# Wake Opensource Round 6

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#### Exec flexibility on detention powers now

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President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Reforms turn terrorism and intel---guts exec flexibility

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

#### Causes nuclear war---exec flex is key to successful fourth-gen warfare

Zheyao Li 9, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

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#### Farm bill will pass but it’s very close

Reuters 11/11/13, “U.S. Congress has about 50/50 chance of passing farm bill in 2013 –analyst,” http://www.reuters.com/article/2013/11/12/usa-agriculture-farm-bill-idUSL2N0IX01T20131112

Nov 11 (Reuters) - The chances of the U.S. Congress passing a five-year farm bill by year's end are a little better than 50/50 given the gridlock over food stamps for the poor, a top farm policy expert said on Monday.¶ "There is a slightly better chance than 50/50 that we will get a bill rolled into a budget at the end of the year. But it's no better than that," Barry Flinchbaugh, a Kansas State University agricultural economist who advises legislators shaping the U.S. farm bill, told Reuters on the sidelines of a farm bankers meeting in Minneapolis.¶ The farm bill, already a year behind schedule, is the master legislation that directs government supports for farmers and food aid programs.¶ The bill is now with a conference committee of 41 members of Congress who are hammering out the difference between the House and Senate bills. The biggest difference: the Senate wants $4 billion cut from food stamps while the House wants to reduce the program by $40 billion.¶ "Food is the only division. The other issues can be settled," said Flinchbaugh, citing variations in how they address crop insurance for farmers along with other subsidies.¶ Historically, the conference committee reconciles differences and brings a compromise to a final vote. That process has been hampered by the deep divisions between the Republican-controlled House and the Senate, where Democrats are in the majority.¶ "There is a way perhaps we can get past this food stamp gridlock. We cut food stamps $6-$8 billion and then we put in all these caveats the far right wants to put in the food stamp program, like work requirements and drug tests," said Flinchbaugh, who has advised on farm policy for over 40 years.¶ The government extended the expired 2008 farm bill last year. Leaders of the House and Senate agricultural committees have a self-imposed deadline of reaching agreement by Thanksgiving and the White House has threatened to veto a bill with large food stamp cuts.¶ If Congress fails to pass a new bill, a second extension is likely, Flinchbaugh said.¶ "There is some talk we will do that for two years because we don't want to be messing with this during an election year," Flinchbaugh said. "Or, we implement the permanent legislation."¶ Without a new law, U.S. farm policy will be dictated by an underlying 1938 permanent law that would bring back the concept of "price parity" which led to sharply higher guaranteed crop prices, Flinchbaugh said.

#### Obama would spend tons of PC to push the plan

Nathaniel H. Nesbitt 11, J.D. Candidate 2011, University of Minnesota Law School; B.A. 2005, New York University, November, "Note: Meeting Boumediene's Challenge: The Emergence of an Effective Habeas Jurisprudence and Obsolescence of New Detention Legislation," Minnesota Law Review, 95 Minn. L. Rev. 244, Lexis

Apart from the point that new legislation is not substantively necessary, perhaps the most obvious - if unremarkable - argument against further detention legislation is that it is unlikely. Passing detention legislation would require President Obama to expend political capital at a time when other issues dominate the national agenda, something the President is no doubt even more reluctant to do now than when he first declined to do so in September 2009. n190 The same is true of most legislators; it is well recognized that politicians "have a strong incentive to avoid taking up a question that has been provisionally settled by a court." n191 In short, even assuming new legislation to be the ideal course of action, it is far from clear that Congress could actually pass it. And most legislators may not even be tempted to try given Congress's ill-fated history in this area. n192

#### Political capital is key --- overcomes partisanship

Josh Lederman 10/18/13, reporter for the Associated Press, and Jim Kuhnhenn, “No safe bets for Obama despite toned-down agenda,” US News and World Report, http://www.usnews.com/news/politics/articles/2013/10/18/no-safe-bets-for-obama-despite-toned-down-agenda

WASHINGTON (AP) — Regrouping after a feud with Congress stalled his agenda, President Barack Obama is laying down a three-item to-do list for Congress that seems meager when compared with the bold, progressive agenda he envisioned at the start of his second term.¶ But given the capital's partisanship, the complexities of the issues and the limited time left, even those items — immigration, farm legislation and a budget — amount to ambitious goals that will take political muscle, skill and ever-elusive compromise to execute.¶ "Those are three specific things that would make a huge difference in our economy right now," Obama said. "And we could get them done by the end of the year if our focus is on what's good for the American people."

#### Farm bill’s key to advances in biofuels---stable policy and funding are vital

Sustainable Business 11/6/13, “Farm Bill is Back, Will Renewable Energy Be Included?,” http://www.sustainablebusiness.com/index.cfm/go/news.display/id/25339

While we don't often think of the farm-renewable energy connection, under the Farm Bill, the US Department of Agriculture (USDA) has assisted bringing thousands of solar, wind and biogas projects to farms, while helping them increase their efficiency.

The Rural Energy for America Program (REAP) funds up to 25% of a renewable energy system or energy efficiency upgrade and provides additional support through loan guarantees. 8,250 renewable energy and energy efficiency projects have been installed under the Obama administration.

The Biorefinery Assistance Program supports young companies in getting their biofuel technologies off the ground. Sapphire Energy's $54 million loan from the US Department of Agriculture (USDA) allowed it to build its Green Crude Farm in New Mexico, which turns algae into crude oil. Sapphire paid the loan back this year.

While these programs represent a tiny portion of Farm Bill costs - 0.7% of the 2008 Farm Bill - they are responsible for much of the growth of the US renewable energy industry, they say. Both programs are hanging by a thread because of funding cuts over the past few years.

The letter - from the solar, wind and biofuels trade associations - asks them to re-authorize $900 billion in guaranteed funds for the next five years, which is in the Senate version of the bill (S.954).

In the past, these funds have leveraged billions of dollars in private investment, they say. "These new agriculture, manufacturing, and high technology jobs are at risk without continued federal investment."

The House version, (HR 2642) leaves this funding out and instead, authorizes $1.4 billion in discretionary funds that can be allocated as congress wishes.

Indeed, in 2011, House Republicans cut funding from $75 million to just $1.3 million for the Rural Energy for America Program. They wanted to scrap the program.

Rep. Tim Walz (D-MN), the ranking member of the House Agriculture Subcommittee on Conservation, Energy and Forestry, is expected to lead on getting these programs through conference committee negotiations.

"The U.S. is experiencing strong growth in the development and commercialization of biofuels, bioproducts, biopower, biogas, energy crops, renewable energy, renewable chemicals and energy efficiency. These important and growing industries all benefit agriculture and forestry and are poised to make huge contributions to our economic, environmental and national security in the coming years, provided that we maintain stable policies that support clean energy manufacturing and innovation," the letter says.

#### Farm bill renewables grants are key to the Navy’s Great Green Fleet

Tina Casey 12, specializes in military and corporate sustainability, advanced technology, emerging materials, biofuels, and water and wastewater issues for Clean Technica, 8/27/12, “Farmers in Cahoots with Navy Biofuel Mission,” <http://cleantechnica.com/2012/08/27/chemtex-gets-usda-loan-for-biofuel-plant-in-north-carolina/#OdGkBwbQVPdqPi7r.99>

When Republican leadership in Congress tried to torpedo the U.S. Navy’s ambitious biofuel programs last spring, the Navy managed to fight its way around those obstacles. The maneuvers received some media attention at the time, but one strategic ally seems to have slipped under the radar: the U.S. Department of Agriculture. The USDA has been funding a network of eight biofuel refineries in every region of the country while supporting foundational research that will help make biofuels cost competitive with fossil fuels, which will benefit the Navy and farmers alike.

Biorefineries to Aid Farmers

When you think of biorefineries, the fuel is the first thing that naturally comes to mind, but a key mission of the USDA’s biorefinery program is to aid farmers and boost rural economies.

The Navy and Department of Energy first announced a major biofuel partnership with the USDA last summer, capping off President Obama’s midwest bus tour in support of the Administration’s rural economic development programs.

The USDA is funding the eight new biorefineries under The Biorefinery Assistance Program set forth in Section 9003 of the 2008 Farm Bill. The goal of that program goes beyond the dollars and cents of competitive biofuels. According to the USDA, it is intended to:

“…increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; create jobs and enhance the economic development of the rural economy.”

A New Biorefinery for North Carolina

The USDA’s latest biorefinery project is a $99 million, 80% loan guarantee to the global engineering company Chemtex, which also received funding to work directly with local farmers to raise “energy grasses” like switchgrass and miscanthus.

The new biorefinery will be the first commercial-scale facility of its kind in the Mid-Atlantic, and the USDA expects it to create 65 jobs on site with another 250 jobs off site, many involved in raising and transporting feedstock for the refinery.

In a sustainability twofer, some of the feedstock will also double as natural effluent management for waste lagoons at local pig farms, where a grass called Coastal Bermuda is already being used for that purpose. By transitioning to energy grasses, farmers will continue the land stewardship program while benefiting from a new revenue stream.

USDA estimates that local farmers stand to gain $4.5 million in new revenue annually when the new biorefinery is completed.

U.S. Navy: 3, Biofuel Opponents: 0

By putting itself front and center as an early adopter of biofuels, the Navy’s goal has been to help the biofuel industry build up to an economy of scale that makes its product competitive with petroleum fuels.

To that end, the Navy has budgeted for the purchase of biofuels even though they are currently more expensive. The program culminated in the launch of biofuel-assisted ships and aircraft in the new Green Strike Group this summer, and a full Great Green Fleet is planned for 2016.

#### GGF’s key to U.S. clean tech leadership

Peter Lehner 12, Executive Director of the Natural Resources Defense Council, 7/31/12, “Navy Launches Great Green Fleet, Powered by Biofuels,” http://switchboard.nrdc.org/blogs/plehner/navy\_launches\_great\_green\_flee.html

The U.S. Navy launched its Great Green Fleet recently at RIMPAC, the world's largest naval exercise, which takes place biannually off the coast of Hawaii. Squadrons of F/A-18 Hornet fighter jets, an SH60-Seahawk helicopter, E-2 Hawkeye airborne early warning aircraft and other planes took off from the deck of the USS Nimitz, all powered by a biofuel blend, demonstrating, for the first time, biofuels in action at sea.

“The military has done a lot of things that starts a tidal wave throughout our culture, and I think this is one of those things,” Lt. Commander Jason Fox, a Hawkeye pilot, told Forbes.

The Navy has been testing biofuels for years, as part of a broader military effort to reduce vulnerability to oil prices and improve combat capability in general through renewable energy and efficiency. Naval Secretary Ray Mabus pointed out that the Navy got hit with a billion-dollar energy bill in May due to rising oil prices. He told reporters, “We simply have to figure out a way to get American made homegrown fuel that is stable in price, that is competitive with oil that we can use to compete with oil. If we don’t we’re still too vulnerable.”

The Navy is aiming to get 50 percent of its energy from renewable sources by 2020, and biofuels are an important part of that plan. However, the Navy's expanded use of biofuels could have unintended consequences, depending on what kind of biofuels the Navy chooses. Done right, biofuels are a sustainable source of energy that can protect the environment and reduce carbon pollution without affecting food prices. But carelessly produced biofuels can actually increase global warming pollution and degrade our forests, soil, and water quality, and pose a threat to public health--hardly compatible with the military's mission. Moreover, biofuels that degrade the land, soil, and water that sustain them will not deliver strategically meaningful volumes of alternative fuel for very long.

Working to increase the production of low-carbon, responsibly grown biofuels can give us environmental security and national security, by providing our military with a sustainable supply of domestic fuel, reducing global warming pollution, and helping our economy--and our nation--break free from the monopoly of oil. The launch of the Great Green Fleet demonstrates real leadership on the Navy's part, and highlights the key role that the military can play in advancing groundbreaking technologies that transform the way we live.

The military essentially created the semiconductor industry, for example, by supporting early R&D and then making large purchases that brought down the cost of semiconductor manufacturing, eventually making it accessible to the broader civilian market. The military can play this transformative role again, by supporting biofuel supplies that can be replenished and sustained over the long term. That means ensuring the Navy's biofuels are responsibly grown, low-carbon biofuels that provide maximum benefits for all Americans.

#### Extinction

Louis Klarevas 9, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

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

### 1NC

#### The United States Congress should restrict indefinite detention by creating a National Security Court based on non-criminal courts with exclusive jurisdiction over the United States’ indefinite detention policy.

#### Creating an NSC solves detention problems

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2. Creation of a National Security Court. Congress should establish a special national security court (NSC) with jurisdiction over cases involving international terrorism and other national security issues, including judicial review of enemy combatant detentions, within limits that respect the prerogatives of the political branches.¶ This NSC would be analogous to the court created by the Foreign Intelligence Surveillance Act of 1978, i.e., the Foreign Intelligence Surveillance Court (or, as it is better known, the “FISA court”), which now hears government applications for national security wiretaps and searches.62 Like the FISA court, the NSC would have district and appellate court components, both drawn from the national pool of experienced federal judges.63 The judges would be selected by the Chief Justice of the United States for renewable four-year terms. Renewal would be in the discretion of the Chief Justice, and judges could be removed from their assignment to the NSC for bad behavior or poor performance. The NSC could be centrally located in Washington, D.C., and/or could sit in other courthouses throughout the country that have been hardened in light of the terrorist threat – i.e., districts which have court, prison, government office and storage facilities that the Justice Department’s Security Office, the U.S. Marshals Service and the federal Bureau of Prisons have secured to deal with classified information and the dangers unavoidably attendant to international terrorism matters.64 As appropriate, it could also convene in safe facilities under the control of the Defense Department overseas, such as the naval base at Guantanamo Bay.65¶ The new NSC’s appellate tribunal (not its district court) would have jurisdiction to review combatant status review tribunals – just as the D.C. Circuit, rather than a district court, currently has it under the MCA.66 The CSRT-review would be highly deferential to the executive branch (especially while war still ensues), there being no reason to believe it is not being performed in good faith by the military. Thus, one round of judicial review by an appellate court (empowered to remand the case back to the military for additional proceedings if necessary) is perfectly adequate – with the proviso that certiorari review may be sought in the Supreme Court. ¶ The NSC would, in addition, be given concurrent original jurisdiction over offenses that by statute or under the laws of war may currently be tried by military commissions,67 as well as jurisdiction over other statutory offenses common to international terrorism cases. It would have jurisdiction over any alleged offenders, regardless of where in the world they have been apprehended (including inside the United States), if those offenders qualify as alien enemy combatants upon the determination of a CSRT.¶ Designed in this manner, the NSC would ensure development of judicial expertise in the complex legal issues peculiar to this realm, including among others: classified information procedures (see the Classified Information Procedures Act, 18 U.S.C. Append. III), the laws and customs of war, international humanitarian law, the limited entitlements of aliens under U.S. law, and the strict construction of discovery rights in national security cases. Not only would this expertise enable the judges sitting on the NSC to dispense justice fairly and more efficiently; it would also result in the affected executive branch agencies (primarily, the Justice Department, the Defense Department, and the components of the intelligence community) having to adapt to but a single body of jurisprudence. ¶ Symmetrically, the executive branch would form an NSC unit combining Justice Department attorneys who specialize in terrorism and other national security cases with military lawyers drawn from the services’ Judge Advocate General’s offices, selected by the Secretary of Defense (or, perhaps, the Defense Department’s General Counsel). This unit would be the NSC’s liaison with the affected executive branch agencies and would represent the government before the NSC. The NSC would also have its own panel of defense counsel, which would mirror what now exists in the military system: a chief defense counsel drawn from the Judge Advocate General’s office of one of the armed services, and other judge advocates and qualifying civilian defense counsel who would have appropriate security clearances and experience in national security litigation. (Some, of course, would also have expertise in capital litigation). ¶ Significantly, transferring these matters to a new NSC would also foster the salutary effects of disconnecting most international terrorists from the justice system that applies to ordinary Americans accused of crimes. On the other hand, although the new forum would not give detained terrorists the right to judicial enforcement of treaties, its existence, independence and the public interest in its proceedings would provide the U.S. government with a powerful incentive to honor its treaty obligations, and a stage on which to exhibit that it does so.68

#### Counterplan solves executive flexibility

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What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

### 1NC

#### The United States Supreme Court should restrict indefinite detention by ruling that:

#### ---U.S. citizens and resident aliens are not eligible for indefinite detention

#### ---indefinite detention should conform with the Law of Armed Conflict and be restricted to individuals who cannot be adequately prosecuted in the criminal justice system

#### ---individuals can be detained for providing substantial support only if it is necessary for the completion of a terrorist plot or the ongoing operation of a terrorist organization or a smaller sub-group thereof

#### ---all individuals classified for prosecution by the Guantanamo Review Task Force Report of 2010, and who have not been formally charged, should receive criminal trials in federal court.

