brooks’ and Wohlforth’s own standards, the soil is fertile for new work on the broader question of the costs of perceived illegality and illegitimacy. It is on this broader question that this dissertation seeks to provide insight. Brooks and Wohlforth ultimately conclude that academic criticisms of President Bush’s unilateral policies were motivated largely by the substance of the policies (on which academia traditionally has little to offer), but focused on procedural issues (on which it does). They call for increased attention to clarifying the distinction between criticisms of substance and of procedure. In one respect, this dissertation is an answer to their skepticism that international relations scholarship has much to offer in terms of generalities around unilateralism. I am seeking to expand the specification of the independent variable beyond unilateral behavior to include the character of U.S. foreign policy, measured by its normative 28 Brooks and Wohlforth, "International Relations Theory and the Case against Unilateralism," 518. 26 consistency with international standards regulating the use of force. This should help satisfy the criticism that the outcome of unilateralism is under-determined.

### Won’t Push

#### Obama won’t push the plan---it restricts his authority so he wouldn’t expend PC

NYT 12 – Becker and Shane – NYT Staff

Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will, By JO BECKER and SCOTT SHANE, Published: May 29, 2012, New York Times, http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&\_r=0

Walking out of the Archives, the president turned to his national security adviser at the time, Gen. James L. Jones, and admitted that he had never devised a plan to persuade Congress to shut down the prison.¶ “We’re never going to make that mistake again,” Mr. Obama told the retired Marine general.¶ General Jones said the president and his aides had assumed that closing the prison was “a no-brainer — the United States will look good around the world.” The trouble was, he added, “nobody asked, ‘O.K., let’s assume it’s a good idea, how are you going to do this?’ “¶ It was not only Mr. Obama’s distaste for legislative backslapping and arm-twisting, but also part of a deeper pattern, said an administration official who has watched him closely: the president seemed to have “a sense that if he sketches a vision, it will happen — without his really having thought through the mechanism by which it will happen.”¶ In fact, both Secretary of State Hillary Rodham Clinton and the attorney general, Mr. Holder, had warned that the plan to close the Guantánamo prison was in peril, and they volunteered to fight for it on Capitol Hill, according to officials. But with Mr. Obama’s backing, his chief of staff, Rahm Emanuel, blocked them, saying health care reform had to go first.

## Case

### Afghan impact

#### No checks on escalation --- destroys regional stability + US influence

Jack A. Smith 14, Foreign Policy Journal, “Why the US Wants to Stay in Afghanistan”, 1-7, http://www.foreignpolicyjournal.com/2014/01/07/why-the-us-wants-to-stay-in-afghanistan/

Afghanistan is especially important to Washington for two main reasons.¶ The obvious first reason is to have smaller but elite forces and surveillance facilities in Afghanistan to continue the fighting when necessary to protect U.S. interests, which include maintaining a powerful influence within the country. Those interests will become jeopardized if, as some suspect, armed conflict eventually breaks out among various forces contending for power in Kabul since the mid-1990s, including, of course, the Taliban, which held power from 1996 until the 2001 U.S. invasion.¶ The more understated second reason is that Afghanistan is an extremely important geopolitical asset for the U.S., particularly because it is the Pentagon’s only military base in Central Asia, touching Iran to the west, Pakistan to the east, China to the northeast, and various resource-rich former Soviet republics to the northwest, as well as Russia to the north.¶ A Dec. 30 report in Foreign Policy by Louise Arbour noted: “Most countries in [Central Asia] are governed by aging leaders and have no succession mechanisms — in itself potentially a recipe for chaos. All have young, alienated populations and decaying infrastructure… in a corner of the world too long cast as a pawn in someone else’s game.”¶ At this point, a continued presence in Afghanistan dovetails with Washington’s so-called New Silk Road policy first announced by then Secretary of State Hillary Clinton two years ago. The objective over time is to sharply increase U.S. economic, trade, and political power in strategic Central and South Asia to strengthen U.S. global hegemony and to impede China’s development into a regional hegemon.¶ As the State Department’s Robert O. Blake Jr. put it March 23: “The dynamic region stretching from Turkey, across the Caspian Sea to Central Asia, to Afghanistan and the massive South Asian economies, is a region where greater cooperation and integration can lead to more prosperity, opportunity, and stability.¶ “But for all of this progress and promise, we’re also clear-eyed about the challenges. Despite real gains in Afghan stability, we understand the region is anxious about security challenges. That’s why we continue to expand our cooperation with Afghanistan and other countries of the region to strengthen border security and combat transnational threats.”¶ Blake did not define what “security challenges” he had in mind. But both China and Russia are nearby seeking greater trade and influence in Central Asia — their adjacent backyard, so to speak — and the White House, at least, may consider this a security challenge of its own.

