# 1nc

### 1nc---disad

#### Immigration reform will pass --- it’s Obama’s top priority

Eleanor Clift, 10-25-2013, “Obama, Congress Get Back to the Immigration Fight,” Daily Beast, http://www.thedailybeast.com/articles/2013/10/25/obama-congress-get-back-to-the-immigration-fight.html

But now with the shutdown behind them and Republicans on the defensive, Obama saw an opening to get back in the game. His message, says Sharry: “‘Hey, I’m flexible,’ which after the shutdown politics was important, and he implied ‘if you don’t do it, I’m coming after you.’” For Obama and the Democrats, immigration reform is a win-win issue. They want an overhaul for the country and their constituents. If they don’t get it, they will hammer Republicans in demographically changing districts in California, Nevada, and Florida, where they could likely pick up seats—not enough to win control of the House, but, paired with what Sharry calls “the shutdown narrative,” Democratic operatives are salivating at the prospect of waging that campaign. Some Republicans understand the stakes, and former vice-presidential candidate and budget maven Paul Ryan is at the center of a newly energized backroom effort to craft legislation that would deal with the thorniest aspect of immigration reform for Republicans: the disposition of 11 million people in the country illegally. Rep. Raul Labrador (R-ID), an early advocate of reform who abandoned the effort some months ago, argues that Obama’s tough bargaining during the shutdown means Republicans can’t trust him on immigration. “When have they ever trusted him?” asks Sharry. “Nobody is asking them to do this for Obama. They should do this for the country and for themselves.... We’re not talking about tax increases or gun violence. This is something the pillars of the Republican coalition are strongly in favor of.” Among those pillars is Chamber of Commerce President Tom Donahue, who on Monday noted the generally good feelings about immigration reform among disparate groups, among them business and labor. He expressed optimism that the House could pass something, go to conference and resolve differences with the Senate, get a bill and have the president sign it “and guess what, government works! Everybody is looking for something positive to take home.” The Wall Street Journal reported Thursday that GOP donors are withholding contributions to lawmakers blocking reform, and that Republicans for Immigration Reform, headed by former Bush Cabinet official, Carlos Gutierrez, is running an Internet ad urging action. Next week, evangelical Christians affiliated with the Evangelical Immigration Table will be in Washington to press Congress to act with charity toward people in the country without documentation, treating them as they would Jesus. The law-enforcement community has also stepped forward repeatedly to embrace an overhaul. House Speaker John Boehner says he wants legislation, but not the “massive” bill that the Senate passed and that Obama supports. The House seems inclined to act—if it acts at all—on a series of smaller bills starting with “Kids Out,” a form of the Dream Act that grants a path to citizenship for young people brought to the U.S. as children; then agriculture-worker and high-tech visas, accompanied by tougher border security. The sticking point is the 11 million people in the country illegally, and finding a compromise between Democrats’ insistence that reform include a path to citizenship, and Republicans’ belief that offering any kind of relief constitutes amnesty and would reward people for breaking the law. The details matter hugely, but what a handful of Republicans, led by Ryan, appear to be crafting is legalization for most of the 11 million but without any mention of citizenship. It wouldn’t create a new or direct or special path for people who came to the U.S. illegally or overstayed their visa. It would allow them to earn legal status through some yet-to-be-determined steps, and once they get it, they go to the end of a very long line that could have people waiting for decades. The Senate bill contains a 13-year wait. However daunting that sounds, the potential for meaningful reform is tantalizingly close with Republicans actively engaged in preparing their proposal, pressure building from the business community and religious leaders, and a short window before the end of the year to redeem the reputation of Congress and the Republican Party after a bruising takedown. The pieces are all there for long-sought immigration reform. We could be a few weeks away from an historic House vote, or headed for a midterm election where Republicans once again are on the wrong side of history and demography.

#### Obama’s fresh political capital is vital to reignite momentum for immigration

Reid Epstein 10/17/13, writer at Politico, “Obama’s latest push features a familiar strategy,” http://www.politico.com/story/2013/10/barack-obama-latest-push-features-familiar-strategy-98512.html

President Barack Obama made his plans for his newly won political capital official — he’s going to hammer House Republicans on immigration.¶ And it’s evident from his public and private statements that Obama’s latest immigration push is, in at least one respect, similar to his fiscal showdown strategy: yet again, the goal is to boost public pressure on House Republican leadership to call a vote on a Senate-passed measure.¶ “The majority of Americans think this is the right thing to do,” Obama said Thursday at the White House. “And it’s sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let’s hear them. Let’s start the negotiations. But let’s not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year.”¶ (WATCH: Assessing the government shutdown's damage)¶ And yet Obama spent the bulk of his 20-minute address taking whack after whack at the same House Republicans he’ll need to pass that agenda, culminating in a jab at the GOP over the results of the 2012 election — and a dare to do better next time.¶ “You don’t like a particular policy or a particular president? Then argue for your position,” Obama said. “Go out there and win an election. Push to change it. But don’t break it. Don’t break what our predecessors spent over two centuries building. That’s not being faithful to what this country’s about.”¶ Before the shutdown, the White House had planned a major immigration push for the first week in October. But with the shutdown and looming debt default dominating the discussion during the last month, immigration reform received little attention on the Hill.¶ (PHOTOS: Immigration reform rally on the National Mall)¶ Immigration reform allies, including Obama’s political arm, Organizing for Action, conducted a series of events for the weekend of Oct. 5, most of which received little attention in Washington due to the the shutdown drama. But activists remained engaged, with Dream Act supporters staging a march up Constitution Avenue, past the Capitol to the Supreme Court Tuesday, to little notice of the Congress inside.¶ Obama first personally signaled his intention to re-emerge in the immigration debate during an interview Tuesday with the Los Angeles Univision affiliate, conducted four hours before his meeting that day with House Democrats.¶ Speaking of the week’s fiscal landmines, Obama said: “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ (Also on POLITICO: GOP blame game: Who lost the government shutdown?)¶ When he met that afternoon in the Oval Office with the House Democratic leadership, Obama said that he planned to be personally engaged in selling the reform package he first introduced in a Las Vegas speech in January.¶ Still, during that meeting, Obama knew so little about immigration reform’s status in the House that he had to ask Rep. Xavier Becerra (D-Calif.) how many members of his own party would back a comprehensive reform bill, according to a senior Democrat who attended.¶ The White House doesn’t have plans yet for Obama to participate in any new immigration reform events or rallies — that sort of advance work has been hamstrung by the 16-day government shutdown.¶ But the president emerged on Thursday to tout a “broad coalition across America” that supports immigration reform. He also invited House Republicans to add their input specifically to the Senate bill — an approach diametrically different than the House GOP’s announced strategy of breaking the reform into several smaller bills.¶ White House press secretary Jay Carney echoed Obama’s remarks Thursday, again using for the same language on immigration the White House used to press Republicans on the budget during the shutdown standoff: the claim that there are enough votes in the House to pass the Senate’s bill now, if only it could come to a vote.¶ “When it comes to immigration reform … we’re confident that if that bill that passed the Senate were put on the floor of the House today, it would win a majority of the House,” Carney said. “And I think that it would win significant Republican votes.”

#### Obama would pushes the plan and it costs tons of capital to overcome opposition from both the left and the right

Anthony L. Kimery 9, Homeland Security Today's Online Editor and Online Media Division manager, draws on 30 years of experience and extensive contacts as he investigates homeland security, counterterrorism and border security, citing Glenn Sulmasy, first permanent commissioned military law professor at the Coast Guard Academy, where he is a Professor of Law teaching international, constitutional, and criminal law, "The Case For A 'National Security Court'", December 3, [www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html](http://www.hstoday.us/blogs/the-kimery-report/blog/the-case-for-a-national-security-court/a9333d82c11cecd35e74c8c0b65c2698.html)

But “while some from both political parties in the legislature have been working hard to ‘fix’ the Guantanamo problem, such a noble efforts have never gained the necessary momentum to create real change,” Sulmasy noted. “Unfortunately, it often seems that domestic politics has prevented many legislators from seeking new solutions. Many legislators apparently fear being labeled ‘soft on terror;’ they worry about voters’ reactions to such changes in US detention policies and further, how any progressive change in our policies might impact their election (or reelection) prospects.”¶ Conversely, the liberal Obama administration and Congress are concerned about antagonizing their left political base of support that opposes any methodology of adjudicating jihadist terrorists other than trying them in federal Article III courts.

#### CIR’s critical to economic growth---multiple internals

Klein 13 Ezra is a columnist for The Washington Post. “To Fix the U.S. Economy, Fix Immigration,” 1/29, http://www.bloomberg.com/news/2013-01-29/to-fix-the-u-s-economy-fix-immigration.html

Washington tends to have a narrow view of what counts as “economic policy.” Anything we do to the tax code is in. So is any stimulus we pass, or any deficit reduction we try. Most of this mistakes the federal budget for the economy.¶ The truth is, the most important piece of economic policy we pass -- or don’t pass -- in 2013 may be something we don’t think of as economic policy at all: immigration reform.¶ Congress certainly doesn’t consider it economic policy, at least not officially. Immigration laws go through the House and Senate judiciary committees. But consider a few facts about immigrants in the American economy: About a tenth of the U.S. population is foreign-born. More than a quarter of U.S. technology and engineering businesses started from 1995 to 2005 had a foreign-born owner. In Silicon Valley, half of all tech startups had a foreign-born founder.¶ Immigrants begin businesses and file patents at a much higher rate than their native-born counterparts, and while there are disputes about the effect immigrants have on the wages of low-income Americans, there’s little dispute about their effect on wages overall: They lift them.¶ The economic case for immigration is best made by way of analogy. Everyone agrees that aging economies with low birth rates are in trouble; this, for example, is a thoroughly conventional view of Japan. It’s even conventional wisdom about the U.S. The retirement of the baby boomers is correctly understood as an economic challenge. The ratio of working Americans to retirees will fall from 5-to-1 today to 3-to-1 in 2050. Fewer workers and more retirees is tough on any economy.¶ Importing Workers¶ There’s nothing controversial about that analysis. But if that’s not controversial, then immigration shouldn’t be, either. Immigration is essentially the importation of new workers. It’s akin to raising the birth rate, only easier, because most of the newcomers are old enough to work. And because living in the U.S. is considered such a blessing that even very skilled, very industrious workers are willing to leave their home countries and come to ours, the U.S. has an unusual amount to gain from immigration. When it comes to the global draft for talent, we almost always get the first-round picks -- at least, if we want them, and if we make it relatively easy for them to come here.¶ From the vantage of naked self-interest, the wonder isn’t that we might fix our broken immigration system in 2013. It’s that we might not.¶ Few economic problems wouldn’t be improved by more immigration. If you’re worried about deficits, more young, healthy workers paying into Social Security and Medicare are an obvious boon. If you’re concerned about the slowdown in new company formation and its attendant effects on economic growth, more immigrant entrepreneurs should cheer you. If you’re worried about the dearth of science and engineering majors in our universities, an influx of foreign-born students is the most obvious solution you’ll find.

#### US economic decline makes global nuclear war likely

O’Hanlon and Lieberthal 12 Michael O’Hanlon, Ph.D., is a senior fellow at The Brookings Institution, specializing in defense and foreign policy issues. Kenneth Lieberthal, Ph.D., is a senior fellow in Foreign Policy and Global Economy and Development at Brookings. “The real national security threat: America's debt,” July 3, LA Times Op-Ed, http://articles.latimes.com/2012/jul/03/opinion/la-oe-ohanlon-fiscal-reform-20120703

Lastly, American economic weakness undercuts U.S. leadership abroad. Other countries sense our weakness and wonder about our purported decline. If this perception becomes more widespread, and the case that we are in decline becomes more persuasive, countries will begin to take actions that reflect their skepticism about America's future. Allies and friends will doubt our commitment and may pursue nuclear weapons for their own security, for example; adversaries will sense opportunity and be less restrained in throwing around their weight in their own neighborhoods. The crucial Persian Gulf and Western Pacific regions will likely become less stable. Major war will become more likely.

### 1nc---t

#### Restrictions are prohibitions on action --- the aff is oversight

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Violation: The aff only increases court oversight of indefinite detention policy

#### Vote neg---

#### Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

### 1nc---counterplan

#### Counterplan text:

The United States federal government should provide traditional Article III courts exclusive jurisdiction over the United States’ indefinite detention policy and ensure that sufficient resources are available for training, preparation and trial.

#### Article III courts solve detention problems—aff kills due process

David Cole 08, Professor of Law, Georgetown University Law Center, David Keene, Chairman, American Conservative Union, 6/23/08, “A Critiuqe of ‘National Security Courts’,” http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle these cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brought in the federal courts over the past fifteen years. It finds that established federal courts were able to try these cases without sacrificing either national security or the defendants’ rights to a fair trial.3 The report documents how federal courts have successfully dealt with classified evidence under the Classified Information Procedures Act (CIPA) without creating any security breaches. It further concludes that courts have been able to enforce the government’s Brady obligations to share exculpatory evidence with the accused, deal with Miranda warning issues, and provide means for the government to establish a chain of custody for physical evidence, all without jeopardizing national security. Of course, our traditional federal courts have not always done everything that the government would like them to do. They are, after all, constrained by well-established constitutional limits on prosecutorial power. For example, no federal court would permit the prosecution to present witnesses without protecting the defendant’s constitutional right to confront those witnesses against him or her.4¶ Nor would a federal court permit the prosecution to rely on a coerced confession in violation of a defendant’s Fifth Amendment right against self-incrimination. But creating a new set of courts would not repeal existing constitutional rights. Conversely, to the extent that the existing rules are not constitutionally compelled, ordinary federal courts (or Congress, where applicable) can modify them when it is shown that the modification is necessary to accommodate the government’s legitimate interests.¶ Most importantly, there is the intrinsic and inescapable problem of definition. Whereas the argument for specialized courts for tax and patent law is that expert judges are particularly necessary given the complex subject-matter, proposals for specialized courts for terrorism trials are based on the asserted need for relaxed procedural and evidentiary rules and are justified on the ground that terrorists do not deserve full constitutional protections.5 This creates two fundamental constitutional problems. First, justifying departures from constitutional protections on the basis that the trials are for terrorists undermines the presumption of innocence for these individuals. Second, if a conviction were obtained in a national security court using procedural and evidentiary rules that imposed a lesser burden on the government, then the defendant would be subjected to trial before a national security court based upon less of a showing than would be required in a traditional criminal proceeding. The result would be to apply less due process to the question of guilt or innocence, which, by definition, would increase the risk of error. And, if the government must make a preliminary showing that meets traditional rules of procedure and evidence in order to trigger the jurisdiction of a national security court, such a showing would also enable it to proceed via the traditional criminal process.