#### Courts are comparatively better at handling indefinite detention issues and don’t jeopardize national security

Nathaniel H. Nesbitt 11, J.D. Candidate 2011, University of Minnesota Law School; B.A. 2005, New York University, November, "Note: Meeting Boumediene's Challenge: The Emergence of an Effective Habeas Jurisprudence and Obsolescence of New Detention Legislation," Minnesota Law Review, 95 Minn. L. Rev. 244, Lexis

III. HABEAS WORKS: THE PRAGMATIC CASE AGAINST NEW DETENTION LEGISLATION¶ In September 2009, President Obama declined to seek new detention legislation. n168 One may have doubted the wisdom of this decision in the early months of the habeas litigation. Perhaps an inevitable consequence of Boumediene, n169 the vagueness of the legal authority on which the government rests its ability to detain suspected terrorists initially gave rise to a deeply fractured jurisprudence in the district courts. n170 This state of affairs led some commentators, including judges and legislators, to call for Congress to intervene to provide guidance for the courts. n171 As an abstract policy matter, it may well be preferable to build detention standards from the top down, through legislation or administrative regulations, rather than from the ground up, through the common-law process mandated by Boumediene. Part II took this argument seriously, and showed that the first eighteen months of habeas litigation were indeed plagued by substantive and procedural divergences among judges that arguably threatened equal application of the law and, possibly, national security prerogatives. But time has vindicated President Obama's decision. Part II also showed that the D.C. Circuit has resolved the most salient of these divergences in less than seven months, and in a manner that almost uniformly favors the government and thus undermines the key motivation for congressional action. In short, further [\*274] detention legislation is unnecessary because habeas works. The goal of this Part is to catalogue why new legislation is unnecessary, unwise, and indeed, unlikely. It argues that the most prudent course is also the most politically palatable: to allow the habeas litigation to continue to unfold.¶ A. New Legislation is Not Substantively Necessary¶ ¶ The problems with pressing for new detention legislation can be distilled to issues of necessity, motivation, and competence. Building on the above description of the habeas litigation, this section tackles the first of these issues and argues that further legislation is unnecessary to bolster either of the two primary issues at stake in the habeas litigation - national security and detainee welfare.¶ Many have urged further detention legislation, including D.C. judges presiding over the habeas litigation. Thomas Hogan, Chief Judge of the D.C. district courts and the author of the procedural order that governs the Guantanamo litigation, urged congressional action by highlighting the uniformity issues discussed above. "It is unfortunate," said Judge Hogan, "that the Legislative Branch of our government, and the Executive Branch have not moved more strongly to provide uniform, clear rules and laws for handling these cases." n172 The differences among judges point to the "need for a national legislative solution with the assistance of the Executive so that these matters are handled promptly and uniformly and fairly for all concerned." n173 Similarly, Judge Janice Rogers Brown of the D.C. Circuit suggested that a "court-driven process" is not best suited to "protect[] both the rights of petitioners and the safety of our nation." n174 Rather, "the circumstances that frustrate the judicial process are the same ones that make this situation particularly ripe for Congress to intervene pursuant to its policy expertise, democratic legitimacy, and oath to uphold and defend the Constitution." n175 In short, "war is a challenge to law, and the law must adjust." n176¶ [\*275] Perhaps. And yet this Note has demonstrated that over the last two years, the law has done precisely that: adjust to meet the challenges of the Guantanamo litigation. Divergences among district court judges have narrowed as the jurisprudence has matured, and the D.C. Circuit has resolved most issues in favor of the government. Still, Judge Brown rightly points to the twin reasons that might conceivably animate further detention legislation: national security and detainee welfare. Neither presents a convincing rationale for congressional action.¶ First, the notion that Congress would better protect detainee welfare is simply not credible. The only lobbies concerned with detainee welfare - human rights and civil liberties groups - have long opposed further detention legislation because, they reason, it would further entrench an illegitimate system of detention. n177 But even assuming the legitimacy of [\*276] some form of executive detention, it would be naive to suggest that the political branches mobilize for the benefit of Guantanamo detainees. To the extent members of Congress are incentivized to be "tough on terrorism," n178 one cannot reasonably expect detention reform to enhance fairness to detainees. Indeed, the jurisdiction-stripping legislation struck down by Boumediene demonstrates that most members of Congress object to detainees' access to the court system in the first instance. n179 True, even among opponents of further legislation, there are few vocal advocates of the current state of affairs. n180 From a pragmatic detainee-welfare perspective, however, as between new legislation and the current process of habeas review, the current process is the lesser of two evils. n181¶ Although one cannot credibly urge congressional action to protect detainee rights, one may do so for national security reasons. An argument that the fractious lower court jurisprudence is in part the result of judges whittling away at the President's detention authority may well have political bite. n182 The national security argument for further detention legislation is, in short, that the President's continued ability to detain dangerous individuals depends on clearer standards from Congress. One might further bolster this argument by noting that there is more at stake than detainee liberty. The rules federal judges are crafting will affect more than detention at Guantanamo; indeed, they are likely to influence military policymaking for years to come. n183 The political branches have every incentive [\*277] the argument goes to ensure that the habeas litigation does not impinge on the military's ability to prosecute the "war on terror" by targeting and detaining dangerous individuals.¶ But these security-oriented arguments ring hollow in the face of the overwhelmingly pro-government jurisprudence emerging from the D.C. Circuit. In the dim light cast by Boumediene and Hamdi, the D.C. Circuit has suggested that the vague mandate of the AUMF establishes, for example, that a petitioner's presence at an al Qaeda guesthouse is (almost certainly) independently sufficient to justify detention. n184 One panel intimated that district court judges should be particularly skeptical of detainees' evidence. n185 Moreover, the court has vigorously questioned the necessity of the preponderance standard - uniformly adopted by district court judges and accepted by the Obama Administration - and all but invited the government to press for the lower "some evidence" standard, which has not been seriously advanced since the Bush Administration. n186 The D.C. Circuit has also translated the nonbinding suggestion from four members of the Hamdi plurality that hearsay "may need to be accepted as the most reliable available evidence from the Government" n187 into the repeated holding that "hearsay ... is always admissible." n188 And the court disapproves [\*278] of judicial assessments of detainee dangerousness, even when this approach would lead to the continued detention of an individual in whom it is "ludicrous" to perceive a security threat. n189 In sum, it is difficult to characterize the D.C. Circuit case law as giving rise to serious national security concerns.¶ B. Motivation and Competence¶ ¶ Apart from the point that new legislation is not substantively necessary, perhaps the most obvious - if unremarkable - argument against further detention legislation is that it is unlikely. Passing detention legislation would require President Obama to expend political capital at a time when other issues dominate the national agenda, something the President is no doubt even more reluctant to do now than when he first declined to do so in September 2009. n190 The same is true of most legislators; it is well recognized that politicians "have a strong incentive to avoid taking up a question that has been provisionally settled by a court." n191 In short, even assuming new legislation to be the ideal course of action, it is far from clear that Congress could actually pass it. And most legislators may not even be tempted to try given Congress's ill-fated history in this area. n192¶ Still, one might argue that the courts are not institutionally competent to resolve the policy questions embedded in refining the vague detention criteria of the AUMF. n193 The habeas litigation [\*279] has disproven this thesis. The animating concern here is, again, national security. While the courts have taken steps to protect detainee rights - and some district court judges have been more aggressive in this respect than others - the standards emerging from the D.C. Circuit do not protect detainee rights at the expense of national security concerns. Indeed, to the extent that court has erred, it has done so in favor of the government. For example, one panel went so far as to hint that district court judges should be particularly skeptical of detainees' explanations, given that al Qaeda members are trained "to make up a story and lie." n194 One might observe that such skepticism would seem to put the cart before the horse by assuming detainees to be members of al Qaeda, whereas the whole point of a habeas proceeding is to determine whether each petitioner in fact meets that standard. Regardless, the limited point here is that the D.C. Circuit seems to favor resolving "close calls" in favor of the government.¶ Furthermore, even if, from an abstracted institutional perspective, Congress is better suited to the task, there is good reason to doubt that Congress would, in fact, produce reasoned, sensible detention legislation. New legislation is likely to be less the result of reasonable deliberation and more a function of interest group politics. n195 A habeas reform bill introduced by Lindsey Graham in early August 2010 illustrates this point. n196 The bill would require the D.C. district courts to give "utmost deference" to the executive's determination as to whether a particular organization is associated with al Qaeda or the Taliban. n197 [\*280] In essence, this provision would take from Congress its constitutional power to determine the entities with which the United States is at war. n198 The criticism, then, is that even if institutionally competent, Congress may not be politically competent to pass detention legislation that would be any more effective than the habeas litigation has proven to be. n199 And, like the Graham bill, resulting legislation may well raise serious constitutional concerns, the resolution of which would only further delay the habeas proceedings. In any case, new legislation would also be subject to interpretation by courts, and so - rather than clarifying the law - may only destabilize the increasingly coherent jurisprudence. n200¶ It bears emphasizing that the political branches could pass new detention legislation that appropriately reckoned with the implications of Boumediene, ensuring that detainees have a prompt, meaningful chance to contest their status, to assess the evidence against them, and so on. n201 The suggestion here, however, is that the game would not be worth the candle: the federal courts in Washington, D.C. have already done this work for them.¶ C. Congressional Inaction¶ ¶ The best option is, in the end, the simplest one. The political branches should allow the courts to continue to adjudicate habeas petitions on the basis of the AUMF as construed in Hamdi and in light of the Court's guidance in Boumediene. As has happened over the last two years, remaining differences among judges will likely narrow over time as the jurisprudence matures. n202 True, as Judge Brown pointed out in urging congressional [\*281] action, the common-law process depends on incrementalism and eventual correction, and may be most effective where there are a significant number of cases brought before a large number of courts; by contrast, the number of Guantanamo detainees is limited, the circumstances of their confinement are unique, and all cases are heard before the D.C. courts. n203 Yet, as Part II demonstrated, even as district court judges have rejected the alternative approaches of their colleagues on both substantive and procedural issues, n204 the common-law process has already worked to resolve many of these disagreements. And that all habeas cases are heard before the federal courts in Washington, D.C. is a virtue rather than a vice, as it allows the D.C. judges to rapidly accumulate expertise. n205¶ A central purpose of the habeas litigation is to allow each detainee a fair and equal chance to challenge his confinement. The early months of litigation gave reasons to doubt whether that was happening. But times have changed. Detainees need not wait for the law to cohere on some future date; it is already beginning to do so. While detainees do not benefit from all aspects of the jurisprudence emerging from the D.C. Circuit, the law is at least becoming coherent and consistent enough to provide every detainee the same, genuine opportunity to challenge his detention.¶ The D.C. Circuit has not resolved every divergence, nor could it. Some disagreements, rooted in different conceptions of the appropriate amount of deference to accord the government in light of Boumediene, will persist. n206 Given the convergence of [\*282] substantive detention standards discussed above, such disagreements may increasingly be about procedural matters. From a uniformity standpoint this result is less of a problem. Procedure is an area of unique judicial expertise; district court judges are well suited to develop procedures that ensure accurate fact-finding and a fair - or at least reasoned and public - resolution of each habeas case. n207 It would be unwise to mandate a one-size-fits-all procedural framework for cases that are widely recognized to be "unique" and "unprecedented." n208¶ CONCLUSION¶ ¶ The Guantanamo habeas cases have challenged our court system. With little guidance from Congress or the Supreme Court, federal judges have been muddling through the habeas cases for over two years. But while district court judges have disagreed about both substantive and procedural issues, the D.C. Circuit has resolved the most salient of these disagreements. As a result, the habeas jurisprudence is increasingly coherent, and effectively provides each detainee with the same, meaningful chance to challenge his detention. Moreover, the many detainee wins have not come at the expense of laying precedent that threatens U.S. national security. Indeed, the standards emerging from the D.C. Circuit are, if anything, overly protective of national security prerogatives at the expense of detainee liberty. For detainees as well as for the government, then, habeas works.¶ Many eight-or-more-year denizens of Guantanamo never belonged there, and the story of their detention will no doubt long stain the reputation of the United States as a champion of individual liberty and human rights. But the story recounted [\*283] here is not an unmitigated failure of these principles. Boumediene gave detainees access to a process that has led many to freedom; Fouad Al-Rabiah, the aviation engineer discussed in the Introduction, is now at home in Kuwait. n209 In sum, the habeas cases decided so far suggest that the wisest course of action is also the simplest and most politically attractive. Congress should stand back and allow the habeas litigation to proceed.