### Yes Central Asia

#### Escalation’s guaranteed

Sahgal and Anand 10 (Arun, former Army officer who created the Office of Net Assessment in the Indian Joint Staff, Senior Fellow at the Institute for Defense Studies and Analyses and ‘Distinguished Fellow’ School of Geo-Politics at the Manipal Academy of Higher Education and Vinod, postgraduate in defence and strategic studies and is an alumnus of Defence Services Staff College and College of Defence Management, “Strategic Environment in Central Asia and India”, <http://www.silkroadstudies.org/new/docs/publications/1004Joshi-V-Strategic.pdf>)

The geo-strategic salience of Central Asia today has been underscored by two main factors. First, Central Asia has become important because of the discovery of hydrocarbon reserves and second, it has become a major transportation hub for gas and oil pipelines and multi-modal communication corridors connecting China, Russia, Europe, the Caucasus region, the Trans-Caspian region and the Indian Ocean. Furthermore, whether it was Czarist Russia or the Soviet Union or even the present Central Asian regimes, there has always been a strategic ambition in the north to seek access to the warm waters of the Indian Ocean. Thus Afghanistan, which links Central Asia and South Asia, is a strategic bridge of great geopolitical significance. Central Asia and South Asia are intimately connected not only geographically but also strategically. The Central Asian republics of Turkmenistan, Uzbekistan and Tajikistan have borders with Afghanistan, Iran lies to its west and Pakistan to the east and south. Therefore, the geostrategic significance of Afghanistan is enhanced even though it may not be an oil- or gas-rich country. With the control of Afghanistan comes the control of the land routes between the Indian subcontinent and resource-rich Central Asia, as well as of a potential corridor to Iran and the Middle East. Thus, stability and peace in Afghanistan, and for that matter Pakistan, are a geostrategic imperative. Central Asia has never been a monolithic area and is undergoing a turbulent transitional process with a diverse range of ethnicities and fragmented societies throughout the region. These societal divisions and lack of political maturity compound the social, economic and political challenges. Security and economic issues are the two most important components of the Central Asian states’ engagement with outside powers. Among the states themselves there are elements of both cooperation and competition. Historical legacies, their geo-strategic locations, and above all their perceived national interests profoundly influence the political choices of Central Asian nations. The weaknesses of the new nations in Central Asia pave the way for outside powers to interfere in their internal affairs.

## Politics

### AT: Impact

#### No Israeli strikes---politics have changed

Mark Landler 13 NYT Reporter, "A Goal for Obama in Israel: Finding Some Overlap on Iran," March 18, 2013, [www.nytimes.com/2013/03/19/world/middleeast/obama-in-israel-visit-to-seek-common-ground-with-netanyahu-on-iran.html?pagewanted=1&nl=todaysheadlines&emc=edit\_th\_20130319](http://www.nytimes.com/2013/03/19/world/middleeast/obama-in-israel-visit-to-seek-common-ground-with-netanyahu-on-iran.html?pagewanted=1&nl=todaysheadlines&emc=edit_th_20130319)

Some analysts believe that Mr. Obama now holds the upper hand, in part because doubts about the wisdom of a unilateral strike have grown in Israel since last year, when it was widely discussed.¶ Iran has made enough progress reinforcing its Fordo nuclear facility that it is no longer clear whether Israeli warplanes could destroy it.¶ “There has been a dramatic change in the policy views of most Israeli elites since last fall,” Mr. Kupchan said. “There is a fresh sense that there’s not as much they can do militarily.”¶ The politics in Israel, moreover, have changed. Ehud Barak, the defense minister who was a leading hawk on Iran, has left Mr. Netanyahu’s cabinet. The prime minister’s new cabinet, though not necessarily composed of doves, will need to be briefed before the ministers are likely to vote in favor of unilateral action, analysts said.