### 1nc---k

#### Security is a psychological construct—the aff’s scenarios for conflict are products of paranoia that project our violent impulses onto the other

Mack 91 – Doctor of Psychiatry and a professor at Harvard University (John, “The Enemy System” http://www.johnemackinstitute.org/eJournal/article.asp?id=23 \*Gender modified)

The threat of nuclear annihilation has stimulated us to try to understand what it is about (hu)mankind that has led to such self-destroying behavior. Central to this inquiry is an exploration of the adversarial relationships between ethnic or national groups. It is out of such enmities that war, including nuclear war should it occur, has always arisen. Enmity between groups of people stems from the interaction of psychological, economic, and cultural elements. These include fear and hostility (which are often closely related), competition over perceived scarce resources,[3] the need for individuals to identify with a large group or cause,[4] a tendency to disclaim and assign elsewhere responsibility for unwelcome impulses and intentions, and a peculiar susceptibility to emotional manipulation by leaders who play upon our more savage inclinations in the name of national security or the national interest. A full understanding of the "enemy system"[3] requires insights from many specialities, including psychology, anthropology, history, political science, and the humanities. In their statement on violence[5] twenty social and behavioral scientists, who met in Seville, Spain, to examine the roots of war, declared that there was no scientific basis for regarding (hu)man(s) as an innately aggressive animal, inevitably committed to war. The Seville statement implies that we have real choices. It also points to a hopeful paradox of the nuclear age: threat of nuclear war may have provoked our capacity for fear-driven polarization but at the same time it has inspired unprecedented efforts towards cooperation and settlement of differences without violence. The Real and the Created Enemy Attempts to explore the psychological roots of enmity are frequently met with responses on the following lines: "I can accept psychological explanations of things, but my enemy is real. The Russians [or Germans, Arabs, Israelis, Americans] are armed, threaten us, and intend us harm. Furthermore, there are real differences between us and our national interests, such as competition over oil, land, or other scarce resources, and genuine conflicts of values between our two nations. It is essential that we be strong and maintain a balance or superiority of military and political power, lest the other side take advantage of our weakness". This argument does not address the distinction between the enemy threat and one's own contribution to that threat-**by distortions of perception**, provocative words, and actions. In short, the enemy is real, but we have not learned to understand how we have created that enemy, or how the threatening image we hold of the enemy relates to its actual intentions. "We never see our enemy's motives and we never labor to assess his will, with anything approaching objectivity".[6] Individuals may have little to do with the choice of national enemies. Most Americans, for example, know only what has been reported in the mass media about the Soviet Union. We are largely unaware of the forces that operate within our institutions, affecting the thinking of our leaders and ourselves, and which determine how the Soviet Union will be represented to us. Ill-will and a desire for revenge are transmitted from one generation to another, and we are not taught to think critically about how our assigned enemies are selected for us. In the relations between potential adversarial nations there will have been, inevitably, real grievances that are grounds for enmity. But the attitude of one people towards another is usually determined by leaders who manipulate the minds of citizens for domestic political reasons which are generally unknown to the public. As Israeli sociologist Alouph Haveran has said, in times of conflict between nations historical accuracy is the first victim.[8] The Image of the Enemy and How We Sustain It Vietnam veteran William Broyles wrote: "War begins in the mind, with the idea of the enemy."[9] But to sustain that idea in war and peacetime a nation's leaders must maintain public support for the massive expenditures that are required. Studies of enmity have revealed susceptibilities, though not necessarily recognized as such by the governing elites that provide raw material upon which the leaders may draw to sustain the image of an enemy.[7,10] Freud[11] in his examination of mass psychology identified the proclivity of individuals to surrender personal responsibility to the leaders of large groups. This surrender takes place in both totalitarian and democratic societies, and without coercion. Leaders can therefore designate outside enemies and take actions against them with little opposition. Much further research is needed to understand the psychological mechanisms that impel individuals to kill or allow killing in their name, often with little questioning of the morality or consequences of such actions. Philosopher and psychologist Sam Keen asks why it is that in virtually every war "The enemy is seen as less than human? He's faceless. He's an animal"." Keen tries to answer his question: "The image of the enemy is not only the soldier's most powerful weapon; it is society's most powerful weapon. It enables people en masse to participate in acts of violence they would never consider doing as individuals".[12] National leaders become skilled in presenting the adversary in dehumanized images. The mass media, taking their cues from the leadership, contribute powerfully to the process.

#### The alt is to vote neg---their paranoid projections guarantee extinction—it’s try or die

Hollander 3 – professor of Latin American history and women's studies at California State University (Nancy, "A Psychoanalytic Perspective on the Politics of Terror:In the Aftermath of 9/11" www.estadosgerais.org/mundial\_rj/download/FLeitor\_NHollander\_ingl.pdf)

In this sense, then, 9-11 has symbolically constituted a relief in the sense of a decrease in the persecutory anxiety provoked by living in a culture undergoing a deterioration from within. The implosion reflects the economic and social trends I described briefly above and has been manifest in many related symptoms, including the erosion of family and community, the corruption of government in league with the wealthy and powerful, the abandonment of working people by profit-driven corporations going international, urban plight, a drug-addicted youth, a violence addicted media reflecting and motivating an escalating real-world violence, the corrosion of civic participation by a decadent democracy, a spiritually bereft culture held prisoner to the almighty consumer ethic, racial discrimination, misogyny, gaybashing, growing numbers of families joining the homeless, and environmental devastation. Was this not lived as a kind of societal suicide--an ongoing assault, an aggressive attack—against life and emotional well-being waged from within against the societal self? In this sense, 9/11 permitted a respite from the sense of internal decay by inadvertently stimulating a renewed vitality via a reconfiguration of political and psychological forces: tensions within this country—between the “haves-mores” and “have-lesses,” as well as between the defenders and critics of the status quo, yielded to a wave of nationalism in which a united people--Americans all--stood as one against external aggression. At the same time, the generosity, solidarity and selfsacrifice expressed by Americans toward one another reaffirmed our sense of ourselves as capable of achieving the “positive” depressive position sentiments of love and empathy. Fractured social relations were symbolically repaired. The enemy- -the threat to our integrity as a nation and, in D. W. Winnicott’s terms, to our sense of going on being--was no longer the web of complex internal forces so difficult to understand and change, but a simple and identifiable enemy from outside of us, clearly marked by their difference, their foreignness and their uncanny and unfathomable “uncivilized” pre-modern character. The societal relief came with the projection of aggressive impulses onto an easily dehumanized external enemy, where they could be justifiably attacked and destroyed. This country’s response to 9/11, then, in part demonstrates how persecutory anxiety is more easily dealt with in individuals and in groups when it is experienced as being provoked from the outside rather than from internal sources. As Hanna Segal9 has argued (IJP, 1987), groups often tend to be narcissistic, self-idealizing, and paranoid in relation to other groups and to shield themselves from knowledge about the reality of their own aggression, which of necessity is projected into an enemy-- real or imagined--so that it can be demeaned, held in contempt and then attacked. In this regard, 9/11 permitted a new discourse to arise about what is fundamentally wrong in the world: indeed, the anti-terrorism rhetoric and policies of the U.S. government functioned for a period to overshadow the anti-globalization movement that has identified the fundamental global conflict to be between on the one hand the U.S. and other governments in the First World, transnational corporations, and powerful international financial institutions, and on the other, workers’ struggles, human rights organizations and environmental movements throughout the world. The new discourse presents the fundamental conflict in the world as one between civilization and fundamentalist terrorism. But this “civilization” is a wolf in sheep’s clothing, and those who claim to represent it reveal the kind of splitting Segal describes: a hyperbolic idealization of themselves and their culture and a projection of all that is bad, including the consequences of the terrorist underbelly of decades long U.S. foreign policy in the Middle East and Asia, onto the denigrated other, who must be annihilated. The U.S. government, tainted for years by its ties to powerful transnational corporate interests, has recreated itself as the nationalistic defender of the American people. In the process, patriotism has kidnapped citizens’ grief and mourning and militarism has high jacked people’s fears and anxieties, converting them into a passive consensus for an increasingly authoritarian government’s domestic and foreign policies. The defensive significance of this new discourse has to do with another theme related to death anxiety as well: the threat of species annihilation that people have lived with since the U.S. dropped atomic bombs on Hiroshima and Nagasaki. Segal argues that the leaders of the U.S. as well as other countries with nuclear capabilities, have disavowed their own aggressive motivations as they developed10 weapons of mass destruction. The distortion of language throughout the Cold War, such as “deterrence,” “flexible response,” Mutual Assured Destruction”, “rational nuclear war,” “Strategic Defense Initiative” has served to deny the aggressive nature of the arms race (p. 8) and “to disguise from ourselves and others the horror of a nuclear war and our own part in making it possible or more likely” (pp. 8-9). Although the policy makers’ destructiveness can be hidden from their respective populations and justified for “national security” reasons, Segal believes that such denial only increases reliance on projective mechanisms and stimulates paranoia.

### 1nc---legitimacy

#### NSC doesn’t resolve due process concerns---perceived internationally

Jordan J. Paust 08, Mike & Teresa Baker Law Center Professor at the University of Houston, a former U.S. Army JAG officer and member of the faculty of the Judge Advocate General’s School, October 23, "The Case Against a National Security Court," Jurist, jurist.law.pitt.edu/forumy/2008/10/case-against-national-security-court.php

JURIST noted in June that a group of high-level national security experts convened by the Constitution Project had issued a report [PDF] opposing creation of a special national security court because it would pose “a grave threat to our constitutional rights”, and observed that a similar report issued by Human Rights First in May had stated that terrorism cases should be tried in the ordinary federal district courts [PDF]. Shortly afterward, also on JURIST, Professor Ben Davis warned against creating “Star Chamber justice” by establishing such a body. ¶ Now, however, proponents of what Ben termed “un tribunal d’exception” are pushing the matter before Congress. For this reason, it is important to note several additional reasons why a special national security court should not be created.¶ During an actual armed conflict to which the laws of war apply, a national security court would have to comply with the customary and treaty-based requirements set forth in common Article 3 of the 1949 Geneva Conventions which, as noted in my book Beyond the Law, are absolute and minimum requirements applicable with respect to any person detained during either an internal or an international *armed* conflict. These mandate that a court be “regularly constituted” and afford “all the judicial guarantees” of due process that are reflected in customary international law – which include, at a minimum, those mirrored in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). ¶ The Supreme Court aptly affirmed in Hamdan v. Rumsfeld that the “core meaning” of the phrase “regularly constituted” has been authoritatively set forth in general commentary by the International Committee of the Red Cross and excludes “‘all special tribunals’” and requires that courts be “‘established ... [and] already in force in a country.’” While concurring in Hamdan, Justice Kennedy noted that there is little doubt that the phrase relates to “standards deliberated upon and chosen in advance.” As Hamdan recognized, a court (1) must not be a “special” tribunal, and (2) must already be in existence. A special national security court simply could not meet the first test and, if otherwise proper, could only operate prospectively with respect to incidents arising after its creation. ¶ Additionally, a national security court would comply with common Article 3 only if it provides “all the judicial guarantees” of due process reflected in customary international law. As the Supreme Court stated in Hamdan, “[i]nextricably intertwined with the question of regular constitution is the evaluation of the procedures governing the tribunal,” and “the phrase ‘regularly constituted court’ ... must be understood to incorporate the barest of those trial protections that have been recognized by customary international law.” The Supreme Court correctly added that “[m]any of these [due process requirements] are described in Article 75 of [Geneva] Protocol I” and in “the same basic protections set forth” as minimum human rights to due process in Article 14 of the ICCPR. Importantly, customary minimum human rights to due process reflected in Article 14 of the ICCPR apply in any social context and pertain, therefore, even when the laws of war are not applicable.¶ As documented in Beyond the Law and recognized by the Supreme Court in Hamdan, violations of customary rights to due process would include: (1) preclusion of the accused and defense counsel from learning what evidence was presented in closed hearings, (2) admission of hearsay evidence, (3) admission of unsworn statements, (4) denial of access by an accused and defense counsel to evidence in the form of classified information, (5) denial of confrontation of all witnesses against an accused, (6) use of “evidence obtained through coercion,” (7) denial of the right to be tried in one’s presence (absent disruptive conduct or consent), and (8) denial of review by a competent, independent, and impartial court of law (i.e., an Article III court). It seems unavoidable that a special national security court with special procedures that deviate from the federal rules of criminal procedure would not be designed to enhance fairness, fully meet bilateral and multilateral treaty requirements of equality of treatment, or provide more general equal protection of the law to criminal accused.¶ It is likely that some will propose the creation of a special court in order to facilitate convictions that would not be possible in a regular federal district court, especially through use of “evidence obtained through coercion” as part of what John Yoo and President Bush have admitted was a “common, unifying” plan or “program” of coercive interrogation that most know involves several manifest violations of customary and treaty-based international law and that can form the basis for criminal prosecution of (1) direct perpetrators, including those who authorized or ordered coercive interrogation; (2) leaders who were also or merely derelict in duty; (3) those who participated in a “joint criminal enterprise;” and (4) those who aided and abetted coercive interrogation or who were otherwise complicit (through memos or elsewise) in denials of rights under the laws of war, other violations of the laws of war, and violations of other international criminal law such as violations of the Convention Against Torture and customary prohibitions of secret detention. Quite clearly, lack of an intent to commit a crime would not obviate such forms of criminal responsibility and orders or authorizations will not lessen criminal responsibility for conduct that is manifestly unlawful. For example, an aider and abettor need only be aware that his or her conduct would or does assist that of a direct perpetrator. It is pertinent in this regard that there are reports that during multiple sessions in the White House beginning in 2002 Condoleezza Rice, Dick Cheney, George Tenet, Donald Rumsfeld, John Ashcroft, and others viewed simulations of and/or discussed and/or approved use of waterboarding, the “cold cell,” use of dogs to instill intense fear in detainees, and stripping naked, among other patently illegal tactics that were to be used as part of the admitted program of coercive interrogation.¶ Perpetuating illegality with a national security court would not serve our traditional values and the best interests of the United States, especially as we seek to regain our honor and international stature during a new Administration committed to the rule of law.