### Case

#### Allied terror coop is high and resilient

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### Self-interest guarantees co-op

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of its drive to bolster its counterterrorism capabilities, the EU has also made promoting law enforcement and intelligence cooperation with the United States a top priority. Washington has largely welcomed these efforts, recognizing that they may help root out terrorist cells both in Europe and elsewhere, and prevent future attacks against the United States or its interests abroad. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially since 2001. A number of new U.S.-EU agreements have also been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, two new U.S.-EU treaties on extradition and mutual legal assistance, and accords on container security and airline passenger data. In addition, the United States and the EU have been working together to curb terrorist financing and to strengthen transport security.

#### NSA surveillance wrecks co-op---outweighs the aff

Henry Farrell, WaPo, 10/23/13, The Merkel phone tap scandal paves the way toward E.U.-U.S. confrontation, www.washingtonpost.com/blogs/monkey-cage/wp/2013/10/23/the-merkel-phone-tap-scandal-paves-the-way-toward-e-u-u-s-confrontation/?wprss=rss\_politics&clsrd

According to German news magazine, Spiegel, there is some evidence that the United States has tried to tap German Chancellor Angela Merkel’s cellphone. The evidence seems strong enough to have caused Merkel to make an angry phone call to Obama to complain. The administration, in response, has said that the United States “is not monitoring and will not monitor the communications of Chancellor Merkel.” It has declined to comment on whether it has monitored her phone communications in the past. It’s likely that Germany is being hypocritical in complaining about the phone tap. The transcripts of the Wikileaks diplomatic cables reveal that Merkel has been privately very sympathetic to U.S. surveillance in the past. Almost certainly, Merkel would not be making angry and well publicized phone calls if the scandal hadn’t already become public. Now that it is public, she has to. The scandal is equivalent to the scandal that would erupt in the United States, if it was discovered that France had been tapping into President Obama’s blackberry. Yet as Martha Finnemore and my arguments about hypocrisy suggest, the interesting question isn’t whether the German government is entirely sincere. It’s whether these revelations are making it tougher for the United States to have its cake and eat it too. And there is good reason to believe that they will make direct confrontation between Europe and the United States more likely. On Monday, the European Parliament agreed on new privacy legislation, which included a provision that forbade businesses from giving personal information to U.S. authorities without informing European authorities, and the European citizen affected. The United States had previously successfully lobbied to get this provision deleted; it was reinstated as a result of the Snowden scandal. The European Parliament doesn’t get sole final say on this legislation — it now has to negotiate with Europe’s member states. U.S. politicians and lobbyists have been hoping that they can persuade enough member states to quietly delete the provision yet again. This has suddenly become a lot harder. Merkel would probably personally like to see the provision deleted. Yet it is going to be very hard for her to push that argument, without looking like a sellout to the German public. The French wiretapping scandal is similarly going to harden public opposition in France. Disagreements over spying are usually handled discreetly through back channels. Not this time. Thus — even if Merkel doesn’t want it (and she has done her best in her public statement to limit the controversy by only demanding that U.S. spying stops) — this latest scandal is plausibly going to lead to a major confrontation between the European Union and the United States over NSA spying, in which the two sides make incompatible legal demands. If this happens, Google, Facebook, and other companies that operate across both jurisdictions will be caught in the crossfire. It’s possible that Europe and the United States will find some way to fudge this and avoid confrontation, but it’s hard for me to see how.

#### Terrorists aren’t pursuing nukes

Wolfe 12 – Alan Wolfe is Professor of Political Science at Boston College. He is also a Senior Fellow with the World Policy Institute at the New School University in New York. A contributing editor of The New Republic, The Wilson Quarterly, Commonwealth Magazine, and In Character, Professor Wolfe writes often for those publications as well as for Commonweal, The New York Times, Harper's, The Atlantic Monthly, The Washington Post, and other magazines and newspapers. March 27, 2012, "Fixated by “Nuclear Terror” or Just Paranoia?" [http://www.hlswatch.com/2012/03/27/fixated-by-“nuclear-terror”-or-just-paranoia-2/](http://www.hlswatch.com/2012/03/27/fixated-by-)

If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

#### No technical know-how or resources

Umana 11 – Felipe Umana is a contributor to Foreign Policy In Focus, from the Institute for Policy Studies. August 17, 2011, "Loose Nukes: Real Threat?" http://www.fpif.org/articles/loose\_nukes\_real\_threat

Actors seeking to acquire an atomic weapon – or the capability to produce one – generally do not have the essential training, knowledge, or materials. Nor do they generally have the necessary resources to achieve nuclear capabilities. In fact, for non-state actors, smuggling already-manufactured weapons or available materials is the only practical way to go nuclear. Terrorist organizations like Aum Shinrikyo (now known as Aleph) and al-Qaeda are typically **composed of men with little scientific training** and ersatz scientific knowledge, if any. Unless they steal blueprints, these actors can't construct a usable fissile weapon. Moreover, it's not easy to move such sensitive materials around. Anatoly Bulochnikov, director of the Center for Export Controls in Moscow, contrasted nuclear materials with mundane goods: “[These items are] not potatoes, not something you can keep anywhere.” Another hindrance is a lack of steady funds and resources. Non-state actors simply don't have the money to purchase bomb-grade nuclear material (in 1991, a kilogram of enriched uranium went for $700,000), the means to enrich uranium, or the storage facilities to contain the material.

#### No nuclear retal

Davis 2 – Professor of Policy Analysis, RAND Graduate School (Paul and Brian Jenkins, Deterrence and Influence in Counterterrorism, http://www.rand.org/publications/MR/MR1619/MR1619.pdf)

 That is, al Qaeda could use WMD against the United States, but retaliation—and certainly escalation—would be difficult because (1) the United States will not use chemical, biological, or radiological weapons; (2) its nuclear weapons will seldom be suitable for use; and (3) there are no good targets (the terrorists themselves fade into the woodwork).

#### 15 years of failure proves no risk

Sigger 10—defense policy analyst (Justin, 1/26, “Terrorism Experts Can Be Alarmists, Too”, http://armchairgeneralist.typepad.com/my\_weblog/2010/01/terrorism-experts-can-be-alarmists-too-1.html)

You find the famous bin Laden 1998 quote about WMDs, references from George "slam dunk" Tenet's book on al Qaeda intentions and actions in the desert, meetings between Muslim scientists and suppliers, statements by terrorists that were obtained under "interrogations," and yes, even Jose Padilla's "dirty bomb" - a charge which people may remember the US government dropped because it had no evidence on this point. And no discussion about AQ would be complete without the "mobtaker" device that never really emerged in any plot against the West. That is to say, we have a collection of weak evidence of intent without any feasible capability and zero WMD incidents - over a period of fifteen years, when AQ was at the top of their game, they could not develop even a crude CBRN hazard, let alone a WMD capability. Mowatt-Larsen doesn't attempt to answer the obvious question - why didn't AQ develop this capability by now? He points to a June 2003 article where the Bush administration reported to the UN Security Council that there was a "high probability" that al Qaeda would attack with a WMD within two years. The point that the Bush administration could have been creating a facade for its invasion into Iraq must have occurred to Mowatt-Larsen, but he dodges the issue. This is an important report to read, but not for the purposes that the author intended. It demonstrates the extremely thin thread that so many terrorist experts and scientists hang on when they claim that terrorists are coming straight at the United States with WMD capabilities.

#### Chance of acquiring one is 1 in 3.5 billion

Schneidmiller 9(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

#### Plan can’t boost legitimacy or soft power---alt causes overwhelm

Kudryashov 11 - Roman Kudryashov, Researcher: Applied Politics & Economics, the New School, May 17, 2011, “Democracy Promotion in between Domestic and International Needs,” online: http://whataretheseideas.wordpress.com/2011/05/17/democracy-promotion-in-between-domestic-and-international-needs/

Additionally, America must occasionally pause for self reflection (in an attempt to understand how other people view the nation): While America advertises democratization, policy choices, alliances, and domestic conditions all run counter argument. Where the CFR report suggests switching some media programming into a C-SPAN format to show how democratic politics work (Albright p.32), I argue that the bitter partisan politics leading to budget deadlocks in congress, the radicalizing ideology of the Tea Party, George Bush’s blatant disregard of UN Security Council advice on invading Iraq, and the illegitimate politics of Wisconsin’s Scott Walker in the face of a state-wide strike advertise the failings of the American democratic system 21. As far as neoliberal policies that America packages with its democratization program go, Joseph Stieglitz points out that with the distribution of wealth in America, the nation more and more begins to resemble the autocratic regimes it is criticizing (Stieglitz 1).

As Michael Pocalyko points out at the end of the CFR dissenting views, “Abu Ghraib matters infinitely more than Americans realize. Its effects are enduring. These human rights abuses were a stunning desecration of American values and a psychological assault on Islam. No one…in the Arab nations has ‘moved on’” (Albright p.47). Likewise, Washington’s almost-axiomatic support for Israel will mean that America will be blamed by proxy for whatever conflicts and injustices arise out of the Israeli-Arab and Palestinian conflicts 22. America would do well to be careful of the image it creates for itself in international affairs---the adverse reactions to American democracy promotion confirm that Arabic civil society responds to what America does, not what it says, so a strategic planning approach concerning how America is perceived would argue for repairing America’s reputation through policy changes, before embarking on noble goals of democracy promotion.

#### Best evidence concludes no legitimacy impact

Brooks & Wohlforth 8 – Stephen G. Brooks, Assistant Professor of Government at Dartmouth, and William C. Wohlforth, Associate Professor of Government at Dartmouth, 2008, World Out of Balance: International Relations and the Challenge of American Primacy, p. 201-206

First, empirical studies find no clear relationship between U.S. rulebreaking, legitimacy, and the continued general propensity of other governments to comply with the overall institutional order. Case studies of U.S. unilateralism—that is, perceived violations of the multilateral principle underlying the current institutional order—reach decidedly mixed results.74 Sometimes unilateralism appears to impose costs on the United States that may derive from legitimacy problems; in other cases, these acts appear to win support internationally and eventually are accorded symbolic trappings of legitimacy; in yet others, no effect is discernable. Similar results are reported in detailed analyses of the most salient cases of U.S. noncompliance with international law, which, according to several studies, is as likely to result in a “new multilateral agreement and treaties [that] generally tilt towards U.S. policy preferences” as it is to corrode the legitimacy of accepted rules.75

The contestation created by the Bush administration’s “new unilateralism,” on the one hand, and the “new multilateralism” represented by other states’ efforts to develop new rules and institutions that appear to constrain the United States, on the other hand, fits the historical pattern of the indirect effect of power on law. Highlighting only the details of the struggle over each new rule or institution may deflect attention from the structural influence of the United States on the overall direction of change. For example, a focus on highly contested issues in the UN, such as the attempt at a second resolution authorizing the invasion of Iraq, fails to note how the institution’s whole agenda has shifted to address concerns (e.g., terrorism, proliferation) that the United States particularly cares about. The secretary-general’s Highlevel Panel on Threats, Challenges and Change endorsed a range of U.S.-supported positions on terrorism and proliferation.76 International legal scholars argue that the United States made measurable headway in inculcating new rules of customary law to legitimate its approach to fighting terrorism and containing “rogue states.”77 For example, UN Security Council Resolution 1373 imposed uniform, mandatory counterterrorist obligations on all member states and established a committee to monitor compliance.

That said, there is also evidence of resistance to U.S. attempts to rewrite rules or exempt itself from rules. Arguably the most salient example of this is the International Criminal Court (ICC). During the negotiations on the Rome Convention in the late 1990s, the United States explicitly sought to preserve great-power control over ICC jurisdiction. U.S. representatives argued that the United States needed protection from a more independent ICC in order to continue to provide the public good of global military intervention. When this logic failed to persuade the majority, U.S. officials shifted to purely legal arguments, but, as noted, these foundered on the inconsistency created by Washington’s strong support of war crimes tribunals for others. The Rome Convention rejected the U.S. view in favor of the majority position granting the ICC judicial panel authority to refer cases to court’s jurisdiction.78 By 2007, 130 states had signed the treaty and over 100 were full-fledged parties to it.

President Clinton signed the treaty, but declined to submit it to the Senate for ratification. The Bush administration “unsigned” it in order legally to be able to take action to undermine it. The United States then persuaded over 75 countries to enter into agreements under which they undertake not to send any U.S. citizen to the ICC without the United States’ consent; importantly, these agreements do not obligate the United States to investigate or prosecute any American accused of involvement in war crimes. This clearly undermines the ICC, especially given that about half the states that have signed these special agreements with the United States are also parties to the Rome Statute. 79 At the same time, the EU and other ICC supporters pressured governments not to sign special agreements with the United States, and some 45 have refused to do so—about half losing U.S. military assistance as a result. In April 2005, the United States chose not to veto a UN Security Council resolution referring the situation in Darfur, Sudan, to the ICC. To many observers, this suggests that inconsistency may yet undermine U.S. opposition to the court.80 If the U.S. campaign to thwart the court fails, and there is no compromise solution that meets some American concerns, the result will be a small but noticeable constraint: U.S. citizens involved in what might be construed as war crimes and who are not investigated and prosecuted by the U.S. legal system may have to watch where they travel.

The upshot as of 2007 was something of a stalemate on the ICC, demonstrating the limits of both the United States’ capability to quash a new legal institution it doesn’t like and the Europeans’ ability to legitimize such an institution without the United States’ participation. Similar stalemates characterize other high-profile arguments over other new international legal instruments, such as the Kyoto Protocol on Climate Change and the Ottawa Landmine Convention. Exactly as constructivists suggest, these outcomes lend credence to the argument that power does not translate unproblematically into legitimacy. What the larger pattern of evidence on rule breaking shows, however, is that this is only one part of the story; the other part involves rule breaking with few, if any, legitimacy costs, and the frequent use of go-it-alone power to revise or create rules.

AN EROSION OF THE ORDER?

The second general evidence pattern concerns whether fallout from the unpopular U.S. actions on ICC, Kyoto and Ottawa, Iraq, and many other issues have led to an erosion of the legitimacy of the larger institutional order. Constructivist theory identifies a number of reasons why institutional orders are resistant to change, so strong and sustained action is presumably necessary to precipitate a legitimacy crisis that might undermine the workings of the current order. While aspects of this order remain controversial among sections of the public and elite both in the United States and abroad, there is little evidence of a trend toward others opting out of the order or setting up alternatives. Recall also that the legitimacy argument works better in the economic than in the security realm. It is also in the economic realm that the United States arguably has the most to lose. Yet it is hard to make the empirical case that U.S. rule violations have undermined the institutional order in the economic realm. Complex rules on trade and investment have underwritten economic globalization. The United States generally favors these rules, has written and promulgated many of them, and the big story of the 1990s and 2000s is their growing scope and ramified nature—in a word, their growing legitimacy. On trade, the WTO represents a major strengthening of the GATT rules that the United States pushed for (by, in part, violating the old rules to create pressure for the upgrade). As of 2007, it had 149 members, and the only major economy remaining outside was Russia’s. And notwithstanding President Putin’s stated preference for an “alternative” WTO, Russian policy focused on accession.81 To be sure, constructivists are right that the WTO, like other rational-legal institutions, gets its legitimacy in part from the appearance of independence from the major powers.82 Critical analysts repeatedly demonstrate, however, that the organization’s core agenda remains powerfully influenced by the interests of the United States.83

Regarding international finance, the balance between the constraining and enabling properties of rules and institutions is even more favorable to the United States, and there is little evidence of general legitimacy costs. The United States retains a privileged position of influence within the International Monetary Fund and the World Bank. An example of how the scope of these institutions can expand under the radar screen of most legitimacy scholarship is International Center for Settlement of Investment Disputes (ICSID)—the major dispute settlement mechanism for investment treaties. Part of theWorld Bank group of institutions, it was established in 1966, and by 1991 it had considered only 26 disputes. With the dramatic growth in investment treaties in the 1990s, however, the ICSID came into its own. Between 1998 and 2004, over 121 disputes were registered with the Center.84 This increase reflects the rapidly growing scope of international investment law. And these new rules and treaties overwhelmingly serve to protect investors’ rights, in which the United States has a powerful interest given how much it invests overseas.