### AT: PressTV Card

#### Their impact card is literally propaganda

ADL 13, Anti-Defamation League, “Iran's Press TV: Broadcasting Anti-Semitism To English-Speaking World”, 10-21, http://www.adl.org/anti-semitism/united-states/c/press-tv-iran.html

Press TV, Iran's government-run English-language satellite news network, has emerged as the Iranian government's primary propaganda tool to promote a wide range of pernicious anti-Semitic conspiracy theories in English to a worldwide audience. Operated by Islamic Republic of Iran Broadcasting (IRIB), a significant amount of Press TV programing provides a platform for American anti-Semites, conspiracy theorists and Holocaust deniers, who help amplify the Iranian regime's hateful messages. The station not only misleadingly presents these hatemongers as serious and credible "experts" or "analysts" on international economic and political issues, but also enables their bigoted perspectives to reach a significant new audience. Launched in 2007 and based in Tehran, the station is broadcast in North America, Europe, the Middle East, Asia and parts of Africa and Latin America via a number of satellite television providers. In addition to promoting classic anti-Semitic myths of global Jewish domination, Press TV presents a pervasively negative perspective on Western society, emphasizing what it views as the West's imperialism, faltering economies, lack of justice, political corruption and racial and class divisions. Its programs, interviews, and articles are available on the network's website and further distributed through social media, including on Facebook and Twitter. In July 2013, Press TV sought to further expand its viewership by live streaming its content on YouTube. ADL con­tacted YouTube to inform them that the content on Press TV may violate their terms of service, also noting that providing such communication services may be viewed as violating the Iran Sanctions Act. YouTube subsequently disabled Press TV’s ability to live stream their content. Although YouTube disabled Press TV’s live stream after ADL exposed it, Hispan TV, Press TV’s Spanish-language sister-station, similarly started live streaming its content from the station’s YouTube account, and was subsequently shutdown after YouTube was altered.

### UQ

The tipping point happened today---game over

WP 1-9 – Washington Post, 1/9/14, <http://www.washingtonpost.com/blogs/right-turn/wp/2014/01/09/tipping-point-on-iran-sanctions/>

Several significant events Thursday suggest the Iran sanctions bill’s tipping point has been reached.

First, as the co-sponsors on the bill reached 53, a key Democrat — a moderate, not known for outspoken views on Israel — Sen. Michael Bennet (Colo.) signed on. There are now 15 Democratic co-sponsors, despite a virulent White House campaign to bury the bill. Bennet, the first Democrat to join since the main group in December, raises the possibility still more Democrats will defy the White House. It is rare that the Senate gets 54 bipartisan votes on anything, let alone foreign policy, but the news that Iran is still insisting on proceeding with advanced centrifuges and is dragging out the interim agreement may spur others to follow Bennet.

Second, J Street, the most visible anti-sanctions groups which prides itself on blocking and tackling for the president, panicked, sending out an emergency alert today, imploring members to call senators to tell them not to sign onto sanctions legislation. Plainly, Bennet’s decision unnerved the group which unlike every other mainstream Jewish organizations has opposed sanctions, attacked Israel for defending itself against the terrorist flotilla and even embraced the now discredited Goldstone report.

Certainly, J Street has reason to worry. If Bennet is on board then Democratic senators who fancy themselves as pro-Israel — like Maryland’s Barbara Mikulski — will be hard pressed to stick with the White House. (It is especially treacherous for Mikulski since her Maryland Democratic colleague Ben Cardin has signed on.) The long list of co-sponsors, both Democratic and Republican, also heightens pressure on Majority Leader Harry Reid (D-Nev.) to move the bill to the floor.

Interestingly, vulnerable red state Democrats like Mark Pryor (Ark.), Kay Hagan (D-N.C.), and Mary Landrieu (D-La.) quickly signed on, leaving the Democratic stragglers on the ballot like Sen. Jeanne Shaheen (D-N.H.) vulnerable to attack.

The game changed this afternoon---huge momentum for a veto-proof majority

John Hudson 1-9, Foreign Policy reporter, 1/9/14, “Pressure Mounts on Reid as 58 Senators Back Iran Sanctions,” http://thecable.foreignpolicy.com/posts/2014/01/09/pressure\_mounts\_on\_reid\_as\_58\_senators\_back\_iran\_sanctions#sthash.WGfsLi8Y.dpbs

In a surprise development in Congress, a long-building effort to impose new sanctions on Iran has reached a near-filibuster-proof majority in the Senate. Despite months of White House lobbying against the bill, 58 Senators now support the so-called "Nuclear Weapon Free Iran Act," according to a Senate aide close to the process.