#### NSC doesn’t solve equal protection---shatters credibility

David Cole and David Keene 08, Professor of Law, Georgetown University Law Center, AND Chairman, American Conservative Union, June 23, "A CRITIQUE OF 'NATIONAL SECURITY COURTS'," The Constitution Project, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf

Indeed, it is also likely that the overwhelming majority of defendants in such proceedings would be of particular national and religious backgrounds, a point that would only further undermine the appropriateness of such a “separate” system. Cf. Neal Kumar Katyal, Equality in the War on Terror, 59 STAN. L. REV. 1365 (2007). The creation of a different court to try suspects, most of whom, if not all of whom, are likely to be Muslims, would be widely seen as the creation of a second-class justice system for Muslims. That result would further tarnish the United States’ reputation for justice and fairness in the Arab and Muslim world, and would be counterproductive for U.S. foreign policy and our efforts to combat terrorism.

#### Judge selection becomes politicized and kills credibility

David Cole and David Keene 08, Professor of Law, Georgetown University Law Center, AND Chairman, American Conservative Union, June 23, "A CRITIQUE OF 'NATIONAL SECURITY COURTS'," The Constitution Project, www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf

In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

#### 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.

#### No impact to heg

Maher 11---adjunct prof of pol sci, Brown. PhD expected in 2011 in pol sci, Brown (Richard, The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1)

At the same time, preeminence creates burdens and facilitates imprudent behavior. Indeed, because of America’s unique political ideology, which sees its own domestic values and ideals as universal, and the relative openness of the foreign policymaking process, the United States is particularly susceptible to both the temptations and burdens of preponderance. For decades, perhaps since its very founding, the United States has viewed what is good for itself as good for the world. During its period of preeminence, the United States has both tried to maintain its position at the top and to transform world politics in fundamental ways, combining elements of realpolitik and liberal universalism (democratic government, free trade, basic human rights). At times, these desires have conflicted with each other but they also capture the enduring tensions of America’s role in the world. The absence of constraints and America’s overestimation of its own ability to shape outcomes has served to weaken its overall position. And because foreign policy is not the reserved and exclusive domain of the president---who presumably calculates strategy according to the pursuit of the state’s enduring national interests---the policymaking process is open to special interests and outside influences and, thus, susceptible to the cultivation of misperceptions, miscalculations, and misunderstandings. Five features in particular, each a consequence of how America has used its power in the unipolar era, have worked to diminish America’s long-term material and strategic position. Overextension. During its period of preeminence, the United States has found it difficult to stand aloof from threats (real or imagined) to its security, interests, and values. Most states are concerned with what happens in their immediate neighborhoods. The United States has interests that span virtually the entire globe, from its own Western Hemisphere, to Europe, the Middle East, Persian Gulf, South Asia, and East Asia. As its preeminence enters its third decade, the United States continues to define its interests in increasingly expansive terms. This has been facilitated by the massive forward presence of the American military, even when excluding the tens of thousands of troops stationed in Iraq and Afghanistan. The U.S. military has permanent bases in over 30 countries and maintains a troop presence in dozens more.13 There are two logics that lead a preeminent state to overextend, and these logics of overextension lead to goals and policies that exceed even the considerable capabilities of a superpower. First, by definition, preeminent states face few external constraints. Unlike in bipolar or multipolar systems, there are no other states that can serve to reliably check or counterbalance the power and influence of a single hegemon. This gives preeminent states a staggering freedom of action and provides a tempting opportunity to shape world politics in fundamental ways. Rather than pursuing its own narrow interests, preeminence provides an opportunity to mix ideology, values, and normative beliefs with foreign policy. The United States has been susceptible to this temptation, going to great lengths to slay dragons abroad, and even to remake whole societies in its own (liberal democratic) image.14 The costs and risks of taking such bold action or pursuing transformative foreign policies often seem manageable or even remote. We know from both theory and history that external powers can impose important checks on calculated risk-taking and serve as a moderating influence. The bipolar system of the Cold War forced policymakers in both the United States and the Soviet Union to exercise extreme caution and prudence. One wrong move could have led to a crisis that quickly spiraled out of policymakers’ control. Second, preeminent states have a strong incentive to seek to maintain their preeminence in the international system. Being number one has clear strategic, political, and psychological benefits. Preeminent states may, therefore, overestimate the intensity and immediacy of threats, or to fundamentally redefine what constitutes an acceptable level of threat to live with. To protect itself from emerging or even future threats, preeminent states may be more likely to take unilateral action, particularly compared to when power is distributed more evenly in the international system. Preeminence has not only made it possible for the United States to overestimate its power, but also to overestimate the degree to which other states and societies see American power as legitimate and even as worthy of emulation. There is almost a belief in historical determinism, or the feeling that one was destined to stand atop world politics as a colossus, and this preeminence gives one a special prerogative for one’s role and purpose in world politics. The security doctrine that the George W. Bush administration adopted took an aggressive approach to maintaining American preeminence and eliminating threats to American security, including waging preventive war. The invasion of Iraq, based on claims that Saddam Hussein possessed weapons of mass destruction (WMD) and had ties to al Qaeda, both of which turned out to be false, produced huge costs for the United States---in political, material, and human terms. After seven years of war, tens of thousands of American military personnel remain in Iraq. Estimates of its long-term cost are in the trillions of dollars.15 At the same time, the United States has fought a parallel conflict in Afghanistan. While the Obama administration looks to dramatically reduce the American military presence in Iraq, President Obama has committed tens of thousands of additional U.S. troops to Afghanistan. Distraction. Preeminent states have a tendency to seek to shape world politics in fundamental ways, which can lead to conflicting priorities and unnecessary diversions. As resources, attention, and prestige are devoted to one issue or set of issues, others are necessarily disregarded or given reduced importance. There are always trade-offs and opportunity costs in international politics, even for a state as powerful as the United States. Most states are required to define their priorities in highly specific terms. Because the preeminent state has such a large stake in world politics, it feels the need to be vigilant against any changes that could impact its short-, medium-, or longterm interests. The result is taking on commitments on an expansive number of issues all over the globe. The United States has been very active in its ambition to shape the postCold War world. It has expanded NATO to Russia’s doorstep; waged war in Bosnia, Kosovo, Iraq, and Afghanistan; sought to export its own democratic principles and institutions around the world; assembled an international coalition against transnational terrorism; imposed sanctions on North Korea and Iran for their nuclear programs; undertaken ‘‘nation building’’ in Iraq and Afghanistan; announced plans for a missile defense system to be stationed in Poland and the Czech Republic; and, with the United Kingdom, led the response to the recent global financial and economic crisis. By being so involved in so many parts of the world, there often emerges ambiguity over priorities. The United States defines its interests and obligations in global terms, and defending all of them simultaneously is beyond the pale even for a superpower like the United States. Issues that may have received benign neglect during the Cold War, for example, when U.S. attention and resources were almost exclusively devoted to its strategic competition with the Soviet Union, are now viewed as central to U.S. interests. Bearing Disproportionate Costs of Maintaining the Status Quo. As the preeminent power, the United States has the largest stake in maintaining the status quo. The world the United States took the lead in creating---one based on open markets and free trade, democratic norms and institutions, private property rights and the rule of law---has created enormous benefits for the United States. This is true both in terms of reaching unprecedented levels of domestic prosperity and in institutionalizing U.S. preferences, norms, and values globally. But at the same time, this system has proven costly to maintain. Smaller, less powerful states have a strong incentive to free ride, meaning that preeminent states bear a disproportionate share of the costs of maintaining the basic rules and institutions that give world politics order, stability, and predictability. While this might be frustrating to U.S. policymakers, it is perfectly understandable. Other countries know that the United States will continue to provide these goods out of its own self-interest, so there is little incentive for these other states to contribute significant resources to help maintain these public goods.16 The U.S. Navy patrols the oceans keeping vital sea lanes open. During financial crises around the globe---such as in Asia in 1997-1998, Mexico in 1994, or the global financial and economic crisis that began in October 2008--- the U.S. Treasury rather than the IMF takes the lead in setting out and implementing a plan to stabilize global financial markets. The United States has spent massive amounts on defense in part to prevent great power war. The United States, therefore, provides an indisputable collective good---a world, particularly compared to past eras, that is marked by order, stability, and predictability. A number of countries---in Europe, the Middle East, and East Asia---continue to rely on the American security guarantee for their own security. Rather than devoting more resources to defense, they are able to finance generous social welfare programs. To maintain these commitments, the United States has accumulated staggering budget deficits and national debt. As the sole superpower, the United States bears an additional though different kind of weight. From the Israeli-Palestinian dispute to the India Pakistan rivalry over Kashmir, the United States is expected to assert leadership to bring these disagreements to a peaceful resolution. The United States puts its reputation on the line, and as years and decades pass without lasting settlements, U.S. prestige and influence is further eroded. The only way to get other states to contribute more to the provision of public goods is if the United States dramatically decreases its share. At the same time, the United States would have to give other states an expanded role and greater responsibility given the proportionate increase in paying for public goods. This is a political decision for the United States---maintain predominant control over the provision of collective goods or reduce its burden but lose influence in how these public goods are used. Creation of Feelings of Enmity and Anti-Americanism. It is not necessary that everyone admire the United States or accept its ideals, values, and goals. Indeed, such dramatic imbalances of power that characterize world politics today almost always produce in others feelings of mistrust, resentment, and outright hostility. At the same time, it is easier for the United States to realize its own goals and values when these are shared by others, and are viewed as legitimate and in the common interest. As a result of both its vast power but also some of the decisions it has made, particularly over the past eight years, feelings of resentment and hostility toward the United States have grown, and perceptions of the legitimacy of its role and place in the world have correspondingly declined. Multiple factors give rise toanti-American sentiment, and anti-Americanism takes different shapes and forms.17 It emerges partly as a response to the vast disparity in power the United States enjoys over other states. Taking satisfaction in themissteps and indiscretions of the imposing Gulliver is a natural reaction. In societies that globalization (which in many parts of the world is interpreted as equivalent to Americanization) has largely passed over, resentment and alienation are felt when comparing one’s own impoverished, ill-governed, unstable society with the wealth, stability, and influence enjoyed by the United States.18 Anti-Americanism also emerges as a consequence of specific American actions and certain values and principles to which the United States ascribes. Opinion polls showed that a dramatic rise in anti-American sentiment followed the perceived unilateral decision to invade Iraq (under pretences that failed to convince much of the rest of the world) and to depose Saddam Hussein and his government and replace itwith a governmentmuchmore friendly to the United States. To many, this appeared as an arrogant and completely unilateral decision by a single state to decide for itselfwhen---and under what conditions---military force could be used. A number of other policy decisions by not just the George W. Bush but also the Clinton and Obama administrations have provoked feelings of anti-American sentiment. However, it seemed that a large portion of theworld had a particular animus for GeorgeW. Bush and a number of policy decisions of his administration, from voiding the U.S. signature on the International Criminal Court (ICC), resisting a global climate change treaty, detainee abuse at Abu Ghraib in Iraq and at Guantanamo Bay in Cuba, and what many viewed as a simplistic worldview that declared a ‘‘war’’ on terrorism and the division of theworld between goodand evil.Withpopulations around theworld mobilized and politicized to a degree never before seen---let alone barely contemplated---such feelings of anti-American sentiment makes it more difficult for the United States to convince other governments that the U.S.’ own preferences and priorities are legitimate and worthy of emulation. Decreased Allied Dependence. It is counterintuitive to think that America’s unprecedented power decreases its allies’ dependence on it. During the Cold War, for example, America’s allies were highly dependent on the United States for their own security. The security relationship that the United States had with Western Europe and Japan allowed these societies to rebuild and reach a stunning level of economic prosperity in the decades following World War II. Now that the United States is the sole superpower and the threat posed by the Soviet Union no longer exists, these countries have charted more autonomous courses in foreign and security policy. A reversion to a bipolar or multipolar system could change that, making these allies more dependent on the United States for their security. Russia’s reemergence could unnerve America’s European allies, just as China’s continued ascent could provoke unease in Japan. Either possibility would disrupt the equilibrium in Europe and East Asia that the United States has cultivated over the past several decades. New geopolitical rivalries could serve to create incentives for America’s allies to reduce the disagreements they have with Washington and to reinforce their security relationships with the United States.

#### No extinction

Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease.

#### Democracy spillover is a joke and the US can’t affect it---their evidence ignores … everything

Walt 11/28/11—IR, Harvard (Stephen, Requiem for the "Arab Spring?," 11/28/11, online at walt.foreignpolicy.com)

But if the history of revolutions tells us anything, it is that rebuilding new political orders is a protracted, difficult, and unpredictable process, and having a few Mandelas around is no guarantee of success. Why? Because once the existing political order has collapsed, the stakes for key groups in society rise dramatically. The creation of new institutions -- in effect, the development of new rules for ordering political life -- inevitably creates new winners and losers. And everyone knows this. Not only does this situation encourage more and more groups to join the process of political struggle, but awareness that high stakes are involved also gives them incentives to use more extreme means, including violence.