Looking beyond the economic realm, the evidence simply does not provide a basis for concluding that serial U.S. rule-breaking imposed general legitimacy costs sufficient to erode the existing order. On the contrary, it suggests a complex and malleable relationship between rule breaking, legitimacy, and compliance with the existing order that opens up numerous opportunities for the United States to use its power to change rules and limit the legitimacy costs of breaking rules. The evidence also suggests that just as rules do not automatically constrain power, power does not always smoothly translate into legitimacy. As our review of the ICC issue showed, the United States is not omnipotent, and its policies can run afoul of the problems of hypocrisy and inconsistency that constructivists and legal scholars identify. Indeed, neither the theory nor the evidence presented in this chapter can rule out the possibility that the United States might have enjoyed much more compliance, and had much more success promulgating its favored rules and quashing undesired rule change, had it not been such a rule breaker or had it pursued compensating strategies more energetically.

#### Climate multilateralism fails

Hale 11---PhD Candidate in the Department of Politics at Princeton University and a Visiting Fellow at LSE Global Governance, London School of Economics (Thomas, © 2011 Center for Strategic and International Studies, The Washington Quarterly, 34:1 pp. 89-101, “A Climate Coalition of the Willing,” <http://www.twq.com/11winter/docs/11winter_Hale.pdf>)

Intergovernmental efforts to limit the gases that cause climate change have all but failed. After the unsuccessful 2010 Copenhagen summit, and with little progress at the 2010 Cancun meeting, it is hard to see how major emitters will agree any time soon on mutual emissions reductions that are sufficiently ambitious to prevent a substantial (greater than two degree Celsius) increase in average global temperatures.

It is not hard to see why. No deal excluding the United States and China, which together emit more than 40 percent of the world’s greenhouse gases (GHGs), is worth the paper it is written on. But domestic politics in both countries effectively block ‘‘G-2’’ leadership on climate. In the United States, the Obama administration has basically given up on national cap-and-trade legislation. Even the relatively modest Kerry-Lieberman-Graham energy bill remains dead in the Senate. The Chinese government, in turn, faces an even harsher constraint. Although the nation has adopted important energy efficiency goals, the Chinese Communist Party has staked its legitimacy and political survival on raising the living standard of average Chinese. Accepting international commitments that stand even a small chance of reducing the country’s GDP growth rate below a crucial threshold poses an unacceptable risk to the stability of the regime. Although the G-2 present the largest and most obvious barrier to a global treaty, they also provide a convenient excuse for other governments to avoid aggressive action. Therefore, the international community should not expect to negotiate a worthwhile successor to the Kyoto Protocol, at least not in the near future.

#### No extinction from climate change

NIPCC 11 – the Nongovernmental International Panel on Climate Change, an international panel of nongovernment scientists and scholars, March 8, 2011, “Surviving the Unprecedented Climate Change of the IPCC,” online: http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html

In a paper published in Systematics and Biodiversity, Willis et al. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2 will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas et al., 2004; Solomon et al., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford et al., 2008)."

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos et al., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records."

Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world."

In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."

#### No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

#### Legitimacy not key to human rights pressure – backlash isn’t prohibitive

Michael Ignatieff 2, Carr professor of human rights, Kennedy School of Government @ Harvard, “NO EXCEPTIONS?” *Legal Affairs*, May/June

This defense of the United States does not, however, address the charge of hypocrisy. If America wants to be a human rights leader, the argument goes, it must obey the rules it seeks to champion. Leadership depends on legitimacy, and legitimacy requires consistency. But it's not clear that the effective use of American power in fact depends on being consistent, or on being seen by others as legitimate. Perceived legitimacy eases but it isn't essential to the exercise of power.

Being seen as hypocritical or double-dealing may impose some costs on a superpower, but these costs are rarely prohibitive. America has faced a storm of protest about its treatment of the Guantanamo Bay prisoners—a storm that has led the Bush Administration to concede that the Geneva Convention should determine which protections Taliban prisoners (though not Al Qaeda ones) receive. At the same time, the prisoners remain, and are likely to remain, in American custody and subject to American justice.

In another example, Slobodan Milosevic is in detention in The Hague, thanks in large measure to the pressure of the United States on the Serbian government. America could exert that pressure despite resisting the creation of a permanent criminal court with the power to try American citizens. (Milosevic will make much of this resistance to demonstrate that he is the casualty of victor's justice.) And again, as a matter of equity and ethics, it may be undesirable for the United States to support international tribunals for others but not for its own citizens. It is less clear, however, that this prevents American support for these tribunals from being effective.

#### Human Rights Cred is irrelevant — public opinion, global norms, and NGO networks outweigh US policy

Andrew Moravcsik 5, PhD and a Professor of Politics and International Affairs at Princeton, 2005, "The Paradox of U.S. Human Rights Policy," American Exceptionalism and Human Rights, http://www.princeton.edu/~amoravcs/library/paradox.pdf

It is natural to ask: What are the consequences of U.S. "exemptionalism” and noncompliance? International lawyers and human rights activists regularly issue dire warnings about the ways in which the apparent hypocrisy of the United States encourages foreign governments to violate human rights, ignore international pressure, and undermine international human rights institutions. In Patricia Derian's oft-cited statement before the Senate in I979: "Ratification by the United States significantly will enhance the legitimacy and acceptance of these standards. It will encourage other countries to join those which have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues.""' One constantly hears this refrain. Yet there is little empirical reason to accept it. Human rights norms have in fact spread widely without much attention to U.S. domestic policy. In the wake of the "third wave" democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without attending to U.S. domestic or international practice." The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. One reads occasional quotations from recalcitrant governments citing American noncompliance in their own defense-most recently Israel and Australia-but there is little evidence that this was more than a redundant justification for policies made on other grounds. Other governments adhere or do not adhere to global norms, comply or do not comply with judgments of tribunals, for reasons that seem to have little to do with U.S. multilateral policy.

## 2NC

### CP

#### Political fights mean oversight turns into partisan blame-shifting---collapses effectiveness

Philip Alston 11, the John Norton Pomeroy Professor of Law, New York University School of Law, was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, 2011, “ARTICLE: The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283

The United States was one of the first countries to institutionalize congressional oversight, driven initially by revelations relating to domestic abuses by the Federal Bureau of Investigation. n359 By comparison with other democratic states, n360 the system of Congressional oversight in the United States is, in theory, relatively strong. The relevant committees have wide-ranging mandates, are empowered to examine both policy and operational issues, and have certain proactive as well as various reactive powers. n361 It is perhaps not surprising then that defenders of the CIA's targeted killings program have placed great store in the effectiveness of Congressional oversight. n362¶ [\*386] There is, however, remarkably little either in the public record, or in leaked information, which would sustain such confidence. In general, it is widely acknowledged that the oversight system has suffered from extensive shortcomings and the relationship between the CIA and Congress has been poor for many years. n363 The 9/11 Commission concluded in 2004 that Congressional oversight of intelligence and counter-terrorism activities was "dysfunctional," n364 and it called for "dramatic change." n365. A study by a former CIA Inspector-General, published by the CIA, describes relations with the Congress through 2004 in the following terms:¶ Rather than a constructive collaboration to tackle genuine, long-term problems, oversight became a means of shifting political blame . . . either to the incumbent administration or away from it. ¶ When any intelligence agency perceives this is happening, communications will suffer. No longer confident how the committees will use the information they are provided, agencies become more wary of what they share with them. n366¶ In 2007, Tim Weiner concluded that "congressional oversight of the [CIA] had collapsed." n367 He argued that the intelligence committees had not engaged the CIA on key issues for many years, and described their dismal legacy as consisting of "an occasional public whipping and a patchwork of quick-fixes . . . ." n368 Loch Johnson similarly characterizes congressional oversight as involving "sporadic patrolling and ad hoc responses to fire alarms." n369 In 2009, the Speaker of the House of [\*387] Representatives, Nancy Pelosi, charged that, "the CIA was misleading the Congress" and added, for good measure, that "they mislead us all the time." n370 Speaker Pelosi was responding to the agency's alleged failure to have adequately informed Congress about its use of waterboarding to extract information from detainees. That controversy was exacerbated by the CIA's subsequent destruction of videotapes showing such interrogations. n371 Many other incidents have also involved allegations that the CIA withheld information from Congress. n372 These include, in particular, the wiretapping program managed by the National Security Agency, n373 and a targeted killings plan that Vice President Cheney allegedly ordered the CIA to keep secret from Congress over an eight-year period. n374

#### Politicians can deflect blame

Alison M. Martens, political science at University of Louisville, 2007 (*Perspectives on Politics* 5.3)

The outline of this revised research agenda, begins by looking at a 1993 article written by Mark Graber challenging the countermajoritarian difficulty paradigm. Graber's observations point to the importance of studying systemic transformations, such as the evolution of judicial supremacy. Using historical case studies on abortion, the *Dred Scott* controversy, and anti-trust issues to study perceived incidents of judicial independence, he contends that scholars who seek to justify independent judicial policymaking, even in the face of believed democratic deficiencies, misunderstand and inaccurately represent the relationships between justices and elected officials. By looking at the dialogues between these parties it becomes apparent that judicial independence, when it actually occurs, is often exercised **at the invitation of elected officials**, and in the absence of any expressed majoritarian choice, in order to **resolve political controversies** that elected officials cannot or do not want to resolve themselves. Hence the counter-majoritarian difficulty can be more appropriately characterized as the “non-majoritarian difficulty.” [33](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn33#fn33)

According to Graber, where crosscutting issues divide a lawmaking majority an invitation is often tacitly but consciously issued to the Court by political elites to **resolve the political controversy** that they themselves are unwilling or unable to address, thereby “foisting disruptive political debates off on the Supreme Court.” [34](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn34#fn34) Graber writes that “elected officials encourage or tacitly support judicial policymaking both as a means of **avoiding political responsibility** for making tough decisions and as a means of pursuing controversial policy goals that they **cannot publicly advance** through open legislative and electoral politics.” [35](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn35#fn35) Furthermore, political and electoral advantages can accrue by ducking these tough questions and sending them on to be settled by the Court. Graber explains that elites (including **the executive) can benefit from passing the political buck** to the Court in multiple ways. Party activists can be redirected to focus on legal action in the courts, thereby reducing pressure on mainstream politicians who wish to maintain a more politically viable moderate stance. Voters can be redirected to focus any ire they might have over policy outcomes on the Court. Politicians can take responsive positions on judicial decisions that may make for a good sound bite but really require no politically accountable action on their part. Finally, political compromise between the legislature and the executive might be had under the table of Court policymaking. [36](http://journals.cambridge.org.ezp-prod1.hul.harvard.edu/action/displayFulltext?type=6&fid=1300748&jid=PPS&volumeId=5&issueId=03&aid=1300740&fulltextType=RA&fileId=S1537592707071484#fn36#fn36) This is an impressive set of political benefits that can stem from a practice of judicial supremacy that creates a Court equipped with the interpretive authority and legitimacy to make controversial public policies. Graber's article, then, highlights the perversion of political accountability that can possibly occur where everyone in the system, the public included, accepts and expects interpretive authority to reside with the courts.

#### Court decisions preserve capital

Tushnet 8—William Nelson Cromwell Professor of Law @ Harvard University [Mark, “The Obama Presidency and the Roberts Court: Some Hints From Political Science” 25 Const. Commentary 343, Summer, lexis]

What can the courts do for a resilient regime? Presidents and Congress have limited time and political energy. They will spend them on what they regard as central issues. But at any time there will be "outliers"--geographic regions as yet uncommitted to the regime's constitutional understandings, or substantive areas that plainly require change if those understandings are to become deeply implanted in society, yet politically too touchy or relatively unimportant to Congress. "For the affiliated leader, enhancing judicial authority to define and enforce constitutional meaning provides an efficient mechanism for supervising and correcting those who might fail to adhere to the politically preferred constitutional vision" (pp. 105-06). The courts can serve as a convenient but essentially administrative mechanism for bringing these outliers

into the constitutional order. (16) In addition, the courts may have rhetorical resources unavailable to presidents. Their obligation to explain their decisions, and the fact that they make decision after decision, means that they have an opportunity to develop a reasonably general account of the resilient regime's constitutional understandings. In Whittington's words, "It is the classic task of judges within the Anglo-American tradition ... to render new decisions and lay down new rules that can be explicated as a mere working out of previously established legal principles" (p. 84). Presidents, in contrast, only sporadically make speeches illuminating those understandings. More boldly, affiliated presidents may try to use the courts to "**overcome[el gridlock**" (p. 124) caused by the strategic positions recalcitrant opponents of the new constitutional regime may occupy. And, if not "use the courts," at least rely on the courts to take the initiative, because "[t]he Court can sometimes **move forward on the** constitutional **agenda** where other political officials cannot" (p. 125). "[C]oalition leaders might be constrained by the needs of coalition maintenance," but "judges have a relatively free hand" (p. 125). This "use" of the courts, though, poses risks. The courts may push the regime's constitutional principles further and faster than is politically wise, and the regime's political leaders may find themselves on the defensive. Indeed, in this way the courts can contribute to making a resilient regime vulnerable, which may be part of the story about the Warren Court and the demise of the New Deal/Great Society regime. (17) Preemptive presidents face a special strategic problem. Sometimes they take office because they manage to persuade the public that they remain committed to a resilient regime's constitutional vision even if in

their hearts they want to transform the regime. (18) At other times they take office as a regime becomes vulnerable, but do not themselves have the program, vision, or charisma to be reconstructive presidents themselves. (19) They are likely to face opposition in Congress and to some

degree in the courts. But they can turn divided government to their advantage by seeking judicial confirmation of executive prerogative. The judges in place might be sympathetic to such claims for doctrinal and political reasons. They will have "inherited from affiliated administrations" (p. 169) doctrines supporting executive authority. And, though Whittington doesn't make this point explicitly, they may see the preemptive president as an accident, soon to be replaced by an affiliated one whose exercises of presidential power they will want to endorse. Finally, preemptive presidents need to get their authority from somewhere when they face congressional opposition, as they will. They don't have much of their own, but they can try "to borrow from the authority of the courts in order to hold off their political adversaries" (p. 195). One final point before I move to some speculations about the future of judicial supremacy. Whittington emphasizes the growth of judicial supremacy during the twentieth century, both m terms of the judges' self-understanding and, perhaps more importantly, in terms of the degree of political commitment to judicial supremacy (p. 25). He suggests that politicians have had increasingly strong reasons to support the Supreme Court. The reconstructive presidency of Ronald Reagan was less ambitious than that of Franklin Roosevelt (p. 232), assuring the American people that Reagan's policies would strengthen rather than destroy the social safety nets that Roosevelt and Lyndon Johnson's regimes had created. Even a reconstructive president could hope that the Supreme Court would assist in articulating regime principles in the way the Court ordinarily does for affiliated presidents. Further, drawing again on Skowronek's account of the ways in which regimes leave a residue even after they have been displaced, Whittington describes the doctrinal thickening that occurred during the twentieth century with respect to essentially every possible ideological and political commitment a President could have (p. 283). Doctrinal thickening means that every member of a ruling coalition will have some basis in constitutional law for its assertions that the Constitution requires satisfaction of its policy preferences, and that the Court cannot possibly satisfy all the demands on it. (20) So, for the future, we might expect Presidents to have increasingly ambivalent views about the Supreme Court. In the twenty-first century, the Supreme Court will be useful and annoying to every President--useful because the Court can serve to articulate regime principles and can do some policy work that **Presidents would rather not expend time and political capital on**, and annoying because the Court's failure to satisfy all the demands emanating from a President's political supporters will put pressure on the President to do something about the Court.