The bill's bipartisan backing puts Senate Majority Leader Harry Reid in an awful bind. Either he defies President Obama and allows a vote on the legislation. Or he goes along with the White House -- and takes on the majority of his fellow senators.

"The only way you can get a vote is if Reid allows it," said a separate Senate aide. "Hence the question ... Does Reid support sanctions -- yes or no?"

A spokesman for Reid did not respond to multiple requests for comment.

In December, the White House threatened to veto the legislation for fear that it would implode last November's interim nuclear deal in Geneva. At that time, Iran's Foreign Minister Javad Zarif told Time magazine "the entire deal is dead" if Congress passses the legislation. Now Reid, who said last month he would eventually bring the issue to a vote, is confronted with demands by the White House to bury it. On the flipside, Democratic allies and pro-Israel lobbyists are hounding him to put the legislation to a vote.

"AIPAC thinks Reid is their ally, but he's carrying water for the administration," said a Senate aide, referring to the influential pro-Israel lobbying group, the American Israel Public Affairs Committee, which supports the bill. "[It's] hard to keep playing both sides, but he'll keep doing it as long as he can."

If passed, the bill -- sponsored by Sen. Robert Menendez (D-NJ) -- would impose sanctions on Tehran if it fails to agree to a comprehensive nuclear deal either this year or next. Democrats supporting it include liberals such as Sen. Kirsten Gillibrand of New York, Sen. Ben Cardin of Maryland, and Sen. Cory Booker of New Jersey. Since its introduction last month, support for the bill has more than doubled from 26 cosponsors to 53 as of this week.

"Every day this week, the legislation has added additional cosponsors," said a Senate aide.

Close watchers of the bill disagree on what Reid will ultimately do. "Reid's in a tight spot," said Mark Dubowitz, executive director of the pro-sanctions Foundation for the Defense of Democracies. "I think it's going to be hard for Reid to resist pressure and at least put it to a vote and see if there's sufficient support to override the veto."

\*\*AIPAC outweighs PC

Philip Weiss 1/6/14, Mondoweiss a news website devoted to American foreign policy in the Middle East, "Why are no Democrats coming down on Republicans who are crossing up Kerry in Jerusalem?," http://mondoweiss.net/2014/01/democrats-republicans-jerusalem.html

I’ve only seen one politician raising an eyebrow about this, actually a former pol, Jane Harman, the former California Democratic congressperson now at the Wilson Center. She had the temerity to call Graham a “mouthpiece” for Netanyahu on MSNBC. Harman is a member in good standing of the Israel lobby, but she was disturbed by the conduct.¶ Now compare the complete silence from the Democratic Party to another foreign policy issue. Back in ’02, two Democratic congressmen visited Iraq and raised serious questions about George W. Bush’s misrepresentations on the path to war. Jim McDermott and David Bonior were great antiwar congressmen who did their duty (and McDermott is still a leader in the House). And the Republican Party came down on them like a ton of bricks.¶ The reason the Democratic Party is silent is because it’s also dependent on the Israel lobby. As Jim Lobe notes in a piece titled, “47 Senators Take AIPAC’s Word Over U.S. Intel Community,” more than a dozen Democratic senators, including blue state “liberals” Booker, Blumenthal, Gillibrand, Schumer, and Casey (see MJ Rosenberg’s character judgment) have defied their president and signed on to wag-the-tail legislation saying Israel’s war on Iran must be our war. That is also the reason UN Ambassador Samantha Power can carry no water for Kerry on the Iran deal or the peace talks. She avoids both subjects because that’s a political liability; her base is northeast liberals and many of them support Israel no matter what. The same lesson is contained in the above photo, put out by the State Department. John Kerry couldn’t be angry about the renegade Republican senators’ work. No; he had to meet with them.¶

\*\*\*PC fails---election concerns

Rebecca Shabad 12/19/13, The Hill, "Top Dems divided on more Iran sanctions," http://thehill.com/blogs/global-affairs/middle-east-north-africa/193669-dems-divided-on-tougher-iran-sanctions-as-bill