Under these conditions, it is a pipedream to think that key actors in a complex and troubled society like Egypt or Libya (or in the future, Syria) could quickly agree on new political institutions and infuse them with legitimacy. Even if interim rulers write a quick constitution, hold a referendum, or elect new representatives, those whose interests are undermined by the outcomes are bound to question the new rules and the process and to do what they can to undermine or amend them. What one should expect, therefore, are half-measures, false starts, prolonged uncertainty, and highly contingent events, where seemingly random events (a riot, an accident, an episode of overt foreign interference, an unexpected flurry of violence, etc.) can alter the course of events in far-reaching ways. Tunisia notwithstanding, what you are unlikely to get is a quick and easy consensus on new institutions.

Remember the French Revolution? The storming of the Bastille took place in July 1789, the nobility was abolished by the National Assembly the following year, and Louis XVI tried unsuccessfully to flee in 1791 before being forced to accept a new constitution. Internal turmoil and foreign interference eventually lead to war in 1792, Louis and Marie Antoinette were executed in 1793, and Paris was soon engulfed by the Jacobin terror, which eventually burns itself out. A new constitution is adopted in 1795, establishing a government known as the "Directory," which is eventually overthrown by Napoleon's coup d'etat on 18 Brumaire, 1799. By the time Napoleon seized power, it had been more than ten years since the initial revolutionary upheaval.

To judge by that timetable, the "Arab spring" has a long way to go. And other cases offer a similar lesson. The Russian revolution starts with the fall of the Tsarist regime in March 1917 and the formation of Kerensky's provisional government, which is subsequently overthrown by the Bolshevik coup a few months later. But the Bolsheviks' hold on power isn't fully established until their victory in the Russian Civil War, which isn't fully won until 1923. The Soviet political order endured recurrent power struggles over the next decade, until Joseph Stalin vanquished his various opponents and established a personal dictatorship.

Or take a more recent case, Iran. The revolution begins in 1978, with a steadily escalating series of street demonstrations. The shah flees into exile in January 1979, the Ayatollah Khomeini returns in February and appoints Mehdan Bazegar as Prime Minister of an interim government. A new constitution is drafted by October, but there is a continuing struggle for power between liberal, Islamist, and other groups.

The first president of the new "Islamic Republic," Abdolhassan Bani-Sadr, is impeached in 1981, and the outbreak of the Iran-Iraq war strengthens hardliners and provides an opportunity for a crackdown against some prominent members of the original revolutionary movement. The Islamic republic remains a work-in-progress to this day, with the role of the "Supreme Jurisprudent," the Revolutionary Guards, the clergy, the presidency, and the Majlis remaining in flux.

Even the comparatively benign American Revolution was hardly a done-deal when the peace treaty with England was signed in 1783. Independence from England had required the colonists to fight a lengthy war of independence, and the fledgling republic then faced several armed rebellions, most notably Shays' Rebellion in 1786. These challenges revealed the inadequacies of the original Articles of Confederation (1777-1786) leading to the drafting and adoption of what is now the U.S. Constitution.

In short, anybody who thought that the events that swept through the Arab world in 2011 were going to produce stable and orderly outcomes quickly was living in a dream world. To say this is not to oppose what has happened, or to believe that the old orders could or should have continued. Rather, it is to recognize that radical reform -- even revolution -- is a long, difficult, and uncertain process, and that the ride is likely to be a bumpy one for years to come.

History also warns that outside powers have at best limited influence over the outcomes of a genuine revolutionary process. Even well-intentioned efforts to aid progressive forces can backfire, as can overt efforts to thwart them. Overall, a policy of "benevolent neglect" may be the more prudent course, making it clear that outsiders are prepared to let each country's citizens choose their own order, provided that important foreign policy redlines are not crossed. But for a country like the United States, which still sees itself as a model for others and tends to think that it has the right and the wisdom to tell them what to do, patience and restraint can be hard to sustain. And patience is what is needed most these days.

#### Global democracy inevitable

Tow 10—Director of the Future Planet Research Centre (David, Future Society- The Future of Democracy, 26 August 2010, http://www.australia.to/2010/index.php?option=com\_content&view=article&id=4280:future-society-the-future-of-democracy&catid=76:david-tow&Itemid=230)

Democracy, as with all other processes engineered by human civilisation, is evolving at a rapid rate. A number of indicators are pointing to a major leap forward, encompassing a more public participatory form of democratic model and the harnessing of the expert intelligence of the Web. By the middle of the 21st century, such a global version of the democratic process will be largely in place. Democracy has a long evolutionary history. The concept of democracy - the notion that men and women have the right to govern themselves, was practised at around 2,500 BP in Athens. The Athenian polity or political body, granted all citizens the right to be heard and to participate in the major decisions affecting their rights and well-being. The City State demanded services and loyalty from the individual in return. There is evidence however that the role of popular assembly actually arose earlier in some Phoenician cities such as Sidon and Babylon in the ancient assemblies of Syria- Mesopotamia, as an organ of local government and justice. As demonstrated in these early periods, democracy, although imperfect, offered each individual a stake in the nation’s collective decision-making processes. It therefore provided a greater incentive for each individual to cooperate to increase group productivity. Through a more open decision process, improved innovation and consequently additional wealth was generated and distributed more equitably. An increase in overall economic wellbeing in turn generated more possibilities and potential to acquire knowledge, education and employment, coupled with greater individual choice and freedom. According to the Freedom House Report, an independent survey of political and civil liberties around the globe, the world has made great strides towards democracy in the 20th and 21st centuries. In 1900 there were 25 restricted democracies in existence covering an eighth of the world’s population, but none that could be judged as based on universal suffrage. The US and Britain denied voting rights to women and in the case of the US, also to African Americans. But at the end of the 20th century 119 of the world’s 192 nations were declared electoral democracies. In the current century, democracy continues to spread through Africa and Asia and significantly also the Middle East, with over 130 states in various stages of democratic evolution. Dictatorships or quasi democratic one party states still exist in Africa, Asia and the middle east with regimes such as China, North Korea, Zimbabwe, Burma, the Sudan, Belarus and Saudi Arabia, seeking to maintain total control over their populations. However two thirds of sub-Saharan countries have staged elections in the past ten years, with coups becoming less common and internal wars gradually waning. African nations are also starting to police human rights in their own region. African Union peacekeepers are now deployed in Darfur and are working with UN peacekeepers in the Democratic Republic of the Congo. The evolution of democracy can also be seen in terms of improved human rights. The United Nations Universal Declaration of Human Rights and several ensuing legal treaties, define political, cultural and economic rights as well as the rights of women, children, ethnic groups and religions. This declaration is intended to create a global safety net of rights applicable to all peoples everywhere, with no exceptions. It also recognises the principle of the subordination of national sovereignty to the universality of human rights; the dignity and worth of human life beyond the jurisdiction of any State. The global spread of democracy is now also irreversibly linked to the new cooperative globalisation model. The EU, despite its growing pains, provides a compelling template; complementing national decisions in the supra-national interest at the commercial, financial, legal, health and research sharing level. The global spread of new technology and knowledge also provides the opportunity for developing countries to gain a quantum leap in material wellbeing; an essential prerequisite for a stable democracy. The current cyber-based advances therefore presage a much more interactive public form of democracy and mark the next phase in its ongoing evolution. Web 2.0’s social networking, blogging, messaging and video services have already significantly changed the way people discuss political issues and exchange ideas beyond national boundaries. In addition a number of popular sites exist as forums to actively harness individual opinions and encourage debate about contentious topics, funnelling them to political processes. These are often coupled to online petitions, allowing the public to deliver requests to Government and receive a committed response. In addition there are a plethora of specialized smart search engines and analytical tools aimed at locating and interpreting information about divisive and complex topics such as global warming and medical stem cell advances. These are increasingly linked to Argumentation frameworks and Game theory, aimed at supporting the logical basis of arguments, negotiation and other structured forms of group decision-making. New logic and statistical tools can also provide inference and evaluation mechanisms to better assess the evidence for a particular hypothesis. By 2030 it is likely that such ‘intelligence-based’ algorithms will be capable of automating the analysis and advice provided to politicians, at a similar level of quality and expertise as that offered by the best human advisers. It might be argued that there is still a need for the role of politicians and leaders in assessing and prioritising such expert advice in the overriding national interest. But a moment’s reflection leads to the opposite conclusion. Politicians have party allegiances and internal obligations that can and do create serious conflicts of interest and skew the best advice. History is replete with such disastrous decisions based on false premises, driven by party political bias and populist fads predicated on flawed knowledge. One needs to look no further in recent times than the patently inadequate evidential basis for the US’s war in Iraq which has cost at least half a million civilian lives and is still unresolved. However there remains a disjunction between the developed west and those developing countries only now recovering from colonisation, the subsequent domination by dictators and fascist regimes and ongoing natural disasters. There is in fact a time gap of several hundred years between the democratic trajectory of the west and east, which these countries are endeavouring to bridge within a generation; often creating serious short-term challenges and cultural dislocations. A very powerful enabler for the spread of democracy as mentioned is the Internet/Web- today’s storehouse of the world’s information and expertise. By increasing the flow of essential intelligence it facilitates transparency, reduces corruption, empowers dissidents and ensures governments are more responsive to their citizen’s needs. Ii is already providing the infrastructure for the emergence of a more democratic society; empowering all people to have direct input into critical decision processes affecting their lives, without the distortion of political intermediaries. By 2040 more democratic outcomes for all populations on the planet will be the norm. Critical and urgent decisions relating to global warming, financial regulation, economic allocation of scarce resources such as food and water, humanitarian rights and refugee migration etc, will to be sifted through community knowledge, resulting in truly representative and equitable global governance. Implementation of the democratic process itself will continue to evolve with new forms of e-voting and governance supervision, which will include the active participation of advocacy groups supported by a consensus of expert knowledge via the Intelligent Web 4.0. Over time democracy as with all other social processes, will evolve to best suit the needs of its human environment. It will emerge as a networked model- a non-hierarchical, resilient protocol, responsive to rapid social change. Such distributed forms of government will involve local communities, operating with the best expert advice from the ground up; the opposite of political party self-interested power and superficial focus-group decision-making, as implemented by many current political systems. These are frequently unresponsive to legitimate minority group needs and can be easily corrupted by powerful lobby groups, such as those employed by the heavy carbon emitters in the global warming debate.

### 1nc---terrorism

#### NSC fails and kill counterterrorism

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, "The Case Against A Special Terrorism Court," Human Rights First, www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Human Rights First believes that all indefinite detention and special court proposals—whatever form they might take—are unwise, unnecessary and should be rejected. The federal criminal courts have proven to be fully capable of handling the challenges posed by complex terrorism cases without compromising national security or sacrificing standards of fairness and due process. Our procedural safeguards and evidentiary standards comprise the bedrock of American justice. A decision to jettison them, even for a small number of suspects, would weaken our system as a whole, undermine America’s efforts to forge an international coalition to combat terrorism, and perpetuate the damage to America’s reputation for fairness and transparency done by unjust trials and prolonged detention without charge at Guantánamo. ¶ Moreover, the problems that plagued the military commission system—with prolonged litigation over the applicable procedures and rules and increasingly widespread dissention within the military command structure—do not favor the creation of a new court to deal with these cases. Establishing another separate, and secondary, system for terrorism suspects would only result in more legal challenges and would negate many of the strategic advantages of closing Guantánamo and ending military commissions. ¶ Just as importantly, a special terrorism court is not smart counterterrorism policy. Current U.S. counterinsurgency doctrine underscores the important strategic value of treating terrorism suspects as criminals, rather than as military combatants, in order to deprive them of legitimacy and undermine their support in the societies from which they seek recruits to their cause. Unjust detentions and trials at Guantánamo have fueled animosity toward the United States. These decisions also have undermined U.S. efforts to advance the rule of law around the world, which is critical to confronting the threat of terrorism. Creating a special terrorism court and a substitute system of detention without charge would perpetuate these errors rather than solve them. ¶ The new Congress and the Obama Administration have a window of opportunity to signal to the American people and the world that the policies of the Bush Administration were an aberration and that, as it confronts the threat of terrorism, the United States is prepared to uphold the Constitution, restore the rule of law, and honor its international obligations. At stake are the effectiveness of our counterterrorism strategy and the integrity of the American justice system.

#### No probability of nuclear terror

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.