#### Congress wants to focus on the economy---proves the plan links and CP doesn’t

Guardian (blog) 8/13 [8/13/10, " Hopes grow that California's gay marriage decision will survive ", http://www.guardian.co.uk/world/richard-adams-blog/2010/aug/13/california-gay-marriage-conservatives-law]

So far the Republicans have avoided making political capital out of the issue, preferring to focus on economic woes ahead of the midterm elections in November. Rightwing commentator Glenn Beck has also downplayed it, saying "I don't think the government has anything to do with marriage". And recent polls show a majority of Americans now support same sex marriage. The lack of enthusiasm among conservatives is compounded by a legal issue that could make it difficult for Judge Walker's ruling to be appealed - a thorny question about who among the ruling's opponents has the legal standing to argue the case in court. To have standing in federal court, a party must demonstrate that it has suffered a definite injury. In his ruling Judge Walker said there was no evidence that supporters of the Proposition 8 amendment would meet that test. The state of California would have been the obvious candidate with legal standing to take the appeal forward, but both governor Arnold Schwarzenegger and attorney general Jerry Brown have said they will not appeal the decision. Legal scholars speaking to the Los Angeles Times said opponents of gay marriage were "in a tough spot" and that the standing issue could scupper further appeals. University of California-Irvine law school dean Erwin Chemerinsky said: "Their injury is ideological, and there is a century of precedent that ideological injury is not enough for standing. I think this lets the 9th Circuit and the Supreme Court follow well-established law and avoid the hard constitutional ruling."

#### Congress won’t backlash—it would kill respect from their key constituents.

**Carson & Randazzo 2** [Jamie L. Carson, Michigan State University, Kirk A. Randazzo, Michigan State University, “Emerging Multi-Institutional Analyses:   Congress and the Courts,” January 2002, http://www.apsanet.org/~lss/Newsletter/Jan02/carson.html]

While these studies provide a thorough understanding of the institutional factors shaping congressional responses, we do not yet have a solid theoretical explanation pertaining to the motivations of individual members of Congress. First, how should we model Congress? The separation of powers models often treat Congress as a unitary actor, or a bicameral actor. This treatment often masks important, underlying patterns of behavior since Congress is a "they" not an "it" (Shepsle 1992). If the relationship between Congress and the Court involves "a highly dynamic process sometimes overlooked by those who conceptualize these branches in purely formal terms" (Campbell and Stack 2001, xiii), then our models must account for the variation in individual motivation and behavior. Second, the separation of powers models assume that legislators do not experience transaction costs when voting to override the Supreme Court. Martin (2001) discovered that tangible costs exist which severely constrain the roll call behavior of members of Congress. Additionally, Hibbing and Theiss-Morse (1995) argue that Congress is the least respected branch, according to public opinion, and the Supreme Court is the most respected. Therefore, if members of Congress attempt to override the Court they could encounter a political backlash from the public. Consequently, our models should include the assumption that individual members will be hesitant to upset the separation of powers. Finally, and most importantly, if members of Congress are reluctant to override Supreme Court decisions, what factors might encourage them to overcome this hesitancy?

### Case

#### They don’t want nukes---statements go negative

Francis J. **Gavin 10**, Professor of International Affairs and Director of the Robert S. Strauss Center for International Security and Law, Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, “Same As It Ever Was,” International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 7–37

A recent study contends that **al-Qaida’s interest in acquiring and using nuclear weapons may be overstated**. Anne Stenersen, a terrorism expert, claims that “looking at statements and activities at various levels within the al-Qaida network, it becomes clear that **the network’s interest in using unconventional means is in fact much lower than commonly thought**.”55 She further states that “**CBRN** [chemical, biological, radiological, and nuclear] **weapons do not play a central part in al-Qaida’s strategy.”**56 In the 1990s, members of al-Qaida debated whether to obtain a nuclear device. Those in favor sought the weapons **primarily to deter** a U.S. attack on al-Qaida’s bases in Afghanistan. This assessment reveals an organization at odds with that laid out by nuclear alarmists of terrorists obsessed with using nuclear weapons against the United States regardless of the consequences. Stenersen asserts, “Although there have been various reports stating that al-Qaida attempted to buy nuclear material in the nineties, and possibly recruited skilled scientists, it appears that **al-Qaida central have not dedicated a lot of time or effort to developing a high-end CBRN capability. . . . Al-Qaida central never had a coherent strategy to obtain CBRN**: instead, its members were divided on the issue, and there was an awareness that militarily effective weapons were extremely difficult to obtain.” 57 Most terrorist groups “assess nuclear terrorism **through the lens of their political goals** and may judge that it does not advance their interests.”58 As Frost has written, “**The risk of nuclear terrorism, especially true nuclear terrorism employing bombs powered by nuclear fission, is overstated, and that popular wisdom on the topic is significantly flawed**.”59

#### Fear of failure deters terrorists from using nuclear weapons

Levi 7 – Michael A. Levi, David M. Rubenstein Senior Fellow for Energy and the Environment and Director of the Program on Energy Security and Climate Change. April 20, 2007, "How Likely is a Nuclear Terrorist Attack on the United States?"http://www.cfr.org/weapons-of-mass-destruction/likely-nuclear-terrorist-attack-united-states/p13097

So let me flag another dimension of motivation that gets too little attention. Even groups that want to and possibly can execute nuclear attacks may decide against them. Why? Because many of the most dangerous terrorist groups hate to fail. Brian Jenkins wrote recently that for jihadists, “failure signals God’s disapproval.” That’s a lot of pressure to succeed. This inevitably pushes the odds of nuclear terrorism down. When we look at our defenses against nuclear terrorism, we prudently notice the holes. When terrorists look at those same defenses, they may be fixating on whatever barriers, however limited, exist. If that’s what’s happening, nuclear terrorism may be much less likely than many expect.

#### Especially true for CT co-op

Aldrich 09 Richard J. Aldrich is a Professor of International Security at the University of Warwick, British Journal of Politics and International Relations, February 2009, "US–European Intelligence Co-operation on Counter-Terrorism: Low Politics and Compulsion", Vol. 11, Issue 1, pgs. 122-139

Since 9/11, intelligence has been viewed as an integral part of a controversial ‘war on terror’. The acrimonious public arguments over subjects such as Iraqi WMD assessments, secret prisons and the interrogation of detainees suggest intense transatlantic discord. Yet improbably, some of those countries that have expressed strident disagreement in public are privately the closest intelligence partners. It is argued here that we can explain this seeming paradox by viewing intelligence co-operation as a rather specialist kind of ‘low politics’ that is focused on practical arrangements. Intelligence is also a fissiparous activity, allowing countries to work together in one area even while they disagree about something else. Meanwhile, the pressing need to deal with a range of increasingly elusive transnational opponents—including organised crime—compels intelligence agencies to work more closely together, despite their instinctive dislike of multilateral sharing. Therefore, transatlantic intelligence co-operation will continue to deepen, despite the complex problems that it entails.

#### Ends CT co-op specifically

Deb Riechman, AP, 10/26/13, NSA spying controversy angers foreign leaders, threatens U.S. foreign policy, lubbockonline.com/filed-online/2013-10-26/nsa-spying-controversy-angers-foreign-leaders-threatens-us-foreign-policy#.UmvyViSmwfY

Secretary of State John Kerry went to Europe to talk about Mideast peace, Syria and Iran. What he got was an earful of outrage over U.S. snooping abroad. President Barack Obama has defended America's surveillance dragnet to leaders of Russia, Mexico, Brazil, France and Germany, but the international anger over the disclosures shows no signs of abating in the short run. Longer term, the revelations by former National Security Agency contractor Edward Snowden about NSA tactics that allegedly include tapping the cellphones of as many as 35 world leaders threaten to undermine U.S. foreign policy in a range of areas. This vacuum-cleaner approach to data collection has rattled allies. "The magnitude of the eavesdropping is what shocked us," former French Foreign Minister Bernard Kouchner said in a radio interview. "Let's be honest, we eavesdrop too. Everyone is listening to everyone else. But we don't have the same means as the United States, which makes us jealous." So where in the world isn't the NSA? That's one big question raised by the disclosures. Whether the tapping of allies is a step too far might be moot. The British ambassador to Lebanon, Tom Fletcher, tweeted this past week: "I work on assumption that 6+ countries tap my phone. Increasingly rare that diplomats say anything sensitive on calls." Diplomatic relations are built on trust. If America's credibility is in question, the U.S. will find it harder to maintain alliances, influence world opinion and maybe even close trade deals. Spying among allies is not new. Madeleine Albright, secretary of state during the Clinton administration, recalled being at the United Nations and having the French ambassador ask her why she said something in a private conversation apparently intercepted by the French. The French government protested revelations this past week that the NSA had collected 70.3 million French-based telephone and electronic message records in a 30-day period. Albright says Snowden's disclosures have hurt U.S. policymakers. "A lot of the things that have come out, I think are specifically damaging because they are negotiating positions and a variety of ways that we have to go about business," Albright said at a conference hosted by the Center for American Progress in Washington. "I think it has made life very difficult for Secretary Kerry. ... There has to be a set of private talks that, in fact, precede negotiations and I think it makes it very, very hard." The spy flap could give the Europeans leverage in talks with the U.S. on a free trade agreement, which would join together nearly half of the global economy. "If we go to the negotiations and we have the feeling those people with whom we negotiate know everything that we want to deal with in advance, how can we trust each other?" asked Martin Schulz, president of the European Parliament. Claude Moniquet, a former French counterintelligence officer and now director of Brussels-based European Strategic Intelligence and Security Center, said the controversy came at a good time for Europe "to have a lever, a means of pressure ... in these negotiations." To Henry Farrell and Martha Finnemore at George Washington University, damage from the NSA disclosures could "undermine Washington's ability to act hypocritically and get away with it." The danger in the disclosures "lies not in the new information that they reveal but in the documented confirmation they provide of what the United States is actually doing and why," they wrote in Foreign Affairs. "When these deeds turn out to clash with the government's public rhetoric, as they so often do, it becomes harder for U.S. allies to overlook Washington's covert behavior and easier for U.S. adversaries to justify their own." They claim the disclosures forced Washington to abandon its "naming-and-shaming campaign against Chinese hacking." The revelations could undercut Washington's effort to fight terrorism, says Kiron Skinner, director of the Center for International Relations and Politics at Carnegie Mellon University. The broad nature of NSA surveillance goes against the Obama administration's claim that much of U.S. espionage is carried out to combat terrorism, she said. "If Washington undermines its own leadership or that of its allies, the collective ability of the West to combat terrorism will be compromised," Skinner said. "Allied leaders will have no incentive to put their own militaries at risk if they cannot trust U.S. leadership."

#### Outweighs the aff

Josh Gerstein, Politico, 10/26/13, NSA disclosures put U.S. on defense, dyn.politico.com/printstory.cfm?uuid=0A829B73-DCF3-4A66-9221-C8EEDDEE02F7

The NSA spying controversy is quickly transforming from a domestic headache for the Obama administration into a global public relations fiasco for the United States government.

After months of public and congressional debate over the National Security Agency’s collection of details on U.S. telephone calls, a series of reports about alleged spying on foreign countries and their leaders has unleashed an angry global reaction that appears likely to swamp the debate about gathering of metadata within American borders.

While prospects for a legislative or judicial curtailment of the U.S. call-tracking program are doubtful, damage from public revelations about NSA’s global surveillance is already evident and seems to be growing.

Citing the snooping disclosed by former NSA contractor Edward Snowden, Brazil’s president canceled a state visit to the U.S. set for this week. Leaders in France and Italy and Germany have lodged heated protests with Washington, with the Germans announcing plans to dispatch a delegation to Washington to discuss the issue. Boeing airplane sales are in jeopardy. And the European Union is threatening to slap restrictions on U.S. technology firms that profit from tens of millions of users on the Continent.

“Europe is talking about this. Some people in Europe are upset and may take steps to block us,” former Rep. Jane Harman (D-Calif.) said in a telephone interview from Rome on Friday. “The reaction of retail politicians is to mirror the upset of the people who elected them.”

“Confidence between countries and confidence between governments are important and sometime decisive and there’s almost no confidence between the United States of America and Europe” now, former German intelligence chief Hansjörg Geiger said. “I’m quite convinced there will be an impact…. It will be a real impact and not only the [intelligence] services will have some turbulence.”

Some analysts see immediate trouble for U.S.-European arrangements to share information about airline passengers, financial transactions and more.

“The bigger problems are not in Berlin or Paris, but in the future out of Brussels,” said Michael Leiter, former head of the National Counterterrorism Center. “At the EU, I expect them to be very, very resistant to any increase — and to have problems even with maintenance—of some of the information sharing we have now…..All of this complicates those discussions exponentially.”