Democrats remain divided on this issue, however. On Thursday, 26 senators introduced a bipartisan bill that would impose new and tougher sanctions against Iran.¶ That move challenges requests by the Obama administration, which says new sanctions threaten negotiations over a final deal with Iran on its nuclear program. ¶ Sens. Robert Menendez (D-N.J.), chairman of the Foreign Relations Committee, and Mark Kirk (R-Ill.) introduced the “Nuclear Weapon Free Iran Act,” joined by 24 other senators. ¶ The measure would implement prospective sanctions against Iran if its government fails to comply with the interim nuclear deal the United States and its allies reached last month. Over the next six months, Iran is required to limit the amount of uranium it enriches and effectively freeze its program.¶ “Current sanctions brought Iran to the negotiating table and a credible threat of future sanctions will require Iran to cooperate and act in good faith at the negotiating table,” Menendez said in a statement Thursday. “Prospective sanctions will influence Iran’s calculus and accelerate that process toward achieving a meaningful diplomatic resolution.”¶ The proposed sanctions would require the U.S. to further reduce the amount of petroleum it purchases from Iran, and apply additional penalties to parts of Iran’s economy including its construction, engineering and mining sectors.¶ The Democratic co-sponsors are Sens. Charles Schumer (N.Y.), Ben Cardin (Md.), Bob Casey Jr. (Pa.), Chris Coons (Del.), Mark Begich (Alaska), Richard Blumenthal (Conn.), Mary Landrieu (La.), Kirsten Gillibrand (N.Y.), Mark Pryor (Ark.), Mark Warner (Va.), Kay Hagan (N.C.), and Joe Donnelly (Ind.).¶ Every Democrat considered vulnerable in his or her race for reelection next year is co-sponsoring this measure, a sign that they want to appear tough on foreign policy.¶ The Republican co-sponsors are Sens. Lindsey Graham (S.C.), John McCain (Ariz.), Marco Rubio (Fla.), John Cornyn (Texas), Kelly Ayotte (N.H.), Bob Corker (Tenn.), Susan Collins (Maine), Jerry Moran (Kan.), Pat Roberts (Kan.), Mike Johanns (Neb.), Ted Cruz (Texas), and Roy Blunt (Mo.).¶ “This is a responsible, bipartisan bill to protect the American people from Iranian deception and I urge the Majority Leader to give the American people an up or down vote," Kirk said in a statement.

Tactical differences between Obama and Congress make override inevitable --- and it means Obama won’t even push against it

Payman Yazdani 1/4/14, The Tehran Times, "Any new Iran sanctions will seriously hurt U.S. credibility: academic," <http://tehrantimes.com/component/content/article/93-interviews/113203-any-new-iran-sanctions-will-seriously-hurt-us-credibility-academic>

\*\*\*interview with Nader Entessar, PhD in political science from St. Louis University and professor of political science and Southern Alabama University

Q: What is the role of the Israeli lobby in pushing for new sanctions legislation against Iran?¶ ¶ A: There is no doubt that the Israeli lobby in the United States had hoped for the collapse of the Geneva negotiations. When that did not materialize, the Lobby, through its allies in Congress, launched a drive to undermine the Geneva agreement. However, it is important to note that there are also other elements in the United States that have their own anti-Iran agenda and would not want to see any improvements in U.S.-Iran relations. Lastly, we should not underestimate the negative role played by some Arab countries in the Persian Gulf in this affair. In other words, there are allies of convenience that have banded together to undermine the integrity of the Geneva agreement.¶ ¶ Q: What could Congress do if Obama vetoes sanctions legislation?¶ ¶ A: Any presidential veto of a legislation can be overridden by a two-thirds majority of votes in both houses of U.S. Congress. Historically, about ten percent of presidential votes have been overridden by Congress. However, because of the strong bi-partisan support for anti-Iran legislation, it is very likely that if Obama vetoes a possible new sanctions legislation, U.S. Congress will muster enough votes to overturn President Obama's veto. However, if the Obama administration is serious about improving U.S.-Iran relations, it can put pressure on some key Democratic members of Congress to change their minds, but I am not sure if the Obama administration will have the wherewithal to confront Congress over Iran issues. ¶ ¶ Q: Do you believe that the differences between Congress and the White House are real?¶ ¶ A: There is no question that there are tactical differences between the White House and Congress on how to deal with Iran. While the White House prefers to follow a "crack-and-stick" policy, Congress has generally favored an "iron fist" policy towards Iran. Therefore, there are tactical differences between the Obama administration and Congress on how to deal with Iran. However, the strategic goals of the two branches of the U.S. government are not drastically different from each other. While Congress demands total surrender by Iran, the White House is willing to allow Iran to have a modicum of enrichment capability.