# 2NC CP

#### Confusion DA—one approach is key to legal certainty

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The evolving and murky U.S. policy governing the detention, treatment, and trial of suspected terrorists has damaged U.S. legitimacy in the fight against transnational terrorism.12 At the writing of this article, controversy continues to swirl around the issues of the detention, the trying of detainees, and the writ of habeas corpus in the war against terrorism.¶ In June 2008, the U.S. Supreme Court decided Boumediene v. Bush, a sharply divided 5-4 decision holding that non-U.S. citizens detained at Guantanamo Bay as enemy combatants have the right to petition for writs of habeas corpus.13 On July 21, in the wake of the Boumediene decision, the Attorney General of the United States, Michael B. Mukasey, announced the government’s desire for Congress to pass legislation setting the rules and procedures for the habeas hearings.14 For Attorney General Mukasey, Boumediene left open three important issues that he hoped the Congress would address: “First, will a federal court be able to order that enemy combatants detained at Guantanamo Bay be released into the United States? . . . Second, how should the courts handle classified information in these unprecedented court proceedings? . . . and third, what are the procedural rules that will govern these court proceedings?”15¶ Also in late July, a detainee, Salim Ahmed Hamdan, Osama bin Laden’s reputed former driver, began a trial for war crimes at Guantanamo Bay under the rules and regulations established by the Military Commissions Act.16 The trial was allowed to proceed because a district court trial judge refused to stay the hearings under Boumediene by distinguishing the facts of the Hamdan case and the court held that the right of habeas corpus would attach post trial.17 In the first day of the Hamdan trial, the military judge barred some of the confessions made in Hamdan’s six-year confinement and allowed others, therefore restricting Hamdan’s right to a broad interpretation of the privilege against self-incrimination.18 Hamdan was convicted on August 6, 2008, by the military commission and was subsequently sentenced to sixty-six months of confinement.19 Given that Hamdan had already served sixty-one months at Guantanamo at the time of his conviction, he will complete service of the sentence in December 2008. However, it remains unclear whether the administration intends to continue to detain Hamdan beyond that term as an enemy combatant.¶ ombatant. ¶ To cloud the picture even more, a series of appellate cases have provided more jurisprudential commentary relating to the rights of detainees. A divided and fragmented Fourth Circuit sitting en banc, decided two issues concerning Ali Saleh Kahlah Al-Marri.20 The court upheld the President’s wartime power to hold enemy combatants who are captured in the United States (so-called sleeper agents) without trial, and simultaneously ruled that the accused had the right to petition a civilian court for a writ of habeas corpus to review the government’s allegations and evidence in the hearsay declaration against him since he had not been given sufficient process to challenge his designation as an enemy combatant.21 Meanwhile, the Court of Appeals for the District of Columbia found insufficient evidence to sustain a Combatant Status Review Tribunal (CSRT) determination that Huzaifa Parhat, a Guantanamo Bay detainee, was an “enemy combatant.”22 The court ordered the government to release, transfer, or hold a new CSRT for Parhat.23¶ Most recently, on November 20, 2008, a district court ordered the release of five detainees from Guantanamo Bay, including Lakhdar Boumediene himself.24 Responding to their habeas corpus petitions, the court found that there was insufficient evidence for the United States to lawfully detain the individuals as “enemy combatants.”25¶ To some, this thicket of cases, executive assertions, and Congressional rebuffs may seem like a system working. But to many it seems that after seven years and two wars, the executive, legislative, and judicial branches have yet to design a constitutional process or framework to detain, try, or hold individuals captured in the struggle against terrorism. The current policy has generated increased domestic concerns about maintaining the delicate constitutional balance between national security, traditional civil liberties, and our commitment to international conventions. The current approach has raised international objections by allies that the U.S. rhetoric with respect for the rule of law appears to be hypocritical.26 Finally, escalating legal challenges, corresponding shifts in policy by the executive branch, potential parallel legal procedures under the Detainee Treatment Act and the writ of habeas corpus, and statutory adjustments by Congress have resulted in a confused legal landscape with uncertain prospects for the future.27

#### The exec will inevitably choose the plan—wrecks solvency

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

To understand my executive forum-discretion framework, it is necessary to understand several key assumptions. I begin by assuming that the Executive is a rational actor: that executive behavior based on rational ordering of policy preferences will result in deliberate and consistent conduct. n114 This assumption highlights the importance of my analytical approach: if the Executive has ordered policy preferences that govern his choices, and his choices are expected to result in deliberate and consistent conduct, some factor must contribute to the Executive's decision to choose one trial forum over another for similarly situated defendants.¶ Where we observe alleged terrorists who could satisfy the jurisdictional predicate for military commissions who are instead tried in an Article III court, or vice versa, I theorize that a multitude of factors are balanced by the Executive and account for the differences in conduct. Thus, a thorough exposition of the Executive's potential policy preferences can provide predictive guidance regarding what the Executive considers when making [\*51] decisions. n115 Quite simply, this analytical approach leads me to the conclusion that, so long as a forum exists which better protects intelligence or allows for easier convictions, the Executive will choose that forum over any other.

#### Perm results in a double standard—that kills cred

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

The current preventive detention regime also damages the strategic legitimacy of the United States because it applies a legal double standard for treatment and interrogation of detainees, depending not upon the status of the detainee but the agency affiliation of the government custodian. The DTA established a minimum standard for detainee treatment and interrogation for all persons detained under the control of the Department of Defense (DoD), requiring that no person under DoD control may be subjected to a list of specific interrogation techniques not authorized by the standing U.S. Army Field Manual on interrogation.64 For non-DoD agencies however, the DTA applies only a minimum constitutional standard, prohibiting “cruel, inhuman or degrading treatment or punishment” that, considered under a totality of the circumstances, violates the Fifth, Eighth, or Fourteenth Amendments.65 This dichotomy allows non-DoD personnel to conceivably engage in coercive interrogation methods that may be otherwise prohibited for use by DoD personnel.66 The MCA not only reaffirmed this dual standard for detainee treatment, but also specifically authorized the use of a detainee’s coerced testimony before a military commission.67

#### Plan destroys US legitimacy, rule of law, and fuels terrorism

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, “The Case Against A Special Terrorism Court,” http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Human Rights First believes that all indefinite detention and special court proposals—whatever form they might take—are unwise, unnecessary and should be rejected. The federal criminal courts have proven to be fully capable of handling the challenges posed by complex terrorism cases without compromising national security or sacrificing standards of fairness and due process. Our procedural safeguards and evidentiary standards comprise the bedrock of American justice. A decision to jettison them, even for a small number of suspects, would weaken our system as a whole, undermine America’s efforts to forge an international coalition to combat terrorism, and perpetuate the damage to America’s reputation for fairness and transparency done by unjust trials and prolonged detention without charge at Guantánamo. ¶ Moreover, the problems that plagued the military commission system—with prolonged litigation over the applicable procedures and rules and increasingly widespread dissention within the military command structure—do not favor the creation of a new court to deal with these cases. Establishing another separate, and secondary, system for terrorism suspects would only result in more legal challenges and would negate many of the strategic advantages of closing Guantánamo and ending military commissions. ¶ Just as importantly, a special terrorism court is not smart counterterrorism policy. Current U.S. counterinsurgency doctrine underscores the important strategic value of treating terrorism suspects as criminals, rather than as military combatants, in order to deprive them of legitimacy and undermine their support in the societies from which they seek recruits to their cause. Unjust detentions and trials at Guantánamo have fueled animosity toward the United States. These decisions also have undermined U.S. efforts to advance the rule of law around the world, which is critical to confronting the threat of terrorism. Creating a special terrorism court and a substitute system of detention without charge would perpetuate these errors rather than solve them. ¶ The new Congress and the Obama Administration have a window of opportunity to signal to the American people and the world that the policies of the Bush Administration were an aberration and that, as it confronts the threat of terrorism, the United States is prepared to uphold the Constitution, restore the rule of law, and honor its international obligations. At stake are the effectiveness of our counterterrorism strategy and the integrity of the American justice system.

#### Plan undermines US legitimacy—that spills over and empowers AQ

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, “The Case Against A Special Terrorism Court,” http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

The policies of detention, interrogation and trial at Guantánamo have also negatively impacted the reputation of the United States and impaired our ability to lead the world in counterterrorism operations. Secretary of Defense Robert Gates has said, “[t]here is no question in my mind that Guantánamo and some of the abuses that have taken place in Iraq have negatively impacted the reputation of the United States.”36 Indeed, Guantánamo has become a symbol—in much the same way as the picture of the hooded Iraqi prisoner at Abu Ghraib—of expediency over fundamental fairness and of this country’s willingness to set aside its core values and beliefs. ¶ None of this should come as a surprise. In the past, overbroad detention practices have only served to alienate and radicalize communities and undermine the work of law enforcement. In the 1970s, for example, Great Britain detained thousands of suspected members of the Irish Republican Army (IRA) without charge or trial. Ultimately, this policy alienated large segments of the Irish Catholic community and aided the IRA’s recruitment efforts. The British government ended the program in 1975, and in 1998, the government discarded its power of internment altogether. In so doing, Junior Northern Ireland Minister Lord Dubs announced to the House of Lords: “The Government have [sic] long held the view that internment does not represent an effective counterterrorism measure…The power of internment has been shown to be counter-productive in terms of the tensions and divisions which it creates.”37¶ As the Army’s Counterinsurgency Manual states, in order to gain the popular support it needs to confront insurgency threats, the United States must send an unequivocal message that it is committed to upholding the law and basic principles of human rights: “A government’s respect for preexisting and impersonal legal rules can provide the key to gaining it widespread and enduring societal support…Efforts to build a legitimate government through illegitimate action are self-defeating, even against insurgents who conceal themselves amid noncombatants and flout the law.”38¶ Creating another substitute system for trying and detaining terrorist suspects, this time on United States soil, would be a costly step in the wrong direction. In all respects, a special terrorism court would be seen as a mere change of venue for the discredited Guantánamo military commissions. The failure of such courts to comport with international human rights treaty obligations for criminal prosecution would further erode American credibility in, and beyond, the realm of counterterrorism.

#### Civilian courts and neutral trials are key to perceived legitimacy

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

Whether by criminal trials, military commissions, or international tribunals, employing the rule of law to achieve “legitimacy supremacy” over terrorists for the long term requires the state to adhere to minimum standards of due process that meet domestic and international legal norms. Whether a state’s actions in detaining and trying suspected terrorists are sufficient to meet such “universal minimum standards” is not only a question of legal review, but one of public understanding and perception that the state’s application of power through legal instruments is just and fair. Thus, the state’s actions must not only be legally legitimate, but perceived as politically legitimate as well. ¶ Of course any U.S. legal regime for detention, treatment, and trial of suspected terrorists must address minimum U.S. constitutional due process requirements. This is not to argue for expansion of constitutional protections currently afforded suspected terrorists, but the need for a careful examination and distinction between those statutory and regulatory protections and the minimum due process required under the Constitution.72 Although establishing United States constitutional due process standards is the first step, whether those standards are truly accepted as universal minimum standards requires a broader assessment of international norms embodied in codified and customary international law.¶ Determining universal minimum standards of due process presents a daunting challenge, yet the Court’s opinion in Hamdan v. Rumsfeld has supplied a starting point in Common Article 373 and Article 75 of Protocol I to the Geneva Conventions.74 In Hamdan, a majority of the Court held that the military commissions established in 2001 violated Article 36 of the UCMJ because the President’s determination for variances between military commissions and courtsmartial was insufficient.75 The Court also held that the military commissions violated Common Article 3 of the Geneva Conventions, and thus required the United States to afford those persons detained and tried as suspected terrorists the protections under Common Article 3, including the prohibition on “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”76¶ In a plurality opinion, Justice Stevens reached beyond the broad language of Common Article 3 to find greater explanation of its due process guarantees. Justice Stevens determined that the “judicial guarantees which are recognized as indispensable by civilized peoples” described in Common Article 3 incorporate “at least the barest of those trial protections that have been recognized by customary international law,” and that “[m]any of these are described in Article 75 of Protocol I to the Geneva Conventions”77 Article 75 provides for humane treatment of all persons held by a contracting party, prohibits certain criminal or otherwise inhumane acts upon persons, and provides certain requirements for due process for persons arrested, detained, interred, or tried by the party.78 Justice Stevens recognized that although the United States has not ratified Protocol I, the principles articulated in Article 75 are “indisputably part of the customary international law.”79 Though the majority did not join Justice Stevens in his reliance on Article 75 as the basis for invalidating the military commissions, making the precedential value of that part of the holding doubtful, both Common Article 3 and Article 75 nevertheless provide standards of due process that are widely accepted by the international community.80

#### Aff emboldens terrorists and the CP solves

Harvey Rishikof 8, Professor of Law and Former Chair of the Department of National Security Strategy at the National War College and Kevin E Lunday, Captain and judge advocate in the US Coast Guard, "Due Process Is a Strategic Choice: Legitimacy and the Establishment of an Article III National Security Court", December 19, www.cwsl.edu/content/journals/Rishikof.pdf

A common objection to the establishment of an NSC is that because the primary purpose of criminal prosecution is general deterrence, and most terrorists are not deterrable, an Article III solution will be ineffective against terrorism.135 However, the primary objective of establishing a permanent Article III NSC is not to increase general deterrence of terrorism. Extremists who seek to employ terrorism without regard to their own survival are not deterrable in the traditional sense and thus are equally undeterred by the threat of indefinite detention at Guantanamo Bay or trial by military commission. However, the strategic objective of establishing an NSC is strengthening U.S. legitimacy and authority for advancing the rule of law, while undermining the perceived legitimacy and political influence of terrorists in the international system. By establishing a specialized court within the judicial branch that employs a historical model and accepted legal norms, the United States will move away from the current policy that has diminished its legitimacy and standing and will move toward a system that is designed to strategically combat terrorism over the long term

#### Courts result in more intel—suspects end up cooperating

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, “The Case Against A Special Terrorism Court,” http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Finally, In Pursuit of Justice finds that criminal prosecution often assists rather than inhibits intelligence gathering. The Sixth Amendment to the U.S. Constitution entitles any suspect who has been criminally charged to legal representation. But many suspects with lawyers end up cooperating with the government in exchange for leniency in sentencing. “The cooperation process has proven historically to be one of the government’s most powerful tools in gathering intelligence,” write Zabel and Benjamin. “Indeed, the government recognizes that cultivating cooperation pleas is an effective intelligence gathering tool for all types of criminal investigations, including significant terrorist cases.”18

#### Safeguards solve intelligence concerns

Kenneth Roth 8, former federal prosecutor in New York and Washington, D.C., is Executive Director of Human Rights Watch, Foreign Affairs, “After Guantánamo”, May/June, Vol. 87 Issue 3, p. 9-16, EBSCO

Finally, opponents of criminally prosecuting terrorism suspects argue that such trials force the government to reveal its secret sources and intelligence-gathering methods. But this problem is not insurmountable. It often arises when sensitive investigations involving national security, drug trafficking, or organized crime lead to prosecution. In such circumstances, defense lawyers typically try to force the government to either reveal sensitive secrets or drop the case. To address these situations, Congress enacted the Classified Information Procedures Act (CIPA) in 1980. The law empowers federal judges to review defense counsels' requests for classified information with the aim of sanitizing that information as much as possible or restricting its disclosure to only those defense lawyers with security clearance. The purpose of the act is to protect a defendant's right to confront all the evidence against him or her while safeguarding legitimate intelligence secrets.¶ If due process requirements cannot be met without revealing secret information, the government must either drop the relevant charges or declassify the information. Judges who have tried cases under CIPA speak of it as a reasonable compromise between fairness and security. CIPA rules have not forced the government to abandon even one of the dozens of international terrorism cases it has prosecuted since 9/11.