#### PRISM is a massive alt-cause to EU willingness to share anti-terrorism intel with the US

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

Although the United States and the EU both recognize the importance of sharing information in an effort to track and disrupt terrorist activity, data privacy has been and continues to be a key U.S.-EU sticking point. As noted previously, the EU considers the privacy of personal data a basic right; EU data privacy regulations set out common rules for public and private entities in the EU that hold or transmit personal data, and prohibit the transfer of such data to countries where legal protections are not deemed “adequate.” In the negotiation of several U.S.-EU informationsharing agreements, from those related to Europol to SWIFT to airline passenger data, some EU officials have been concerned about whether the United States could guarantee a sufficient level of protection for European citizens’ personal data. In particular, some Members of the European Parliament (MEPs) and many European civil liberty groups have long argued that elements of U.S.-EU information-sharing agreements violate the privacy rights of EU citizens. In light of the public revelations in June 2013 of U.S. National Security Agency (NSA) surveillance programs and news reports alleging that U.S. intelligence agencies have monitored EU diplomatic offices and computer networks, many analysts are worried about the future of U.S.-EU information-sharing arrangements. As discussed in this section, many of these U.S.-EU information-sharing agreements require the approval of the European Parliament, and many MEPs (as well as many officials from the European Commission and the national governments) have been deeply dismayed by the NSA programs and other spying allegations. In response, the Parliament passed a resolution expressing serious concerns about the U.S. surveillance operations and established a special working group to conduct an in-depth investigation into the reported programs.17 In addition, led by the European Commission and the U.S. Department of Justice, the United States and the EU have convened a joint expert group on the NSA’s surveillance operations, particularly the so-called PRISM program (in which the NSA reportedly collected data from leading U.S. Internet companies), to assess the “proportionality” of such programs and their implications for the privacy rights of EU citizens.18 U.S. officials have sought to reassure their EU counterparts that the PRISM program and other U.S. surveillance activities operate within U.S. law and are subject to oversight by all three branches of the U.S. government. Some observers note that the United States has been striving to demonstrate that it takes EU concerns seriously and is open to improving transparency, in part to maintain European support for existing information-sharing accords, such as SWIFT (which will be up for renewal in 2015), and the U.S.-EU Passenger Name Record agreement (up for renewal in 2019). Nevertheless, many experts predict that the revelations of programs such as PRISM will make the negotiation of future U.S.-EU information-sharing arrangements more difficult, and may make the European Parliament even more cautious and skeptical about granting its approval.

#### No global blowback

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

That leaves the broader claim of global blow-back -- the idea that drone campaigns are effectively creating transnational terrorists as well as sympathy for their actions. That could always be true and could conceivably outweigh all other concerns. But the evidence is so diffuse as to be pointless. Do Gallup polls of the general Pakistani population indicate overwhelming resentment about drone strikes -- or do they really suggest that more than half the country is unaware of a drone campaign at all? Recent polls found the latter to be the case. Any causal connections that lead from supposed resentments to actual terrorist recruitment are contingent and uncertain. Discussing global blowback is also an easy stance for journalists writing about U.S. counterterrorism -- Mark Mazzetti's new book, The Way of the Knife, is a good example -- because it automatically frames an oppositional narrative, one with dark undertones and intimations of unattractive, unintended consequence. The blowback argument is also peculiarly susceptible to raising the behavioral bar the United States must meet in order to keep the local population happy enough not to embrace suicide bombing and terrorism. It defines terrorist deviancy down, while U.S. and Western security behaviors are always defined up.

From a strategic standpoint, however, the trouble with the blowback theory is simple: It will always counsel doing nothing rather than doing something. It's the kibitzer's lazy objection. Whether one knows a lot or a little about the action and its possible blowback consequences, whether one has an axe to grind or is reasonably objective, one can always offer the blow-back scenario.

There might be situations in which to give it priority; Gregory Johnsen, a Yemen expert, for example, says that a particular form of strike in Yemen causes blowback because it hits low-level fighters whose families cannot understand the American justification. (The response is, usually, that we are effectively fighting as the air arm of the Yemen government against its insurgents, including its low-level fighters.) That bears attention; whether it outweighs the strategic concern of supporting the Yemeni government, which does have to fight even low-level insurgents who in effect offer protection to the transnational terrorist wing, is another question. But we should consider it carefully.

Blowback is a form of the precautionary principle. But it's awfully difficult to conduct war, after all, on the basis of "first do no harm." As it happens, the United States once had a commander driven largely by considerations of blowback from a restive local population. His name was George McClellan. If he had not been replaced by Abraham Lincoln, the Union would have lost the Civil War.

#### And, it’s offense—incremental shifts make the US look hypocritical—kills credibility

Roth 2k (Kenneth, Executive Director, Human Rights Watch, Fall, Chicago Journal of International Law,1 Chi. J. Int'l L. 347)

Washington's cynical attitude toward international human rights law has begun to weakenthe US government's voiceas an advocate for human rights around the  [\*353] world. Increasingly at UN human rights gatherings, other governments privately criticize Washington's "a la carte" approach to human rights. They see this approach reflected not only in the US government's narrow formula for ratifying human rights treaties but also in its refusal to join the recent treaty banning anti-personnel landmines and its opposition to the treaty establishing the International Criminal Court unless a mechanism can be found to exempt US citizens. For example, at the March-April 2000 session of the UN Commission on Human Rights, many governments privately cited Washington's inconsistent interest in international human rights standards to explain their lukewarm response to a US-sponsored resolution criticizing China's deteriorating human rights record.

#### Perception of illegitimacy’s inevitable because of U.S. material power

Layne, 2 (Christopher, prof of political science at Texas A&M, “The Power Paradox,” LA Times, 10-6, http://articles.latimes.com/2002/oct/06/opinion/op-layne6)

U.S. strategists believe that "it can't happen to us," because the United States is a different kind of hegemon, a benign hegemon that others will follow willingly due to the attractiveness of its political values and culture. While flattering, this self-serving argument misses the basic point: Hegemons are threatening because they have too much power. And it is America's power--not the self-proclaimed benevolence of its intentions--that will shape others' response to it. A state's power is a hard, measurable reality, but its intentions, which can be peaceful one day but malevolent the next, are ephemeral. Hegemony's proponents claim that the United States can inoculate itself against a backlash by acting multilaterally. But other states are not going to be deceived byWashington'suse of international institutions as a fig leaf to cloak its ambitions of dominance. And in any event, there are good reasons why the U.S. should not reflexively embrace multilateralism. When it comes to deciding when and how to defend American interests, Washington should want a free hand, not to have its hands tied by others.

#### Sustained economic growth will vastly outpace warming---ensures even poor countries can adapt easily

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

It is frequently asserted that climate change could have devastating consequences for poor countries. Indeed, this assertion is used by the UN Intergovernmental Panel on Climate Change (IPCC) and other organizations as one of the primary justifications for imposing restrictions on human emissions of greenhouse gases.

But there is an internal contradiction in the IPCC’s own claims. Indeed, the same highly influential report from the IPCC claims both that poor countries will fare terribly and that they will be much better off than they are today. So, which is it?

The apparent contradiction arises because of inconsistencies in the way the IPCC assesses impacts. The process begins with various scenarios of future emissions. These scenarios are themselves predicated on certain assumptions about the rate of economic growth and related technological change.

Under the IPCC’s highest growth scenario, by 2100 GDP per capita in poor countries will be double the U.S.’s 2006 level, even taking into account any negative impact of climate change. (By 2200, it will be triple.) Yet that very same scenario is also the one that leads to the greatest rise in temperature—and is the one that has been used to justify all sorts of scare stories about the impact of climate change on the poor.

Under this highest growth scenario (known as A1FI), the poor will logically have adopted, adapted and innovated all manner of new technololgies, making them far better able to adapt to the future climate. But these improvements in adaptive capacity are virtually ignored by most global warming impact assessments. Consequently, the IPCC’s “impacts” assessments systematically overestimate the negative impact of global warming, while underestimating the positive impact.

## 1NR

### 1NC Shell

#### Farm bill will pass but it’s very close

Reuters 11/11/13, “U.S. Congress has about 50/50 chance of passing farm bill in 2013 –analyst,” http://www.reuters.com/article/2013/11/12/usa-agriculture-farm-bill-idUSL2N0IX01T20131112

Nov 11 (Reuters) - The chances of the U.S. Congress passing a five-year farm bill by year's end are a little better than 50/50 given the gridlock over food stamps for the poor, a top farm policy expert said on Monday.¶ "There is a slightly better chance than 50/50 that we will get a bill rolled into a budget at the end of the year. But it's no better than that," Barry Flinchbaugh, a Kansas State University agricultural economist who advises legislators shaping the U.S. farm bill, told Reuters on the sidelines of a farm bankers meeting in Minneapolis.¶ The farm bill, already a year behind schedule, is the master legislation that directs government supports for farmers and food aid programs.¶ The bill is now with a conference committee of 41 members of Congress who are hammering out the difference between the House and Senate bills. The biggest difference: the Senate wants $4 billion cut from food stamps while the House wants to reduce the program by $40 billion.¶ "Food is the only division. The other issues can be settled," said Flinchbaugh, citing variations in how they address crop insurance for farmers along with other subsidies.¶ Historically, the conference committee reconciles differences and brings a compromise to a final vote. That process has been hampered by the deep divisions between the Republican-controlled House and the Senate, where Democrats are in the majority.¶ "There is a way perhaps we can get past this food stamp gridlock. We cut food stamps $6-$8 billion and then we put in all these caveats the far right wants to put in the food stamp program, like work requirements and drug tests," said Flinchbaugh, who has advised on farm policy for over 40 years.¶ The government extended the expired 2008 farm bill last year. Leaders of the House and Senate agricultural committees have a self-imposed deadline of reaching agreement by Thanksgiving and the White House has threatened to veto a bill with large food stamp cuts.¶ If Congress fails to pass a new bill, a second extension is likely, Flinchbaugh said.¶ "There is some talk we will do that for two years because we don't want to be messing with this during an election year," Flinchbaugh said. "Or, we implement the permanent legislation."¶ Without a new law, U.S. farm policy will be dictated by an underlying 1938 permanent law that would bring back the concept of "price parity" which led to sharply higher guaranteed crop prices, Flinchbaugh said.

#### Obama would spend tons of PC to push the plan

Nathaniel H. Nesbitt 11, J.D. Candidate 2011, University of Minnesota Law School; B.A. 2005, New York University, November, "Note: Meeting Boumediene's Challenge: The Emergence of an Effective Habeas Jurisprudence and Obsolescence of New Detention Legislation," Minnesota Law Review, 95 Minn. L. Rev. 244, Lexis

Apart from the point that new legislation is not substantively necessary, perhaps the most obvious - if unremarkable - argument against further detention legislation is that it is unlikely. Passing detention legislation would require President Obama to expend political capital at a time when other issues dominate the national agenda, something the President is no doubt even more reluctant to do now than when he first declined to do so in September 2009. n190 The same is true of most legislators; it is well recognized that politicians "have a strong incentive to avoid taking up a question that has been provisionally settled by a court." n191 In short, even assuming new legislation to be the ideal course of action, it is far from clear that Congress could actually pass it. And most legislators may not even be tempted to try given Congress's ill-fated history in this area. n192

#### Political capital is key --- overcomes partisanship

Josh Lederman 10/18/13, reporter for the Associated Press, and Jim Kuhnhenn, “No safe bets for Obama despite toned-down agenda,” US News and World Report, http://www.usnews.com/news/politics/articles/2013/10/18/no-safe-bets-for-obama-despite-toned-down-agenda

WASHINGTON (AP) — Regrouping after a feud with Congress stalled his agenda, President Barack Obama is laying down a three-item to-do list for Congress that seems meager when compared with the bold, progressive agenda he envisioned at the start of his second term.¶ But given the capital's partisanship, the complexities of the issues and the limited time left, even those items — immigration, farm legislation and a budget — amount to ambitious goals that will take political muscle, skill and ever-elusive compromise to execute.¶ "Those are three specific things that would make a huge difference in our economy right now," Obama said. "And we could get them done by the end of the year if our focus is on what's good for the American people."

#### Farm bill’s key to advances in biofuels---stable policy and funding are vital

Sustainable Business 11/6/13, “Farm Bill is Back, Will Renewable Energy Be Included?,” http://www.sustainablebusiness.com/index.cfm/go/news.display/id/25339

While we don't often think of the farm-renewable energy connection, under the Farm Bill, the US Department of Agriculture (USDA) has assisted bringing thousands of solar, wind and biogas projects to farms, while helping them increase their efficiency.

The Rural Energy for America Program (REAP) funds up to 25% of a renewable energy system or energy efficiency upgrade and provides additional support through loan guarantees. 8,250 renewable energy and energy efficiency projects have been installed under the Obama administration.

The Biorefinery Assistance Program supports young companies in getting their biofuel technologies off the ground. Sapphire Energy's $54 million loan from the US Department of Agriculture (USDA) allowed it to build its Green Crude Farm in New Mexico, which turns algae into crude oil. Sapphire paid the loan back this year.

While these programs represent a tiny portion of Farm Bill costs - 0.7% of the 2008 Farm Bill - they are responsible for much of the growth of the US renewable energy industry, they say. Both programs are hanging by a thread because of funding cuts over the past few years.

The letter - from the solar, wind and biofuels trade associations - asks them to re-authorize $900 billion in guaranteed funds for the next five years, which is in the Senate version of the bill (S.954).

In the past, these funds have leveraged billions of dollars in private investment, they say. "These new agriculture, manufacturing, and high technology jobs are at risk without continued federal investment."

The House version, (HR 2642) leaves this funding out and instead, authorizes $1.4 billion in discretionary funds that can be allocated as congress wishes.

Indeed, in 2011, House Republicans cut funding from $75 million to just $1.3 million for the Rural Energy for America Program. They wanted to scrap the program.

Rep. Tim Walz (D-MN), the ranking member of the House Agriculture Subcommittee on Conservation, Energy and Forestry, is expected to lead on getting these programs through conference committee negotiations.

"The U.S. is experiencing strong growth in the development and commercialization of biofuels, bioproducts, biopower, biogas, energy crops, renewable energy, renewable chemicals and energy efficiency. These important and growing industries all benefit agriculture and forestry and are poised to make huge contributions to our economic, environmental and national security in the coming years, provided that we maintain stable policies that support clean energy manufacturing and innovation," the letter says.

#### Farm bill renewables grants are key to the Navy’s Great Green Fleet

Tina Casey 12, specializes in military and corporate sustainability, advanced technology, emerging materials, biofuels, and water and wastewater issues for Clean Technica, 8/27/12, “Farmers in Cahoots with Navy Biofuel Mission,” <http://cleantechnica.com/2012/08/27/chemtex-gets-usda-loan-for-biofuel-plant-in-north-carolina/#OdGkBwbQVPdqPi7r.99>

When Republican leadership in Congress tried to torpedo the U.S. Navy’s ambitious biofuel programs last spring, the Navy managed to fight its way around those obstacles. The maneuvers received some media attention at the time, but one strategic ally seems to have slipped under the radar: the U.S. Department of Agriculture. The USDA has been funding a network of eight biofuel refineries in every region of the country while supporting foundational research that will help make biofuels cost competitive with fossil fuels, which will benefit the Navy and farmers alike.