Our vote count is conservative

Timothy Gardner 1/7/14, Reuters, "Iran sanctions bill opposed by Obama gains Senate backers," http://www.euronews.com/newswires/2284396-iran-sanctions-bill-opposed-by-obama-gains-senate-backers/

WASHINGTON (Reuters) – U.S. senators pushing a bill to slap new sanctions on Iran if it goes back on an interim deal under which it agreed to limit its nuclear program have gained support since the legislation was introduced in December, aides said on Monday.¶ The bill, which the White House has threatened to veto, requires further reductions in Iran’s oil exports and would apply new penalties on other industries if Iran either violates the interim agreement or fails to reach a final comprehensive deal.¶ Iran signed the six-month interim deal in Geneva on November 24 with the United States, Britain, France, Russia, China and Germany.¶ The “Nuclear Weapon Free Iran Act” had about 48 co-sponsors in the 100-member Senate on Monday, up from 26 when the bill was introduced on December 19, an Senate aide said.¶ “Expect that number to keep growing over next couple of days as folks who were out of town and staff get back in,” the aide said.¶ The bill was introduced by Robert Menendez, the chairman of the Senate Foreign Relations Committee, and Mark Kirk, a Republican from Illinois.¶ “We expect several Democrats to kind of cross the picket line and come on board this week,” the aide said.

Anti-Iran bills always pass with veto-proof majorities

Bob Dreyfuss 1-3, foreign policy columnist for the Nation, 1/3/14, “Don't Wreck the Iran-P5+1 Accord With Tougher Sanctions,” http://www.thenation.com/blog/177766/dont-wreck-iran-p51-accord-tougher-sanctions#

But that hasn’t stopped key members of Congress, including Senators Mark Kirk (R-IL) and Robert Menendez (D-NJ), from drafting a wrecking-ball piece of legislation, cosponsored by twenty-six senators, to intensify sanctions. Menendez, a top Democrat and chairman of the Senate Foreign Relations Committee, is being opposed by a phalanx of other Democrats, who’ve urged Senate Majority Leader Harry Reid not to allow the Menendez-Kirk “Nuclear Weapon Free Iran Act” to come to a vote. (The November interim accord explicitly forbids new sanctions during the talks, and President Obama is certain to veto such legislation, although anti-Iran bills over pass with overwhelming, veto-proof majorities.) In their letter, however, ten Democratic Senate committee chairs told Reid, “At this time, as negotiations are ongoing, we believe that new sanctions would play into the hands of those in Iran who are most eager to see the negotiations fail.”

Top congressional leaders’ political capital outweighs obamas

Mike Emanuel and Ed Henry 12/20/13, "Obama facing Hill rebellion on Iran sanctions," http://www.foxnews.com/politics/2013/12/20/obama-facing-hill-rebellion-on-iran-sanctions/

¶ President Obama is facing a growing insurrection on Capitol Hill over Iran sanctions legislation, with one source telling Fox News the bill is attracting a "flood" of support and another lawmaker vowing to muscle through the legislation with a veto-proof majority if necessary. ¶ ¶ The momentum comes a day after 26 senators, half of them Democrats, introduced Iran legislation in defiance of the administration -- the bill threatens new sanctions if Tehran does not hold up its end of a newly struck nuclear deal. ¶ ¶ The president criticized those lawmakers in a year-end press conference on Friday, claiming they were just trying to "look tough." ¶ ¶ But the legislation could pose a serious challenge to the administration, which warns that even the introduction of such a bill could imperil ongoing nuclear talks. Though the White House has threatened to veto, Sen. Lindsey Graham, R-S.C., told Fox News he's looking to gather enough senators -- 67 -- to override. ¶ ¶ "If the president wants to veto [the bill], we'll override his veto," he said. "He's making a mistake for the ages, to not keep the pressure on the Iranians." ¶ ¶ One source told Fox News that, as of mid-day Friday, there were close to 50 senators signing up to co-sponsor. The Republican source said Senate Majority Leader Harry Reid has also taken a significant procedural step to fast-track the bill as early as next month. ¶ ¶ A Senate Democratic source confirmed that Reid did take a procedural step allowing the Iran sanctions bill to skip the committee process so that it is available for floor action -- but noted that the move doesn't automatically send the measure to the floor.