#### Empirics prove

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Fortunately, there is no need to contemplate such a radical departure from U.S. constitutional norms. U.S. courts are fully capable of addressing today's terrorist threat. The U.S. criminal justice system has successfully dealt with a broad range of serious security threats, from espionage at the height of the Cold War to ruthless drug-trafficking enterprises. In none of these cases has the United States' strong tradition of protecting defendants' due process rights stood in the way.¶ The most common argument against criminal prosecutions is that they examine crimes that were already committed, whereas the threat of terrorism is said to be so dangerous that it requires preventing acts before they occur. But the crime of conspiracy is sufficient to address today's terrorist threat because it is both backward and forward looking. Under U.S. law, a conspiracy can occur whether or not an intended illegal act has been carried out. Much as with the French crime of association de malfaiteurs, all that must be proved is that two or more people agreed to pursue an illegal plan and took at least one step to advance it. This should cover most terrorist plans: the lone wolf terrorist is rare, and al Qaeda and its spinoffs have typically relied on numerous participants to agree on a plan and pursue it. The same intelligence that allows investigators to identify and prevent a terrorist plot should allow them to prosecute the participants for conspiracy. Similarly, the crime of providing material support to terrorists can occur even when a terrorist act is only in preparation and has not yet been committed.¶ Another objection to conventional prosecutions is that they make it harder for interrogators to obtain information from suspects. Under the Sixth Amendment to the U.S. Constitution, a suspect facing criminal charges is entitled to a lawyer, who will generally tell his or her client not to talk to interrogators. But in fact, many criminal suspects with lawyers end up cooperating with interrogators because doing so can shorten the prison time they face. Moreover, the constitutional limits on a prosecutor's ability to question a suspect without counsel need not interfere with parallel but separate questioning aimed at investigating other suspects or preventing terrorism. Even if a suspect's right to counsel has been violated, the Constitution only prohibits prosecutors from using the information derived from the flawed interrogation at trial; it does not forbid other investigators, such as those trying to prevent future terrorist acts, from questioning the suspect without a lawyer present, so long as these investigators do not relay his or her words (or leads based on what he or she said) to the prosecution team. This division of labor may not be ideal, but it is better than resorting to preventive detention and discarding many basic due process rights.

# 2NC Polx

#### Brink is now---reform is key to win the global race for talent---only CIR solves

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Immigrants help fuel the U.S. economy, representing about one in every six workers. Because of accelerated immigration and slowing U.S. population growth, foreign-born workers accounted for almost half of labor-force growth over the past fifteen years. Public attention has focused mainly on the large number of low-skilled immigrant workers, but the number of high-skilled immigrants actually grew faster during this period. Highly educated immigrants filled critical jobs in the science, engineering, IT, and healthcare sectors. They also fostered innovation and created high-tech businesses. Research has documented the benefits of these workers; foreign-born scientists, for example, patent at twice the rate of their U.S.-born counterparts.¶ Future U.S. prosperity depends on having a skilled workforce. This requires educating the native-born population and continuing to attract the world's talent to the United States. For decades, the nation has been the world leader in attracting skilled immigrants who, until recently, had few good alternatives. Today, other destination countries increasingly recognize the economic and fiscal benefits of these workers and are designing policies to attract them, even as the immigrants' nations of origin seek ways to entice them to return home. Return rates among Chinese students educated abroad have doubled since 2001.¶ The U.S. immigration system, meanwhile, has not kept up. Piecemeal fixes have turned current law into a web of outmoded, contradictory, and inefficient quotas, rules, and regulations. For example, the number of high-skilled immigrant workers admitted on temporary visas has doubled since 1996, but the number of employment-based permanent residence visas or green cards has remained the same. As a result, there are over one million high-skilled immigrants waiting for employment-based green cards in a queue that will take more than a decade to clear.¶ Of the 1.1 million green cards issued in a typical year, the United States awards 85 percent to family and humanitarian immigrants and only 15 percent to employment-based, highly skilled immigrants. Of these 15 percent, half go to the workers' spouses and children. Among OECD (Organization for Economic Co-operation and Development) nations, no other nation puts such a low priority on work-based immigration.¶ It's not known how many high-skilled immigrants are attracted by our economy and society only to be turned away by the broken immigration system, but the United States risks falling behind in the global race for talent if immigration laws are not reformed.

#### Illegal immigration risks terrorist infiltration

Ting 6 [OTMS refers to non-Mexican immigrants; Jan, professor of law at Temple University's Beasley School of Law and an FPRI senior fellow, Immigration and National Security, Orbis 50.1 p 41-52]

This summer’s terror bombings in London have brought new attention to the Islamist threat. They also highlight the striking difference between U.S. and European views over the Islamist threat. In Europe, the greatest concern is the threat from its own resident immigrant population, particularly the young second and third generations, born in Europe. In the U.S., the greatest concern is not its own population, but the threat of those sent from abroad to attack America.¶ With acts of violence from Muslim citizens in Europe increasing in number and scale, many Europeans feel that the Islamist threat needs to be addressed at home, not in Iraq. But four years after 9/11, America’s national borders remain open and uncontrolled, even as the government spends billions of dollars and thousands of lives in Iraq and Afghanistan fighting terrorism, and even as it worries about protecting the nation’s ports, power supply, mass transit, and every other possible target against terrorist threats.¶ Illegal Immigration¶ Every night, thousands of foreigners covertly enter the U.S. The official estimate is that the U.S. Border Patrol intercepts only 1 out of every 4 illegal border crossers. But current and former Border Patrol officers say that the ratio of those intercepted is much lower-probably more like 1:8 or 1:10. And because of the illegals’ remittances of U.S. dollars back to their home country, Mexico in particular has been supportive of its citizens who choose to enter the U.S. illegally.¶ Data on Border Patrol apprehensions for fiscal years 2000-05 show that apprehensions were highest in 2000, over 1.5 million, and then declined over the next three years, following 9/11. They rose again in 2004 and 2005, after President Bush announced his proposal for guest-worker amnesty in January 2004. Apprehensions along the southern border make up about 98 percent of total apprehensions. Most of those apprehended near the U.S.’s southern border are Mexicans, but there are also numerous “other than Mexicans,” or OTMs.¶ Research by Wayne Cornelius of the Center for Comparative Immigration Studies at the University of California, San Diego suggests that 92 percent of Mexicans seeking to enter the U.S. illegally eventually succeed. Meanwhile, the number of OTMs apprehended near the southern border has been clearly and dramatically increasing since 2000, from 28,598 that year to 65,814 in 2004 and 100,142 OTM in the first eight months of fiscal 2005 alone.¶ What happens following apprehension is very different for OTMs than for Mexicans, who can be immediately returned to Mexico in what is described as voluntary departure. (In the case of adult Mexicans, U.S. authorities simply take them back to the border.) In contrast, the Mexican government does not allow the U.S. to send OTMs back into Mexico. That may be understandable, but since these OTMs clearly entered the U.S. through Mexico, Washington might usefully and legitimately put some diplomatic pressure on Mexico City either to take the OTMs back or to prevent their entry into the U.S. in the first place.¶ An OTM has to be scheduled for a hearing with an immigration judge, who can issue a removal order. A scheduled immigration hearing may be weeks later, and even if a removal order is issued, the alien has the right to appeal to the Board of Immigration Appeals and then the federal courts. The government therefore has a dilemma. It can either detain the alien until the hearing (and, if a removal order is issued, until all appeal rights are exhausted), or it can release the alien on his “own recognizance,” and hope that the alien will voluntarily appear for the scheduled hearing and, if ordered removed and after exhausting all appeals, voluntarily appear for deportation.¶ Because the government has only authorized and funded a small number of detention spaces (a total of 19,444 in 2004, with another 1,950 added in May 2005), increasing numbers of OTMs are released on their own recognizance. Fewer than 6,000 OTMs were released on their own recognizance in each of 2001 and 2002, but the number increased to 7,972 in 2003 and jumped to 34,161 in 2004; 70,624 were released in just the first 8 months of fiscal 2005.¶ The failure-to-appear rate at one Texas immigration court is 98 percent. A removal order is typically issued in absentia for those who fail to appear. When the statutory appeal rights all expire, the names are added to the list of alien “absconders” who have actually been caught by the government, ordered removed by an immigration judge, exhausted all their appeal rights, but are still in the country anyway. The list of such absconders is now 465,000 and growing, out of a total illegal alien population of 8 to 12 million, per a December 2003 estimate by Tom Ridge, then Secretary of Homeland Security. Lou Dobbs of CNN, among others, uses 20 million as a more realistic number.¶ The release rate for apprehended OTMs is now so high, Border Patrol agents report that instead of hiding from the authorities, illegally entering OTMs actually seek them out in order to obtain the document charging them with illegal entry. They call this “Notice to Appear,” which informs them of the date and place of their scheduled hearing before an immigration judge, a permiso; some agents call it a “Notice to Disappear,” since that is what it permits them to do. If they are challenged while moving deeper into the U.S. from the border, they can produce the document to show that they have already scheduled an appointment before immigration judges.¶ The overwhelming majority of the millions of illegals, and even of the absconders, are not terrorists. But the sea of incoming illegal aliens provides a cover and a culture in which terrorists can hide, and a reliable means of entry. And as we know from the case of the 2004 Madrid train bombings, many Islamist terrorists are fluent in Spanish. Border Patrol apprehension figures show that among the OTMs apprehended in 2004 and 2005 were hundreds of persons from 35 “special interest” countries, almost all of which are Muslim. These countries include Afghanistan, Egypt, Iran, Iraq, Lebanon, Saudi Arabia, Somalia, Sudan, Syria, and Yemen; the number-one country in the group is Pakistan. Again, these are just the apprehensions: for every alien apprehended entering the U.S. illegally, an estimated 3 to 9 others succeed.

flow

#### Immigration has a strong chance --- GOP is weak and pressure is building --- reject their evidence

David Leopold 10/24/13, immigration attorney and past general council at the American Immigration Lawyers Association, “Immigration Reform Is Alive and Kicking on Capitol Hill,” Huffington Post, <http://www.huffingtonpost.com/david-leopold/immigration-reform-is-alive_b_4136478.html>

As it turns out, reports of the death of immigration reform were greatly exaggerated. Rep. Mario Diaz-Balart (R-Fla.), Rep. Darrell Issa (R-Calif.) and other House Republicans and Democrats are reportedly working on various immigration plans, some of which, including a bill to be released next week by Issa, deal with the toughest issue of all -- what to do about the nation's 11.7 million undocumented immigrants. And Speaker John Boehner (R-Ohio) says that immigration reform could get to the floor of the House before the end of the year.¶ Is common sense breaking out on Capitol Hill? That might be too much to ask for. But at least the GOP leadership seems to be taking a hard look at political reality.¶ Here are four big reasons why an immigration overhaul is likely to happen by the end of the year:¶ 1. Immigration reform is a political win-win for Democrats and Republicans.¶ I can't say that either the Democrats or Republicans came out of last week's shutdown and debt limit brinksmanship looking good to the American people, but the whole debacle hurt the Republicans much more. A recent NBCNews/Wall Street Journal poll found that the public blames the GOP more than President Obama by 53 percent to 31 percent, a 21 point margin. And approval ratings for the Republican party are at an all-time low -- never before in the history of polling have the numbers shown such blatant disappointment.¶ Immigration reform gives the Republicans a unique opportunity to do something big, to reach across the aisle and work with House Democrats to pass real immigration reform either in a comprehensive package or as a series of bills that ultimately have a chance to fix what's wrong with our immigration system. It would be a colossal mistake for the House GOP not to seize the chance to lead on immigration reform. The American people want it, the country needs it, and it's a pathway to political redemption for the badly bruised Republican party.¶ 2. The immigration reform coalition is unified and ready to make the final push.¶ A broad coalition of business, labor, faith-based and ethnic groups are full of energy and ready to finish the job the Senate started in the spring. In the midst of the combined "shutdown and debt ceiling" crisis, thousands of Americans descended on Washington to join the "March for Dignity and Respect." Eight members of Congress, including civil rights icon John Lewis (D-Ga.), joined together in an historic act of civil disobedience and were arrested near the steps of the Capitol in a show of solidarity with the immigration reform movement. As Rep. Charles Rangel (D-N.Y.) wrote recently in his The Huffington Post column "Why I Went To Jail":

#### Will pass --- enough Republicans will give in --- proponents have strong leverage

Byron York 10/23/13, chief political correspondent at The Washington Examiner, “Commentary: Written off for dead, immigration reform could still live,” Elko Daily, http://elkodaily.com/news/opinion/commentary-written-off-for-dead-immigration-reform-could-still-live/article\_a6d24b4a-3c57-11e3-99c6-001a4bcf887a.html?comment\_form=true