Biorefineries to Aid Farmers

When you think of biorefineries, the fuel is the first thing that naturally comes to mind, but a key mission of the USDA’s biorefinery program is to aid farmers and boost rural economies.

The Navy and Department of Energy first announced a major biofuel partnership with the USDA last summer, capping off President Obama’s midwest bus tour in support of the Administration’s rural economic development programs.

The USDA is funding the eight new biorefineries under The Biorefinery Assistance Program set forth in Section 9003 of the 2008 Farm Bill. The goal of that program goes beyond the dollars and cents of competitive biofuels. According to the USDA, it is intended to:

“…increase the energy independence of the United States; promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; create jobs and enhance the economic development of the rural economy.”

A New Biorefinery for North Carolina

The USDA’s latest biorefinery project is a $99 million, 80% loan guarantee to the global engineering company Chemtex, which also received funding to work directly with local farmers to raise “energy grasses” like switchgrass and miscanthus.

The new biorefinery will be the first commercial-scale facility of its kind in the Mid-Atlantic, and the USDA expects it to create 65 jobs on site with another 250 jobs off site, many involved in raising and transporting feedstock for the refinery.

In a sustainability twofer, some of the feedstock will also double as natural effluent management for waste lagoons at local pig farms, where a grass called Coastal Bermuda is already being used for that purpose. By transitioning to energy grasses, farmers will continue the land stewardship program while benefiting from a new revenue stream.

USDA estimates that local farmers stand to gain $4.5 million in new revenue annually when the new biorefinery is completed.

U.S. Navy: 3, Biofuel Opponents: 0

By putting itself front and center as an early adopter of biofuels, the Navy’s goal has been to help the biofuel industry build up to an economy of scale that makes its product competitive with petroleum fuels.

To that end, the Navy has budgeted for the purchase of biofuels even though they are currently more expensive. The program culminated in the launch of biofuel-assisted ships and aircraft in the new Green Strike Group this summer, and a full Great Green Fleet is planned for 2016.

#### GGF’s key to U.S. clean tech leadership

Peter Lehner 12, Executive Director of the Natural Resources Defense Council, 7/31/12, “Navy Launches Great Green Fleet, Powered by Biofuels,” http://switchboard.nrdc.org/blogs/plehner/navy\_launches\_great\_green\_flee.html

The U.S. Navy launched its Great Green Fleet recently at RIMPAC, the world's largest naval exercise, which takes place biannually off the coast of Hawaii. Squadrons of F/A-18 Hornet fighter jets, an SH60-Seahawk helicopter, E-2 Hawkeye airborne early warning aircraft and other planes took off from the deck of the USS Nimitz, all powered by a biofuel blend, demonstrating, for the first time, biofuels in action at sea.

“The military has done a lot of things that starts a tidal wave throughout our culture, and I think this is one of those things,” Lt. Commander Jason Fox, a Hawkeye pilot, told Forbes.

The Navy has been testing biofuels for years, as part of a broader military effort to reduce vulnerability to oil prices and improve combat capability in general through renewable energy and efficiency. Naval Secretary Ray Mabus pointed out that the Navy got hit with a billion-dollar energy bill in May due to rising oil prices. He told reporters, “We simply have to figure out a way to get American made homegrown fuel that is stable in price, that is competitive with oil that we can use to compete with oil. If we don’t we’re still too vulnerable.”

The Navy is aiming to get 50 percent of its energy from renewable sources by 2020, and biofuels are an important part of that plan. However, the Navy's expanded use of biofuels could have unintended consequences, depending on what kind of biofuels the Navy chooses. Done right, biofuels are a sustainable source of energy that can protect the environment and reduce carbon pollution without affecting food prices. But carelessly produced biofuels can actually increase global warming pollution and degrade our forests, soil, and water quality, and pose a threat to public health--hardly compatible with the military's mission. Moreover, biofuels that degrade the land, soil, and water that sustain them will not deliver strategically meaningful volumes of alternative fuel for very long.

Working to increase the production of low-carbon, responsibly grown biofuels can give us environmental security and national security, by providing our military with a sustainable supply of domestic fuel, reducing global warming pollution, and helping our economy--and our nation--break free from the monopoly of oil. The launch of the Great Green Fleet demonstrates real leadership on the Navy's part, and highlights the key role that the military can play in advancing groundbreaking technologies that transform the way we live.

The military essentially created the semiconductor industry, for example, by supporting early R&D and then making large purchases that brought down the cost of semiconductor manufacturing, eventually making it accessible to the broader civilian market. The military can play this transformative role again, by supporting biofuel supplies that can be replenished and sustained over the long term. That means ensuring the Navy's biofuels are responsibly grown, low-carbon biofuels that provide maximum benefits for all Americans.

#### Extinction

Louis Klarevas 9, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

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

### Link/Obama pushes

#### Obama would spend tons of PC to push the plan

Nathaniel H. Nesbitt 11, J.D. Candidate 2011, University of Minnesota Law School; B.A. 2005, New York University, November, "Note: Meeting Boumediene's Challenge: The Emergence of an Effective Habeas Jurisprudence and Obsolescence of New Detention Legislation," Minnesota Law Review, 95 Minn. L. Rev. 244, Lexis

Apart from the point that new legislation is not substantively necessary, perhaps the most obvious - if unremarkable - argument against further detention legislation is that it is unlikely. Passing detention legislation would require President Obama to expend political capital at a time when other issues dominate the national agenda, something the President is no doubt even more reluctant to do now than when he first declined to do so in September 2009. n190 The same is true of most legislators; it is well recognized that politicians "have a strong incentive to avoid taking up a question that has been provisionally settled by a court." n191 In short, even assuming new legislation to be the ideal course of action, it is far from clear that Congress could actually pass it. And most legislators may not even be tempted to try given Congress's ill-fated history in this area. n192

### UQ

#### Farm bill will pass now, but PC is still key to negotiate a compromise

Dale Hildebrant, 11-17-2013, “Farm Bill Conference Committee wants to finish by Thanksgiving,” Minnesota Farm Guide, http://www.minnesotafarmguide.com/news/regional/farm-bill-conference-committee-wants-to-finish-by-thanksgiving/article\_2e07f0b2-4d4a-11e3-9894-001a4bcf887a.html

Little has been heard from the Farm Bill Conference Committee since its opening session on Oct. 30 – at least not publicly. But that doesn’t mean there hasn’t been progress. That’s because most of the negotiating is going on behind closed doors. In fact, several committee members have expressed optimism that a compromise bill could be hammered out by Thanksgiving. If that happens, it should allow adequate time for full House and Senate action on the compromise by the end of the year. That first official meeting of the committee on Oct. 30 allowed the 41 members to make their opening statements and offers on what they would like to see in the compromise bill. Since then private meetings have taken place with the nutrition spending level and Title I programs presenting the biggest challenges to an agreement. “We have a responsibility to reach consensus and do what is best for all of agriculture and rural America,” said Rep. Frank Lucas (R-Okla.) in his opening remarks after convening the conference committee. “Let’s give certainty and sound policy to our agricultural producers; let’s deliver taxpayers billions of dollars in deficit reduction; let’s continue to provide consumers the affordable and reliable food supply they have grown accustomed to. Let’s work together to get our work done.” Senate Ag Committee chair Debbie Stabenow (D-Mich.) echoed Lucas’ call for compromise and action. “There are 16 million men and women whose jobs rely on the strength of agriculture and I am confident we won’t let them down,” Stabenow said. Even though Congress has a scheduled recess coming up, ranking member on the House Committee, Rep. Collin Peterson (D-Minn.) expressed hope that the work of the conference committee would continue through the recess. “We need to get at this or we’re not going to get this done,” Peterson told reporters. In a short news conference later in the week, both Lucas and Stabenow expressed the desire to continue work on a compromise bill during the recess. The dialogue surrounding the nutrition part of the Farm Bill debate has already changed with the suspension of a 2009 increase in food stamps benefits as part of the effort to stimulate the economy. The Obama Administration had hoped to phase out those stimulus benefits over time, but Congress decided to speed up the schedule. This reduction, which kicked in on Nov. 1, will save an estimated $11 billion in savings over the next few years. Stabenow referenced this in her opening remarks to the Conference Committee noting that this $11 billion in savings should be added to the equation measuring the food stamp cuts in both versions of the bill. “That $11 billion, plus the $4 billion in original cuts in the Senate bill, means that accepting the Senate nutrition title would result in a total of $15 billion in cuts in nutrition,” she said. The House version of nutrition assistance originally cut $39 billion from the program, which doesn’t include the $11 billion in savings from the Nov. 1 cut in funding. Because of this large difference in the two versions of the bill, Peterson believes that President Obama’s intervention will prove useful in getting the issue resolved.

#### Will pass --- both sides are finding common ground

Politico 11/14/13, “Republicans more optimistic on farm bill,” David Rogers, http://www.politico.com/story/2013/11/republicans-farm-bill-99889.html

House Republicans were more upbeat Thursday on getting a farm bill done this year, with Speaker John Boehner raising the subject and Agriculture Committee Chairman Frank Lucas saying he and his Senate counterparts are “getting to a common point on the commodity title.”¶ “I can say that all the face-to-face meetings that have gone on with the principals — in the last couple of weeks — have made progress,” Lucas told POLITICO. “We are getting to a common point on the commodity title.”¶ “There are still some big principles: choice vs. all inclusive, how you calculate the acres. But we are moving and staff on a variety of fronts are ironing out the differences.”¶ Talks between the Oklahoma Republican and Senate Agriculture Committee Chairwoman Debbie Stabenow (D-Mich.) are expected to continue late Thursday. And at his weekly news conference Thursday morning, Boehner included the farm bill as part of his year-end agenda.¶ “There are issues that can be resolved before the end of the year, including reforms to our farm programs, a bill to reauthorize important water projects around the country and hopefully a budget agreement so that we can stop lurching from one crisis to another,” the speaker told reporters. “We have got a chance to find common ground, and I am hopeful that we can make progress on all of these issues.”

#### It could pass as soon as next week --- disputes over Food Stamps and energy will be overcome

Erik Wasson 11/13/13, writer for The Hill, “Farm bill leaders report progress on deal,” http://thehill.com/blogs/on-the-money/agriculture/190196-farm-bill-leaders-cite-progress-toward-deal

The principal House negotiators on the farm bill on Wednesday said there is progress toward a deal.¶ ¶ House Agriculture Committee ranking member Collin Peterson (D-Minn.) suggested the framework for an agreement could be finished next week.¶ ¶ “It will probably be next week … far be it for me to set deadlines,” he said.¶ Peterson said good work is being done on the farm bill’s energy title and controversial nutrition title that is the focus of a dispute over food stamp cuts.¶ ¶ He said so far the leaders of the farm bill conference, including House Agriculture Committee Chairman Frank Lucas (R-Okla.), and Sens. Debbie Stabenow (D-Mich.) and Thad Cochran (R-Miss.), the chairwoman and ranking member of the Senate Agriculture Committee — have been left alone by party leaders.¶ ¶ “I’m not sure they are in the loop,” he said. “We’re coming to agreement on different things.”¶ ¶ Lucas said the discussions are “focused intensely” on the title containing commodity subsidies.¶ ¶ “I think actually people are moving in the right direction toward progress,” Lucas said.

#### Will pass but the next weeks are key --- Congress has limited time

Jerry Hagstrom 11/15/13, writer at Forum News Service, “Farm bill negotiations continue,” http://www.perhamfocus.com/content/farm-bill-negotiations-continue-0

WASHINGTON — The four principal negotiators on the farm bill appear to have made some progress at one meeting last week and seem likely to be engaged in intensive negotiations during the two weeks before Congress takes a break for Thanksgiving.¶ A new farm bill has passed the House and the Senate in different forms, and a conference committee headed by the Democratic and Republican leaders of the Agriculture committees are working to reconcile the differences so that a conference report can be presented to both houses before the end of the year and sent to President Barack Obama for his signature.¶ The four principals — House Agriculture Committee Chairman Frank Lucas, R-Okla., House Agriculture ranking member Collin Peterson, D-Minn., Senate Agriculture Committee Chairwoman Debbie Stabenow, D-Mich., and Senate Agriculture ranking member Thad Cochran, R-Miss., met on Nov. 6 for at least two hours and made enough progress that Stabenow said on Nov. 7 that they needed to get cost scores on the new proposals from the Congressional Budget Office in order to proceed.¶ In a brief interview off the Senate floor, Stabenow told Agweek that her meeting on Nov. 7 with the other three principal farm bill negotiators — Cochran, Lucas and Peterson — had been a “really good discussion” about “a broad framework,” but she added, “We’ve got to get scores.”¶ Asked whether the four principals would meet as soon as the House and Senate return after Veterans Day, Stabenow said that the four are in constant communication.¶ During the vote on the Employment Non-discrimination Act, which would ban workplace discrimination against gay, lesbian, bisexual and transgender employees, Stabenow was in discussion on the Senate floor with Sen. John Hoeven, R-N.D., for at least 15 minutes. Stabenow would not say whether they were talking about the farm bill in that discussion, but she said that she and Hoeven “talk all the time about the farm bill” and that those discussions are “very positive.”¶ The two weeks beginning Nov. 12 are likely to determine whether Congress will finish the farm bill this year.¶ Both the House and the Senate will be in session during that time. But both chambers are scheduled to leave on Nov. 22 for a Thanksgiving break, and congressional aides have said they are likely to be out of session for two weeks.¶ That schedule would mean that members would return on Dec. 9 for another two-week session before they are expected to depart on Dec. 20 for the Christmas and New Year’s holidays.¶ Although the House- and Senate-passed farm bills do not expire at the end of December because the congressional session will continue for another year, Congress is under pressure to finish the farm bill by then, in part to avoid another round of headlines about milk prices skyrocketing if permanent farm laws from 1938 and 1949 go into effect.