Momentum goes aff --- disproves PC key

Jason Ditz 1/7/14, news editor for Anti War, “50 Senators Now Cosponsor Iran Sanctions Bill,” http://news.antiwar.com/2014/01/07/50-senators-now-cosponsor-iran-sanctions-bill/

Fully half of the US Senate has now signed on as co-sponsors of the “Nuclear Weapons Free Iran Act of 2013,” a bill that aims to violate the P5+1 interim deal by imposing new sanctions on Iran, effectively ending chances for a diplomatic rapprochement.¶ The bill, first introduced by Senate hawks before Christmas, not only aims to impose sanctions but also expresses US support for any Israeli military attack on Iran at any time in the future.¶ President Obama has threatened to veto the bill, saying he wants to keep diplomacy going for the time being, and the White House says the veto plan remains in effect.¶ With 50 sponsors though, the Senate hawks seem to be moving close to a veto-proof majority in the Senate, meaning they could sabotage the P5+1 talks even without the president’s permission.

### Deal fail

#### Multiple factors tank the deal ---- DELAY ALONE kills it

NPR 1-9 “Enrichment Disputes Hamper Iran Nuclear Deal”, http://www.npr.org/templates/story/story.php?storyId=261027502

VIENNA (AP) — Nearly seven weeks after signing a landmark nuclear deal, Iran and six world powers hope to reach an agreement this week on its implementation. But differences over Tehran's push to improve its uranium enrichment abilities could delay its enactment and strengthen critics of the accord in Washington and Tehran.¶ Both sides say agreement is possible at a two-day meeting beginning Thursday afternoon in Geneva — with caveats.¶ European Union spokeswoman Maja Kocijanic said "some issues remain to be resolved" during the talks, a statement echoed by Iranian Foreign Ministry spokeswoman Marzieh Afkham.¶ The meeting is formally being held by Iranian Deputy Foreign Minister Abbas Araghchi and EU senior negotiator Helga Schmid on behalf of the six world powers.¶ But the U.S. State Department has announced that senior U.S. negotiator Wendy Sherman would also attend — an indication that Washington wants to be in place if the two sides overcome their differences and announce a deal by Friday.¶ Asked if the U.S. anticipated agreement, State Department spokeswoman Jen Psaki said Wednesday that "there are just a few remaining issues, so we're working toward that."¶ Psaki did not go into specifics on the nature of the disagreements in keeping with the confidential nature of the negotiations.¶ But two officials told The Associated Press that Iran is coming to the table with demands to exempt a facility used for research and the development of uranium enrichment from the overall curbs on its enrichment. That is something opposed by the six powers which sealed the Nov. 24 deal with Tehran.¶ Depending on its grade, enriched uranium can be used either for reactor fuel or — at levels above 90 percent — for the fissile core of a nuclear warhead. Iran insists it has no interest in nuclear weapons only nuclear power but the United States and its allies are skeptical.¶ Limiting uranium enrichment is one of the core aims of the six-month interim deal meant to prepare ground for a permanent accord on Iran's nuclear program.¶ Under the November agreement, Iran agreed to limit its uranium enrichment to 5 percent — the grade commonly used to power reactors. The deal also commits Iran to stop producing 20 percent enriched uranium — which is only a technical step away from weapons-grade material — and to neutralize its 20 percent stockpile.¶ At the same time, the agreement allows Tehran to continue enrichment research and development — a loophole the two officials say Iran interprets as allowing it to continue producing 20 percent uranium at its research and development site at Natanz, south of Tehran.¶ Iranian negotiators say no additional 20 percent material will be accumulated, because any made at the site will be immediately neutralized, said the officials, who represent countries that are members of the Vienna-based U.N. nuclear agency monitoring Tehran's atomic activities. They spoke on condition of anonymity because they are not authorized to discuss what is said at the closed meetings.¶ But representatives of the six powers — the United States, Russia, China, Britain, France and Germany — argue that the preliminary Geneva deal prohibits all enrichment above 5 percent, even for research and development purposes.¶ The two sides also are coming to the table Thursday with an additional dispute about what can be done at the Natanz site. As reported by the AP last month, Iran told representatives of the six powers that it had installed some advanced centrifuges at the facility after signing the Nov. 24 deal, asserting that it had a right to do so under the research and development provisions of the accord.¶ That is being opposed by the United States and its allies. They argue that installing any centrifuge that increases overall numbers, particularly a new model, violates Tehran's commitment to freeze the amount and type of enriching machines it has at Nov. 24 levels.¶ When the AP sought comment on the topic, the office of Reza Najafi, Iran's chief IAEA delegate, said he was not available to speak to non-Iranian media. Calls to Iranian officials in Tehran were not immediately returned.¶ Also Thursday, the Kremlin announced that Russian President Vladimir Putin had spoken by telephone with Hassan Rouhani, his Iranian counterpart, about the issues surrounding implementation of the Geneva agreement.¶ The disagreements reflect the difficulties in implementing the Nov. 24 deal, which outlines both Iran's obligations and moves by the international community to ease economic sanctions in return for Tehran's nuclear concessions.¶ Both sides have said they hope the interim agreement can come into force by late January.¶ A delay could strengthen hardliners in Tehran, who say Iran is making too many concessions for not enough rewards, as well as congressional skeptics in Washington who are pushing for new Iran sanctions. The U.S. legislators say Iran may be drawing out the diplomatic process as it edges closer to nuclear weapons capability.