The Senate and House had not even settled the final details of ending the government shutdown before President Obama was on to his next priority. “We still need to pass a law to fix our broken immigration system,” Obama said on the night of Oct. 16 as Capitol Hill scrambled to end the standoff. In case anyone missed it, the next morning he declared: “We should finish the job of fixing our broken immigration system.”¶ There’s no doubt the president wants an immigration deal; he’s talked about it for years, and now can’t put it off until another term. But could the Republican-controlled House of Representatives — exhausted, dazed and confused after the self-inflicted battering of the last few weeks — actually get itself together to pass a reform bill to go along with the Gang of Eight bill the Senate already passed?¶ The prospect alone makes some observers laugh. “People talking about immigration being next: have you been watching the House?” tweeted National Review’s Jonathan Strong during the worst of the shutdown battle, adding the hashtag “#craziness.” In this (entirely reasonable) view, there’s no way the fractured GOP could ever unite to pass such a far-reaching piece of legislation.¶ But that doesn’t keep immigration reformers from trying — and hoping. “There is still a window,” says one House GOP aide involved in crafting a reform proposal. “The leadership has said keep working on it and see what you can do.”¶ Republican immigration proponents have been quietly talking to GOP members throughout even the craziest days of the shutdown and default fights. They report some progress. Yes, the most conservative House Republicans are mostly against them. But those with a libertarian bent are more open to the cause. The aide says reformers have had good meetings “with a few of those guys who were with Ted Cruz at Tortilla Coast,” referring to the House conservatives who met with the Texas senator at a Washington, D.C. restaurant and ended up holding out longest against a deal to end the shutdown.¶ But the problem for reformers is not the fractiousness of House Republicans, although that doesn’t help. The problem is that the reformers have never found a way to balance the border security demands of conservatives with the reformers’ demand for quick legalization of the 11 million-plus immigrants currently in the United States illegally. The conservatives must have security first, and then legalization (and even then, some won’t ever support reform). The reformers won’t wait until security is in place before starting legalization.¶ The Senate papered over the problem by throwing billions of dollars at border security in the final rush to pass the Gang of Eight bill. But that didn’t make the Gang’s solution any more attractive to House conservatives. “I think there would be overwhelming opposition from within the ranks to going to conference with the Gang of Eight bill,” one conservative House member said in an email exchange. “Indeed, this would be way more divisive than the last four weeks have been for the House GOP.”¶ The conservatives seek to avoid a scenario in which the House passes some sort of immigration bill, goes to conference with the Senate, and comes out of the negotiations with a bill that looks a lot like the Gang of Eight’s. “Everyone has seen the bad faith exhibited by Obama and (Senate Majority Leader Harry) Reid during this fiscal fight, and I can’t imagine anyone making the case that a final (immigration) product would reflect conservative principles in any fashion,” the lawmaker says. “Reid has all but said that no matter what the House passes the Senate will simply jam the Gang of Eight bill through a conference committee.”¶ That skepticism is probably shared by a large number of House Republicans, perhaps enough to kill any reform proposal. But the reformers, led by Obama, are still trying. They have the Senate bill in their pocket. They have nearly unanimous Democratic support plus a significant number of Republicans. They have the support of powerful interest groups. And they have money, money, money.¶ At a recent Congressional Hispanic Conference meeting, Democratic Rep. John Yarmuth of Kentucky noted that the forces of comprehensive immigration reform include vastly wealthy businesses willing to spend big to win. And the other side? “There is no money on the other side of the issue,” Yarmuth said. “There is nobody out there ready to spend $100 million against this.” For the pro-reform side, supporters like Facebook founder Mark Zuckerberg — who wants looser visa standards for foreign high-tech workers — can rustle up that much with the help of a few Silicon Valley friends.

#### Obama is spending PC on immigration

Huffington Post, 10-24-2013, “Obama Speaking On Immigration Reform,” http://www.huffingtonpost.com/2013/10/24/obama-speaking-immigration-reform\_n\_4155211.html

President Barack Obama is using the bully pulpit to insist that Congress pass legislation overhauling the nation's immigration system. Obama will issue that call to Congress when he speaks Thursday in the East Room of the White House. The president wants Congress to act on immigration before the end of the year, now that the partial government shutdown has ended and a potential default has been temporarily averted. House Speaker John Boehner (BAY'-nur) says he's optimistic the House could act on immigration by year's end. But it's not certain that Republicans will support the comprehensive approach that Obama is seeking.

#### Obama’s ramping up pressure --- he’ll get it done

Justin Sink 10/23/13, writer at The Hill, “Obama to push House on immigration reform,” The Hill, http://thehill.com/homenews/administration/330295-obama-to-ramp-up-pressure-on-immigration-reform

President Obama will look to ramp up pressure on the House to begin deliberations on a comprehensive immigration reform bill with a speech Thursday morning from the White House.¶ The president will urge Congress to take up a reform effort in a "bipartisan way," a White House official told Reuters.¶ The president identified immigration as one of three legislative priorities — in addition to a budget and farm bill — he hoped Congress would tackle by the end of the legislative year during a speech shortly after the end of the government shutdown.¶ "The majority of Americans think this is the right thing to do, and it's sitting there waiting for the House to pass it," he said. "Now if the House has ideas on how to improve the Senate bill, let's hear them. Let's start the negotiations. But let's not leave this problem to keep festering for another year, or two years, or three years."¶ White House press secretary Jay Carney said Wednesday that the White House had been consulting with congressional staff about how to best move forward.¶ Republicans have said that they do not favor a comprehensive bill, instead favoring a piecemeal approach to immigration reform. They argue a single bill would be too unwieldy and difficult to implement. But Democrats believe Republicans intend to pass new border security measures without also including a pathway to citizenship.¶ On Wednesday, House Speaker John Boehner (R-Ohio) said he was "hopeful" the House would address the "important subject" of immigration reform.¶ Democratic lawmakers echoed the president's call to pass a bill by the end of the year in a press conference outside the Capitol.

#### Obama’s pushing immigration and increasing pressure on the GOP

Zeke J. Miller, 10-24-2013, “Obama’s New Immigration Pivot Isn’t About Immigration,” Time, http://swampland.time.com/2013/10/24/obamas-new-immigration-pivot-isnt-about-immigration/

President Obama called Thursday on the Republican-controlled House of Representatives to take up the comprehensive immigration bill passed by the Senate. “This is not an idea whose time has come,” Obama said, “This is an idea whose time has been around for years now. . . and this is the moment when we should be able to the job done.” The move is the latest in a pattern of efforts by Democrats to increase political pressure on Republicans, who have already ruled out the Senate bill, in the hopes of using the issue in the 2014 and 2016 elections. President Barack Obama took the podium in the White House State Dining Room last week to mark the end of the shutdown and laid out his priorities for the coming months. At the top of the list was a renewed push for comprehensive immigration reform. Congressional Democrats likewise are onboard with the new push. “I look forward to the next venture, which is making sure we do immigration reform,” Senate Majority Leader Harry Reid said last week.

#### Wins don’t spillover---capital is finite---prioritizing issues is key

Schultz 13 David Schultz is a professor at Hamline University School of Business, where he teaches classes on privatization and public, private and nonprofit partnerships. He is the editor of the Journal of Public Affairs Education (JPAE). “Obama's dwindling prospects in a second term,” MinnPost, 1/22, http://www.minnpost.com/community-voices/2013/01/obamas-dwindling-prospects-second-term

Four more years for Obama. Now what? What does Barack Obama do in his second term and what can he accomplish? Simply put, his options are limited and the prospects for major success quite limited. Presidential power is the power to persuade, as Richard Neustadt famously stated. Many factors determine presidential power and the ability to influence including personality (as James David Barber argued), attitude toward power, margin of victory, public support, support in Congress, and one’s sense of narrative or purpose. Additionally, presidential power is temporal, often greatest when one is first elected, and it is contextual, affected by competing items on an agenda. All of these factors affect the political power or capital of a president. Presidential power also is a finite and generally decreasing product. The first hundred days in office – so marked forever by FDR’s first 100 in 1933 – are usually a honeymoon period, during which presidents often get what they want. FDR gets the first New Deal, Ronald Reagan gets Kemp-Roth, George Bush in 2001 gets his tax cuts. Presidents lose political capital, support But, over time, presidents lose political capital. Presidents get distracted by world and domestic events, they lose support in Congress or among the American public, or they turn into lame ducks. This is the problem Obama now faces. Obama had a lot of political capital when sworn in as president in 2009. He won a decisive victory for change with strong approval ratings and had majorities in Congress — with eventually a filibuster margin in the Senate, when Al Franken finally took office in July. Obama used his political capital to secure a stimulus bill and then pass the Affordable Care Act. He eventually got rid of Don’t Ask, Don’t Tell and secured many other victories. But Obama was a lousy salesman, and he lost what little control of Congress that he had in the 2010 elections.

#### Winners lose---Bush and Clinton prove

Eberly 13 Todd Eberly is coordinator of Public Policy Studies and assistant professor in the Department of Political Science at St. Mary's College of Maryland. “The presidential power trap,” 1/21, Baltimore Sun, http://articles.baltimoresun.com/2013-01-21/news/bs-ed-political-capital-20130121\_1\_political-system-george-hw-bush-party-support

Only by solving the problem of political capital is a president likely to avoid a power trap. Presidents in recent years have been unable to prevent their political capital from eroding. When it did, their power assertions often got them into further political trouble. Through leveraging public support, presidents have at times been able to overcome contemporary leadership challenges by adopting as their own issues that the public already supports. Bill Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes — in Mr. Clinton's case, welfare reform and budget balance, in Mr. Bush's tax cuts and education reform — that at the time received popular approval.¶ However, short-term legislative strategies may win policy success for a president but do not serve as an antidote to declining political capital over time, as the difficult final years of both the Bill Clinton and George W. Bush presidencies demonstrate. None of Barack Obama's recent predecessors solved the political capital problem or avoided the power trap. It is the central political challenge confronted by modern presidents and one that will likely weigh heavily on the current president's mind today as he takes his second oath of office.

#### Best political science proves

Jackie Calmes, NYTimes, 11/12/12, In Debt Talks, Obama Is Ready to Go Beyond Beltway, mobile.nytimes.com/2012/11/12/us/politics/legacy-at-stake-obama-plans-broader-push-for-budget-deal.xml

That story line, stoked by Republicans but shared by some Democrats, holds that Mr. Obama is too passive and deferential to Congress, a legislative naïf who does little to nurture personal relationships with potential allies in short, not a particularly strong leader. Even as voters re-elected Mr. Obama, those who said in surveys afterward that strong leadership was the most important quality for a president overwhelmingly chose Mr. Romney.¶ George C. Edwards III, a leading scholar of the presidency at Texas A & M University who is currently teaching at Oxford University, dismissed such criticisms as shallow and generally wrong. Yet Mr. Edwards, whose book on Mr. Obama's presidency is titled "Overreach," said, "He didn't understand the limits of what he could do."¶ "They thought they could continuously create opportunities and they would succeed, and then there would be more success and more success, and we'd build this advancing-tide theory of legislation," Mr. Edwards said. "And that was very naïve, very silly. Well, they've learned a lot, I think."¶ "Effective leaders," he added, "exploit opportunities rather than create them."¶ The budget showdown is an opportunity. But like many, it holds risks as well as potential rewards.¶ "This election is the second chance to be what he promised in 2008, and that is to break the gridlock in Washington," said Kenneth M. Duberstein, a Reagan White House chief of staff, who voted for Mr. Obama in 2008 and later expressed disappointment. "But it seems like this is a replay of 2009 and 2010, when he had huge majorities in the House and Senate, rather than recognizing that 'we've got to figure out ways to work together and it's not just what I want.' "¶ For now, at least, Republican lawmakers say they may be open to raising the tax bill for some earners. "We can increase revenue without increasing the tax rates on anybody in this country," said Representative Tom Price, Republican of Georgia and a leader of House conservatives, on "Fox News Sunday." "We can lower the rates, broaden the base, close the loopholes."¶ The challenge for Mr. Obama is to use his postelection leverage to persuade Republicans or to help Speaker John A. Boehner persuade Republicans that a tax compromise is in their party's political interest since most Americans favor compromise and higher taxes on the wealthy to reduce annual deficits.¶ Some of the business leaders the president will meet with on Wednesday are members of the new Fix the Debt coalition, which has raised about $40 million to urge lawmakers and their constituents to support a plan that combines spending cuts with new revenue. That session will follow Mr. Obama's meeting with labor leaders on Tuesday.¶ His first trip outside Washington to engage the public will come after Thanksgiving, since Mr. Obama is scheduled to leave next weekend on a diplomatic trip to Asia. Travel plans are still sketchy, partly because his December calendar is full of the traditional holiday parties.¶ Democrats said the White House's strategy of focusing both inside and outside of Washington was smart. "You want to avoid getting sucked into the Beltway inside-baseball games," said Joel Johnson, a former adviser in the Clinton White House and the Senate. "You can still work toward solutions, but make sure you get out of Washington while you are doing that."¶ The president must use his leverage soon, some Democrats added, because it could quickly wane as Republicans look to the 2014 midterm elections, when the opposition typically takes seats from the president's party in Congress.

# 1nr---legitimacy

#### CP viewed as a cosmetic change in procedure

Benjamin Davis 07, professor at the University Of Toledo College Of Law, July 12, "Against a US 'Terrorists' Court'," Jurist, jurist.law.pitt.edu/forumy/2007/07/against-us-terrorist-court.php

Might I suggest that a national security court is really another phrase for what is called in French un tribunal d’exception a term that is heavy with connotations of Star Chamber justice. One of the great things about state courts of general jurisdiction or federal courts of limited jurisdiction is that they are open to everyone and have to operate in the light of day. Adjustments have to be made and can be made for given cases. We might spend more money on more courts to allow us to have the sufficient number of judges around to do the hard work of their role – but I would hesitate to create such an exceptional court, with exceptional rules, and exceptional powers, that will overtime not be the exception. ¶ Given the rarity of refusals of warrants in our experience with the FISA court that we have had over the past 6 year period, I am deeply concerned that a similar experience would happen with such a national security court. ¶ Maybe Jack Goldsmith and Neal Katyal are just too young to remember the kind of horrendous domestic activities of the CIA and others pre-1973 as described only partially in the recent “Family Jewels” release. But I and many Americans are not. I can remember persons denied even the most basic right to travel through the denial of a passport to Richard Wright for the most spurious of reasons. Who would be a security risk? Would Rosa Parks? How about Ramsey Clark? How about Martin Luther King? How about Stokely Carmichael? How about Malcolm X? How about any person whoever stood up and protested the security state? I think it is incredibly naïve to think that such a national security court could be kept in a limited role.¶ I am not at all warmed by the appeal to American values, for we all know that is a dual edged sword. We have seen under the guise of American values efforts to maintain enshrine and enhance what could only be called domestic state terrorism against blacks in the South for so much of our history. We have seen a Senate that would not take up an anti-lynching law for so many years while people were lynched. We have seen waits of 40 years for persons to receive criminal prosecution of people who killed their brothers for expressing themselves during the civil rights movement, due to the unwillingness of state or federal prosecutors to do anything. In my lifetime, I have seen enough of the ebb and flow of American values on the issue of integration of blacks into society to understand that those values are not so stabilized and protective as such appeals would like to make us think.¶ So please kill this idea immediately. Do the hard work of fixing the security state in the ways it has run off the rails. That hard work will earn the respect and credibility. Not another improvisation or cosmetic window dressing – I and many Americans I suspect are fatigued by these legal games. And let the chips fall where they may.