### Top of the Docket

#### It’s Obama’s top priority --- PC is key

Jenny Hopkinson, 11-11-2013, “COOL rules under fire in farm bill — Obama names farm bill as top priority, again — Pew delivers report on GRAS,” Politico, http://www.politico.com/morningagriculture/1113/morningagriculture12187.html

OBAMA: FARM BILL TOP PRIORITY: President Obama on Friday, in a speech on exports at the Port of the New Orleans, reiterated his calls for the farm bill to be Congress’ number one priority now. “Congress needs to pass a farm bill that helps rural communities grow and protects vulnerable Americans,” Obama said. “For decades, Congress found a way to compromise and pass farm bills without fuss. For some reason, now Congress can't even get that done. Now, this is not something that just benefits farmers. Ports like this one depend on all the products coming down the Mississippi. So let’s do the right thing, pass a farm bill. We can start selling more products. That's more business for this port. And that means more jobs right here.” HAPPY VETERANS DAY! Welcome to Morning Ag, where your host hopes that you had a great weekend, and that everyone who has served has a happy Veterans Day! Thoughts? News? Tips? Feel free to send them to jhopkinson@politico.com and @jennyhops. Follow us @Morning\_Ag and @POLITICOPro. MA’s MONDAY MORNING BUZZ: Every Monday MA will predict what professionals in and around the ag and food industries are going to be talking about the most in the week ahead. This week — the farm bill will be front and center as the House returns to Washington and the self-imposed Thanksgiving deadline for reaching an agreement among the conferees edges ever closer. And we might have a better idea how the talks are going following POLITICO Pro Ag’s launch event Thursday where USDA Secretary Tom Vilsack is set to speak along with a panel of key members of the conference committee and representatives from farm and industry groups who have been closely watching the process.

#### It’s Obama’s top priority in the coming weeks --- he’s exerting pressure

Andy Eubank 11/10/13, writer at Hoosier Ag Today, “Farm Bill at Top of President’s Idea List in New Orleans,” http://www.hoosieragtoday.com/farm-bill-at-top-of-presidents-idea-list-in-new-orleans/

Speaking on the economy in New Orleans Friday – President Barack Obama again addressed three things he believes Republicans and Democrats can join together to do to make progress in the area of business growth and job creation right now. The farm bill was first on his list. President Obama said Congress needs to pass a farm bill that helps rural communities grow and protects vulnerable Americans. Stressing that the farm bill doesn’t just benefit farmers – the President called on Congress to do the right thing and pass a farm bill. The two weeks ahead of Thanksgiving could determine if Congress will get that done yet this year. The House and Senate will both be in session before taking a Thanksgiving break that is scheduled to begin November 22nd. Congressional aides have suggested that recess will last two weeks. That schedule would have members returning December 9th for another two week session before an NewOrleansNightLifeexpected December 20th departure for the Christmas and New Year’s holidays. The farm bills approved by the House and Senate will not expire at the end of the year since the congressional session continues – but the pressure is on to finish a farm bill by then.

#### Farm bill is the top priority – comes before the budget

Jenny Hopkinson, 11-15-2013, “Vilsack pans farm bill COOL provision — Farm bill unlikely before December — CBO: Tweaks to ag programs could save billions,” Politico, http://www.politico.com/morningagriculture/1113/morningagriculture12238.html

Pro’s Bill Tomson took Vilsack through a slew of topics on the ag secretary’s mind, also including a battle over proposed cuts to the Supplemental Nutrition Assistance Program and whether the administration still supports ethanol. But Vilsack was clear about one thing: the farm bill is a high priority for the administration. “It’s more than a farm bill,” he said. “It’s a jobs bill; it’s the opportunity for us to invest in business development in rural America to take advantage of our natural resources. … It’s an energy bill … it’s a trade bill, it’s a reform bill … and it will help to reduce the deficit.” What’s more, he added, “I think there is a link to it getting done and the Congress getting to important work on the budget.” The story on Vilsacks comments from the launch event is available here: <http://politi.co/17t0rV5>.

### HC

#### Healthcare controversy doesn’t deplete political capital or derail Farm Bill push but it DOES create a brink for the DA

* Aides are the ones working on fixing healthcare; doesn’t distract Obama

Michael Shear 11/8/13, “A White House in Crisis Mode, but Some Allies Prod for More Action,” http://www.nytimes.com/2013/11/09/us/politics/a-white-house-in-crisis-mode-but-some-allies-prod-for-more.html?ref=farmbillus

WASHINGTON — President Obama was seething. Two weeks after the disastrous launch of HealthCare.gov, Mr. Obama gathered his senior staff members in the Oval Office for what one aide recalled as an “unsparing” dressing-down. ¶ The public accepts that technology sometimes fails, the president said, but he had personally trumpeted that HealthCare.gov would be ready on Oct. 1, and it wasn’t.¶ “If I had known,” Mr. Obama said, according to the aide, “we could have delayed the website.”¶ Mr. Obama’s anger, described by a White House that has repeatedly sought to show that the president was unaware of the extent of the website’s problems, has lit a fire under the West Wing staff. Senior aides are racing to make sure the website is fixed by the end of the month as they confront the political fallout from presidential promises, now broken, that all Americans who liked their existing health care plans could keep them.¶ Inside the White House, there is anxiety that if the health care problems are not righted, they could imperil the rest of Mr. Obama’s presidency, especially as criticism grows that the president misled consumers about the plan. Mr. Obama sought to tamp down that criticism by apologizing in an interview with NBC News on Thursday. “I am sorry that they, you know, are finding themselves in this situation, based on assurances they got from me,” the president said.¶ Internally, Denis R. McDonough, the White House chief of staff, is in charge of damage control. He leads a health care conference call at 7 p.m. daily, just before a written update on the broken website is inserted into the briefing book that is delivered to his boss in the White House residence. Mr. McDonough is also the primary conduit to angry Democratic lawmakers who are seeking to delay parts of the law and extend the enrollment period until the problems are fixed.¶ Still, Mr. McDonough has insisted that other work continue as the White House struggles to find a balance between operating in perpetual crisis mode and moving on with the rest of Mr. Obama’s agenda.¶ So daily “check-in” sessions on the push for an immigration overhaul still happen every morning. There are regular West Wing meetings on transportation, college affordability and a new farm bill. Mr. Obama spoke about increasing exports in a speech at the Port of New Orleans on Friday, and he is planning a trip next week to talk about the economy.

#### Health care doesn’t tank Obama’s agenda – reject their exaggerated news reports

Paul Waldman, 11-15-2013, “Memo to Democratic Chicken Littles: The Sky Is Not Falling,” American Prospect, http://prospect.org/article/memo-democratic-chicken-littles-sky-not-falling

Ah, now this is what politics is supposed to be like: Ruthless Republicans, gleeful at the prospect that they might increase the net total of human suffering. Timorous Democrats, panicking at the first hint of political difficulty and rushing to assemble a circular firing squad. And the news media bringing out the "Dems In Disarray!" headlines they keep in storage for just this purpose. The problems of the last couple weeks "could threaten Democratic priorities for years," says Ron Brownstein. It's just like Hurricane Katrina, says The New York Times (minus the 1,500 dead people, I guess they mean, though they don't say so). "On the broader question of whether Obama can rebuild an effective presidency after this debacle," says Dana Milbank, "it's starting to look as if it may be game over." Ruth Marcus also declares this presidency all but dead: "Can he recover? I'm sorry to say: I'm not at all confident." Oh please. Everyone just chill out. It's incredible how often reporters and pundits proclaim that what's happening this week is the most important political development in years, and the balance of political advantage today will remain just as it is indefinitely into the future. Then a few weeks or months later things change, and they forget about what they said before, declaring once again that today's situation is how things will be forevermore. Not long ago, people were saying that the fact that Obama couldn't get a congressional vote authorizing a bombing campaign in Syria had crippled his presidency. Then the Republicans shut down the government, and people were saying they wouldn't win another election in our lifetimes. That's just in the last few months. And now people are saying that Obama's second term, which has three years left to go, is an unrecoverable disaster. So let's try to see things from a less panicky perspective. The rollout has been a mess, but it's important to remember that this period is all a preparation for the actual implementation of the law. Nothing that's happening now is permanent. People have gotten cancellation notices, but no one has lost their coverage. The website sucked when it debuted, it sucks slightly less now, but there's still lots of time for people to sign up for plans that take effect next year. And if things aren't working properly by December, they'll probably extend the open enrollment period to a point at which everything's working. That's a hassle, sure. But you can't call the Affordable Care Act a failure until it takes effect and does or does not achieve its goals. That would be like calling your team's season a failure because they lost a couple of pre-season games. A few Democrats will probably vote today for the Republican bill that purports to address the problem of cancellations but it's an attempt to gut the entire ACA. That's because they're cowards and fools, who think that they can protect themselves from a momentary political headwind by rushing into the Republicans' arms. And you know what will happen? Nothing. You can just add this vote to the 47 prior ones repealing the law; it'll have the same impact. It won't ever get to the Senate, and even if it did it wouldn't ever be signed by the President. It isn't even worth paying attention to. Here's what's going to happen. The administrative fix Obama announced yesterday will temporarily staunch the political bleeding. But it will have very little effect on the actual insurance market, which is a good thing. In some states, insurance commissioners won't let the insurance companies continue to sell the junk plans we've been talking about. In others, insurers won't want to go back and re-offer the plans they cancelled. Some of the people with the junk plans will end up keeping them, but most of them will end up going to the exchanges. Many will find that they can get subsidies, or even without them find an affordable plan. Some may find that they're paying more for a plan that offers real insurance. Those in the latter group will grumble, but it won't be front-page news anymore, because the media are extraordinarily fickle, and they've already told that story. Over the next year, the rest of the law will be implemented. There may be problems here and there, but overall it will probably go reasonably well. There will be plenty of things Democrats can point to in order to convince people that it was a good idea, like the fact that now nobody can be denied coverage because of a pre-existing condition, or the fact that millions of people who couldn't afford coverage or were denied before now have it. There will also be things Republicans will say to try to convince people it was a terrible idea, like the fact that premiums didn't plummet, and health care is still expensive, and Obamacare didn't give every little girl a pony. And what else will happen in the next year? Other things. The economy may get worse, or it may get better. There may be a foreign crisis. Controversies we can't yet anticipate will emerge, explode, then disappear. A young singer may move her posterior about in a suggestive manner, causing a nation to drop everything and talk about nothing else for a week. We might start talking about immigration reform again. There's going to be another budget battle. In other words, all sorts of things could affect the next election, and the election after that. So yes, this is a difficult period for President Obama, and for the Affordable Care Act. But everyone needs to take a deep breath and remember that things will change. They always do.

### Agenda Overload

#### Obama’s agenda space and effort is limited --- overreach dooms it --- prefer our ev: cites the opinion of presidential insiders about the unique nature of the second term

Susan Page 13, USA Today, “How Obama can avoid the second-term curse,” 1-15-13, http://www.usatoday.com/story/news/politics/2013/01/14/obama-second-term-curse/1834765/

"By the time a second term rolls around, the illusions about a president have largely evaporated," says Robert Dallek, one of those invited to the dinner and the author of influential biographies of Presidents Lyndon Johnson and John Kennedy. "In second terms, the big problems that confront the country, and they're always there, more or less catch up with the incumbent."¶ To be sure, some presidents have scored significant achievements in their second terms, from the tax code overhaul signed by Reagan to the balanced federal budget during Clinton's watch. But advisers who have been there say the rhythms and political dynamics of the second term are different from the first.¶"In the first term, you're running for re-election," says Ken Duberstein, White House chief of staff for Reagan during his second term. "In the second term, you're running for legacy." That impulse — "whether it's hubris or overreach or over-interpreting a mandate" — sometimes contributes to stumbles.¶ John Podesta, chief of staff for Clinton in his second term, says there's no "unifying physics theory" to explain the second-term curse, a concept that has become so accepted it has its own Wikipedia page. Despite that conventional wisdom, he says second terms also pose an opportunity for a president to deploy a more seasoned staff and exploit more executive powers.¶ USA TODAY asked top White House aides to Reagan, Clinton and Bush during their second terms for their tips, some reflecting hard lessons learned during their time in the West Wing. Here's what they told us.¶ 1. Watch the clock¶ The Constitution says there are four years to a second term, but political reality says a president's ability to command public attention and compel congressional action begins to ebb well before that. "People tend to get tired of their president in the second term," says Frank Donatelli, second-term White House political adviser to Reagan.¶ "Certainly history has proven that second-term presidents typically get the most accomplished in their first year and a little in their second and then not a lot accomplished as the party fights over who the next standard-bearer will be," says Sara Taylor Fagen, political adviser in Bush's second term.¶ That means Obama's major legislative initiatives for his second term probably need to be spotlighted in his inaugural address next week and detailed in the State of the Union speech that follows next month. His opportunities are likely to shrink as time passes, and fast.¶ "It's the Benjamin Button theory of the second term," says former Clinton White House aide Chris Lehane, a reference to the 2008 movie and F. Scott Fitzgerald short story. "You have a year to 16 months, max, to do anything, at least domestically. You're going to age in reverse."¶ At the midpoint of Bush's second term, press secretary Dana Perino saw attendance at daily White House briefings drop as reporters shifted to the 2008 campaign. "Toward the end, I said, 'If we are on the front page of the paper, we have done something terribly wrong or have a huge problem,'" says Perino, now co-host of The Five on Fox News Channel.¶ Another potential problem: The midterm congressional elections. The president's party often suffers big losses in the sixth year of a presidency, although Democrats already may have taken much of that hit in the 2010 elections, when they lost control of the House of Representatives. Democrats probably will have more muscle in Congress for the next two years than in the final two of Obama's term.¶ "There's a little bit of a feeling that you become chopped liver in your seventh and eighth years as the campaign heats up," says Podesta, who ran Obama's transition operation four years ago and is now chair of the Center for American Progress, a liberal-leaning think tank. "The play is going to move on."¶ 2. Pick a priority¶ The president can do something in his second term, the veterans say, but not everything. Fighting too many battles could mean winning none.

#### Obama’s agenda must remain limited and focused

Chris Weigant 13, Political writer and blogger at ChrisWeigant.com, “Handicapping Obama's Second Term Agenda,” 1/23/2013, http://www.huffingtonpost.com/chris-weigant/obama-second-term\_b\_2537802.html

The ceremonies are all over and Congress has slunk back into Washington, meaning President Obama's second term can now truly begin. Obama laid out an impressive and optimistic agenda in his speech on Monday, which leads to the question of how much of this agenda will actually be passed into law. Obama faces a Senate with a Democratic edge, but not a filibuster-proof edge. Obama also faces a House with fewer Republicans in it, but still enough for a solid majority. From the viewpoint of the past two years, this seems to indicate that not much of what Obama wants will get done. But perhaps -- just perhaps, mind you -- things will be a little different for the next two years.¶ Obama, like all second-term presidents, will only have a short window of time to push his issues. There is one way this conventional wisdom could turn out to be wrong, but it is a long shot, at best. If Democrats can manage to hold their edge in the Senate and take control of the House in the 2014 midterm elections, then Obama could defy second-term expectations and actually get a lot done in his final two years in office. But, as I said, this should be seen as a remote possibility at this point. Remember 2010, in other words.¶ Realistically, Obama's only going to have anywhere from a few months to (at most) a year and a half to get anything accomplished. Which is why he is right to push his agenda immediately, as evidenced by his inaugural speech. But even he must realize that he's not going to get everything he wants, so it will be interesting to see what makes it through Congress and what dies an ignoble legislative death.