#### No deal---key sticking points

Reuters 1/8/14, “Iran-Big Power Nuclear Talks Hit Snag on Centrifuge Research,” http://www.voanews.com/content/reu-iran-nuclear-talks-hit-snag-on-centrifuges-research/1826120.html

Negotiations between Iran and six world powers on implementing a landmark November deal to freeze parts of Tehran's nuclear program in exchange for easing some sanctions have run into problems over advanced centrifuge research, diplomats said.¶ ¶ The dispute over centrifuges highlighted the huge challenges facing Iran and the six powers in negotiating the precise terms of the Nov. 24 interim agreement. If they succeed, they plan to start talks on a long-term deal to resolve a more than decade-long dispute over Tehran's nuclear ambitions.¶ ¶ Among the issues to be resolved in political discussions due to begin in Geneva later this week is that of research and development of a new model of advanced nuclear centrifuge that Iran says it has installed, diplomats said on condition of anonymity.¶ ¶ Centrifuges are machines that purify uranium for use as fuel in atomic power plants or, if purified to a high level, weapons.¶ ¶ “This issue [centrifuges] was among the main factors in stopping the previous technical discussions on Dec. 19-21,” a Western diplomat told Reuters on condition of anonymity.¶ ¶ Other Western diplomats confirmed that centrifuges remained a “sticking point” in the talks with Iran but noted that last month's discussions were understandably adjourned ahead of the December holidays - not because of the centrifuge issue.¶ ¶ “As part of the [Nov. 24] agreement, Iran is permitted to engage in R&D [research and development], but that is tempered by the fact that it is prohibited to install new centrifuges, except as required by wear and tear,” the first diplomat said.¶ ¶ State Department spokeswoman Jen Psaki said the United States was keen to see the interim deal implemented, though she declined to predict the outcome of the latest talks.¶ ¶ She said U.S. Undersecretary of State for Political Affairs Wendy Sherman will be in Geneva on Thursday to discuss the issue with her European Union counterpart, Helga Schmid, and Iran's negotiator, Deputy Foreign Minister Abbas Araqchi.¶ ¶ In December, Al-Monitor, a news website focusing on the Middle East, cited a former U.S. official as saying Iran had notified the six powers it wanted to install additional “IR-2m” centrifuges, modified versions of second-generation machines. The website also said the former U.S. official suggested this may have played a role in the dispute.¶ ¶ But diplomats now say Iran has told the six countries it wants to press ahead with the development of even more advanced centrifuges than the IR-2m.¶ ¶ Iran is already testing several different new, more efficient centrifuge models at its Natanz research facility, according to the U.N. nuclear watchdog. Iran's statements last month that it was testing a new advanced centrifuge have not made clear whether it is an entirely new model or a modified version of an installed one.¶ Serious nuclear negotiations¶ ¶ Western diplomats said they were uncomfortable with the idea of Iran pressing ahead with the development of more advanced centrifuges. But Iran says centrifuge research is crucial.¶ ¶ “We have to make sure our right to research and development is respected,” a senior Iranian government official said on condition of anonymity.¶ ¶ The research and development would be aimed at improving Iran's existing centrifuge technology so it can enrich better and faster, a prospect Western governments find worrisome.