#### NSC doesn’t solve—it perpetuates the squo

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

This approach suggests that a national security court would have adequate means by which to judge not the actions of detainees, as with regular courts, but the risk of detainees engaging in harmful actions, even absent evidence. Such an approach appears to deny the notion of due process. It is also difficult to see how this approach would not generate the problem it ostensibly seeks to prevent; that is, the creation of enemies through detention policy. A 2008 document signed by 27 legal scholars opposes “any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects….” for the basic reason that, despite “dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent.” The authors add that perhaps “most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable.”33 Some of the authors, however, conclude that evidence on the part of the government that a detainee has “engaged in belligerent acts or has directly participated in hostilities against the United States” may be the exceptional case justifying “continued detention.”34 Again, however, this distinction remains fluid enough as to be an arbitrary judgment by government officials.

#### that kills legitimacy and counterterrorism cooperation

Neal K. Katyal 07, Professor of Law, Georgetown University Law Center, "Equality in the War on Terror," Stanford Law Review, 59 Stan. L. Rev. 1365-1394, scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1408&context=facpub

Laws of general applicability are not only preferable, they also keep us safer. In affording the same process to alien and citizen detainees, we maintain the superiority of our judicial system. The federal courts have a tried and true record of discerning the guilty from the innocent without turning to arbitrary distinctions such as alienage. Our civilian courts have handled a variety of challenges and complicated cases—from the trial of the Oklahoma City bombers to the awful spying of Aldrich Ames and others. They have tried the 1993 World Trade Center bombers, Manuel Noriega, and dozens of other cases. They have prosecuted cases where the crimes were committed abroad. Indeed, the Justice Department has recently extolled its resounding success in terrorism cases in federal civilian court—where it has proceeded to charge nearly 500 individuals with crimes of terrorism. 102 Our national security policy requires adherence to a judicial process that works for all terrorist suspects. A two- tiered justice system jeopardizes not only the rights of alien suspects, but also the safety of American citizens.¶ As the world becomes even smaller, and the movement of people across borders becomes even more fluid, we need a unitary legal system that is capable of embracing all those in our jurisdiction: one that does not pick and choose who gets fundamental protections. Only then can we be assured that the real terrorists are brought to justice.¶ Moreover, legislation should not play on post-9/11 xenophobia. In the wake of terrorism, fears are heightened, rationality is muted, and it is the government’s responsibility to be the source of reason amidst the chaos, not to fan fears and stimulate even greater hatred. In pointing toward alien detainees as the sole source of danger, however, legislation such as the MCA fails to provide actual solutions to the threat of terrorism. Our policy cannot afford to dally under any delusions that foreigners are the sole source of terrorist impulses. The threat of terrorism permeates all borders, and only fair and evenhanded laws can effectively ferret out that threat. Allowing rank discrimination to drive policy takes attention away from national security and focuses on meaningless distinctions of “us” versus “them.” 103¶ Finally, in the wake of international disdain for the military tribunals authorized by President Bush, our country is already under global scrutiny for its disparate treatment of non-U.S. citizens. We must be careful not to further the perception that, in matters of justice, the U.S. government adopts special rules that single out foreigners for disfavor. Otherwise, the result will be more international condemnation and increased enmity about Americans worldwide. The predictable result will be less cooperation and intelligence sharing, and fewer extraditions to boot.¶ In this respect, the laws of war have changed markedly in recent years, and now reflect the basic equality principle. The Geneva Conventions, for example, require a signatory to treat enemy prisoners of war the same way as it treats its own soldiers. 104 Even for non-prisoners of war, the minimum requirements of Common Article 3 require trials to take place in a “regularly constituted court.” 105 As the International Committee of the Red Cross Commentary puts it:¶ [C]ourt proceedings should be carried out in a uniform manner, whatever the nationality of the accused. Nationals, friends, enemies, all should be subject to the same rules of procedure and judged by the same courts. There is therefore no question of setting up special tribunals to try war criminals of enemy nationality. 106¶ Again, the logic of such provisions is best understood as creating virtual representation—ensuring that the interests of accused enemies will be vindicated by the application of longstanding procedural rules for the trial of the signatory power’s own troops.¶ Fidelity to these precepts, far from undermining the war on terror, is the best way to win it. By demonstrating that America is not being unfair—and by subjecting those from other lands to the same justice Americans face for the same crimes—America projects not only benevolence, but strength. America’s soft power depends, in no small part, on being able to rise above pettiness and to highlight the vitality of our system. Carving out special rules for “them” and reserving different rules for “us” is no way to win respect internationally. ¶ The British experience provides a useful contrast. The House of Lords in A v. Secretary of State for the Home Department, 107 struck down the terrorist detention policy on equality grounds. They found that there was no reasonable or objective justification why a non-U.K. national suspected of being a terrorist could be detained while a U.K. national would be allowed to go free. The Lords rejected the Attorney General’s arguments that immigration law and international law justified differential treatment, including detention, of aliens in times of war or public emergency. 108 As Lord Nicholls put it, “The principal weakness in the Government’s case lies in the different treatment accorded to nationals and non-nationals. . . . The Government has vouchsafed no persuasive explanation of why national security calls for a power of indefinite detention in one case but not the other.” 109 The upshot was that it was “difficult to see how the extreme circumstances, which alone would justify such detention, can exist when lesser protective steps apparently suffice in the case of British citizens suspected of being international terrorists.” 110¶ Sadly, the experience of Britain under the European Convention on Human Rights is far truer to our backbone of equality than that of our own politicians under our own Constitution, who conveniently forget about equality even on fundamental decisions such as who would face a military trial with the death penalty at stake. Indeed, the United Kingdom reacted to the decision by adopting laws that treated citizens and foreigners alike. 111 Although our Founders broke away from Britain in part because of the King’s refusal to adhere to the basic proposition that “all men are created equal,” it is now Britain that is teaching us about the meaning of those words.¶ In sum, by splitting our legal standards on the basis of alienage, we are in effect jeopardizing our own safety and national interest. When terror policy is driven by anti-alien sentiment, the result is only our own isolation. It will not only chill relations with key allies abroad and disrupt extraditions, it will also alienate many of our own citizens who have relied on our country’s longstanding commitment to equal justice for all.

#### CP causes politicization---rigs the process

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, "The Case Against A Special Terrorism Court," Human Rights First, www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Many former judges and former federal prosecutors across the country support our view that the federal system adequately meets the special challenges presented by terrorism cases.29 For example, in testimony before the Senate Judiciary Committee in June 2008, Judge John Coughenour, who presided over the trial of Ahmed Ressam, remarked:¶ It is my firm conviction, informed by 27 years on the federal bench, that the United States courts, as constituted, are not only an adequate venue for trying suspected terrorists, but also a tremendous asset against terrorism. Indeed, I believe it would be a grave error with lasting consequence for Congress, even with the best of intentions, to create a parallel system of terrorism courts unmoored from the constitutional values that have served us so well for so long.30¶ Judge Coughenour has further observed that special terrorism courts risk becoming politicized: ¶ If politically vulnerable actors start redesigning courts, it is conceivable that popular pressure would soon demand the admission of statements obtained by harsh interrogation techniques, or dictate that defense counsel cannot access information needed to mount a defense or cannot represent a defendant without undergoing a background check of undefined scope. Such practices are not without recent precedent at Guantánamo.31¶ Along those same lines, Judge Leonie Brinkema, presiding judge in the trial of Zacarias Moussaoui, has said: ¶ I think that we need seriously to think about the implications of getting away from the standard criminal justice model for these cases…I think the concept of checks and balances done as much as possible in the open is the way to go…You can address the terrorist threat with the tools that we have if the people who are running those tools do their job.32

# 1nr---terrorism

#### NSC kills counterterrorism---plan’s key

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, "The Case Against A Special Terrorism Court," Human Rights First, www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

One important lesson learned from the military commission system at Guantánamo is that creating special courts for terrorism cases can undermine counterterrorism strategy. At least some terrorists do not wish to be viewed as ordinary criminals, but as “warriors” engaged in a worldwide struggle against the United States. Labeling Guantánamo prisoners as “combatants” in a “war on terror” unwittingly ceded an important advantage to al Qaeda. Accused 9/11 planner Khalid Sheikh Mohammed reveled in this status at his Combatant Status Review Tribunal hearing at Guantánamo in March 2007: “For sure I’m [America’s enemy],” he said. “[T]he language of any war in the world is killing…the language of the war is victims.”33 He and his co-defendants capitalized on their warrior status once again in December 2008, when they offered to plead guilty immediately—and before President Obama took office—preferring to martyr themselves in unjust military commission proceedings rather than risk prosecution in an ordinary criminal court. ¶ Those whose job it is to take the fight to al Qaeda understand what a profound error it was to reinforce al Qaeda’s vision of itself as a revolutionary force. The Army-Marine Corps Counterinsurgency Manual, drafted under the leadership of General Petraeus and incorporating lessons learned in a variety of counterinsurgency operations (including Iraq), stresses repeatedly that defeating non-traditional enemies like al Qaeda is primarily a political struggle, and one that must focus on isolating and delegitimizing the enemy rather than elevating it in stature and importance. As the Manual states: “It is easier to separate an insurgency from its resources and let it die than to kill every insurgent…Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power.”34¶ But U.S. counterterrorism policy has taken just the opposite approach. In a 2008 blueprint for closing Guantánamo, the Center for Strategic and International Studies reported that researchers at West Point’s Combating Terrorism Center uncovered scores of references to Guantánamo by al Qaeda leaders between 2002 and January 2008.35 Coercive interrogations, prolonged detention without trial and flawed military commissions have only nurtured the “recuperative power” of al Qaeda, increasing rather than decreasing the danger to the United States. ¶ The policies of detention, interrogation and trial at Guantánamo have also negatively impacted the reputation of the United States and impaired our ability to lead the world in counterterrorism operations. Secretary of Defense Robert Gates has said, “[t]here is no question in my mind that Guantánamo and some of the abuses that have taken place in Iraq have negatively impacted the reputation of the United States.”36 Indeed, Guantánamo has become a symbol—in much the same way as the picture of the hooded Iraqi prisoner at Abu Ghraib—of expediency over fundamental fairness and of this country’s willingness to set aside its core values and beliefs¶ None of this should come as a surprise. In the past, overbroad detention practices have only served to alienate and radicalize communities and undermine the work of law enforcement. In the 1970s, for example, Great Britain detained thousands of suspected members of the Irish Republican Army (IRA) without charge or trial. Ultimately, this policy alienated large segments of the Irish Catholic community and aided the IRA’s recruitment efforts. The British government ended the program in 1975, and in 1998, the government discarded its power of internment altogether. In so doing, Junior Northern Ireland Minister Lord Dubs announced to the House of Lords: “The Government have [sic] long held the view that internment does not represent an effective counterterrorism measure…The power of internment has been shown to be counter-productive in terms of the tensions and divisions which it creates.”37¶ As the Army’s Counterinsurgency Manual states, in order to gain the popular support it needs to confront insurgency threats, the United States must send an unequivocal message that it is committed to upholding the law and basic principles of human rights: “A government’s respect for preexisting and impersonal legal rules can provide the key to gaining it widespread and enduring societal support…Efforts to build a legitimate government through illegitimate action are self-defeating, even against insurgents who conceal themselves amid noncombatants and flout the law.”38¶ Creating another substitute system for trying and detaining terrorist suspects, this time on United States soil, would be a costly step in the wrong direction. In all respects, a special terrorism court would be seen as a mere change of venue for the discredited Guantánamo military commissions. The failure of such courts to comport with international human rights treaty obligations for criminal prosecution would further erode American credibility in, and beyond, the realm of counterterrorism.

#### CP is comparatively better for the War on Terror

Catherine Powell 08, senior fellow at the Center for American Progress, December 1, "Scholars' Statement of Principles for the New President on U.S. Detention Policy," Center for American Progress, www.americanprogress.org/issues/civil-liberties/report/2008/12/01/5337/scholars-statement-of-principles-for-the-new-president-on-u-s-detention-policy/

Because it is viewed as unprincipled, unreliable, and illegitimate, the existing detention system undermines our national security. Because the current system threatens our national security, we strongly oppose any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects. Despite dressed-up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent. To the extent such systems were established within the territorial United States as opposed to on Guantánamo or elsewhere, they would essentially bring the failed Guantánamo system home. Perhaps most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable. Moreover, many of the proponents of a renewed “preventive” detention regime explicitly underscore the primacy of interrogation with respect to detainees’ otherwise-recognized rights. A detention system that permits ongoing interrogation inevitably treats individuals as means to an end, regardless of the danger they individually pose, thereby creating perverse incentives to prolonged, incommunicado, arbitrary (and indefinite) detention, minimized procedural protections, and coercive interrogation.¶ Such arrangements instill resentment and provide propaganda for recruitment of future terrorists, undermine our relationships with our allies, and embolden terrorists as “combatants” in a “war on terror” (rather than delegitimizing them as criminals in the ordinary criminal justice system). Moreover, the current system of long-term (and, essentially, indefinite) detention diverts resources and attention away from other, more effective means of combating terrorism. Reflecting what has now become a broad consensus on the need to use the full range of instruments of state power to combat terrorism, the bipartisan 9/11 Commission pointed out that “long-term success [in efforts to pursue al Qaeda] demands the use of all elements of national power: diplomacy, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.” Thus, in addition to revamping the existing detention program to bring it within the rule of law, the incoming president should work with Congress to utilize this broad array of tools to vigorously prosecute terrorism.