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

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

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

#### 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.”

#### 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---counterplan

#### Counterplan text:

The United States Congress should restrict indefinite detention by creating a National Security Court with exclusive jurisdiction over the United States’ indefinite detention policy.

#### Creating an NSC solves detention problems

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

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

#### Counterplan solves executive flexibility

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

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

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#### Security threats are political constructions by experts to justify constant militarism

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

Despite such democratic concerns, a large part of what makes today's dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, this conclusion assesses them more directly and, in the process, indicates what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the United States faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create a world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states. n310¶ [\*1486] ¶ Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of the national security state, with the U.S. military permanently mobilized to gather intelligence and to combat enemies wherever they strike-at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decision-making are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency-one armed with countless secret and public agencies as well as with a truly global military footprint n311 -greatly outweigh the costs.¶ Yet although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments, but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides-and with it the issue of how democratic or insular our institutions should be-remains open as well.¶ Clearly, technological changes, from airpower to biological and chemical weapons, have shifted the nature of America's position in the [\*1487] world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet in truth, they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers. n312 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments-assessments that carry with them preexisting ideological points of view-such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy.¶ In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have-at times unwittingly-reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America's post- World War II position of global primacy, one which today has only expanded following the Cold War. n313 In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that "our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century," was no longer "adequate" for the "20th-century nation." n314 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country's "pre-eminen[ce] in political and military power." n315 Fulbright believed that greater executive action and war- making capacities were essential precisely because the United States found itself "burdened with all the enormous responsibilities that accompany such power." n316 According to Fulbright, the United States had [\*1488] both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. n317 Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States' own national security rested on the successful projection of power into the internal affairs of foreign states.¶ The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion. n318 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principle and overriding danger facing the country. According to National Counterterrorism Center's 2009 Report on Terrorism, in 2009 there were just twenty-five U.S. noncombatant fatalities from terrorism worldwide-nine abroad and sixteen at home. n319 While the fear of a terrorist attack is a legitimate concern, these numbers-which have been consistent in recent years-place the gravity of the threat in perspective. Rather than a condition of endemic danger-requiring ever-increasing secrecy and centralization-such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit national security aims emphasizes just how entrenched Herring's old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling.¶ It also underscores a telling and often ignored point about the nature of [\*1489] modern security expertise, particularly as reproduced by the United States' massive intelligence infrastructure. To the extent that political assumptions-like the centrality of global primacy or the view that instability abroad necessarily implicates security at home-shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. These assumptions mean that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underlines that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge.¶ If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of "expertise." n320 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threats to newspapers as a method of shaping the public debate. n321 These "open" secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making.

#### It’s try or die---orthodox IR’s atomistic approach to global problems makes extinction inevitable

Ahmed 12 Dr. Nafeez Mosaddeq Ahmed is Executive Director of the Institute for Policy Research and Development (IPRD), an independent think tank focused on the study of violent conflict, he has taught at the Department of International Relations, University of Sussex "The international relations of crisis and the crisis of international relations: from the securitisation of scarcity to the militarisation of society" Global Change, Peace & Security Volume 23, Issue 3, 2011 Taylor Francis

3. From securitisation to militarisation 3.1 Complicity

This analysis thus calls for a broader approach to environmental security based on retrieving the manner in which political actors construct discourses of 'scarcity' in response to ecological, energy and economic crises (critical security studies) in the context of the historically-specific socio-political and geopolitical relations of domination by which their power is constituted, and which are often implicated in the acceleration of these very crises (historical sociology and historical materialism).

Instead, both realist and liberal orthodox IR approaches focus on different aspects of interstate behaviour, conflictual and cooperative respectively, but each lacks the capacity to grasp that the unsustainable trajectory of state and inter-state behaviour is only explicable in the context of a wider global system concurrently over-exploiting the biophysical environment in which it is embedded. They are, in other words, unable to address the relationship of the inter-state system itself to the biophysical environment as a key analytical category for understanding the acceleration of global crises. They simultaneously therefore cannot recognise the embeddedness of the economy in society and the concomitant politically-constituted nature of economics.

Hence, they neglect the profound irrationality of collective state behaviour, which systematically erodes this relationship, globalising insecurity on a massive scale - in the very process of seeking security.85 In Cox's words, because positivist IR theory 'does not question the present order [it instead] has the effect of legitimising and reifying it'.86 Orthodox IR sanitises globally-destructive collective inter-state behaviour as a normal function of instrumental reason -thus rationalising what are clearly deeply irrational collective human actions that threaten to permanently erode state power and security by destroying the very conditions of human existence. Indeed, the prevalence of orthodox IR as a body of disciplinary beliefs, norms and prescriptions organically conjoined with actual policy-making in the international system highlights the extent to which both realism and liberalism are ideologically implicated in the acceleration of global systemic crises.

#### Our alternative is to vote negative to interrogate the epistemological failures of the 1ac---this is a prereq to successful policy

Ahmed 12 Dr. Nafeez Mosaddeq Ahmed is Executive Director of the Institute for Policy Research and Development (IPRD), an independent think tank focused on the study of violent conflict, he has taught at the Department of International Relations, University of Sussex "The international relations of crisis and the crisis of international relations: from the securitisation of scarcity to the militarisation of society" Global Change, Peace & Security Volume 23, Issue 3, 2011 Taylor Francis

While recommendations to shift our frame of orientation away from conventional state-centrism toward a 'human security' approach are valid, this cannot be achieved without confronting the deeper theoretical assumptions underlying conventional approaches to 'non-traditional' security issues.106 By occluding the structural origin and systemic dynamic of global ecological, energy and economic crises, orthodox approaches are incapable of transforming them. Coupled with their excessive state-centrism, this means they operate largely at the level of 'surface' impacts of global crises in terms of how they will affect quite traditional security issues relative to sustaining state integrity, such as international terrorism, violent conflict and population movements. Global crises end up fuelling the projection of risk onto social networks, groups and countries that cross the geopolitical fault-lines of these 'surface' impacts - which happen to intersect largely with Muslim communities. Hence, regions particularly vulnerable to climate change impacts, containing large repositories of hydrocarbon energy resources, or subject to demographic transformations in the context of rising population pressures, have become the focus of state security planning in the context of counter-terrorism operations abroad.

The intensifying problematisation and externalisation of Muslim-majority regions and populations by Western security agencies - as a discourse - is therefore not only interwoven with growing state perceptions of global crisis acceleration, but driven ultimately by an epistemological failure to interrogate the systemic causes of this acceleration in collective state policies (which themselves occur in the context of particular social, political and economic structures). This expansion of militarisation is thus coeval with the subliminal normative presumption that the social relations of the perpetrators, in this case Western states, must be protected and perpetuated at any cost - precisely because the efficacy of the prevailing geopolitical and economic order is ideologically beyond question.

As much as this analysis highlights a direct link between global systemic crises, social polarisation and state militarisation, it fundamentally undermines the idea of a symbiotic link between natural resources and conflict per se. Neither 'resource shortages' nor 'resource abundance' (in ecological, energy, food and monetary terms) necessitate conflict by themselves.

There are two key operative factors that determine whether either condition could lead to conflict. The first is the extent to which either condition can generate socio-political crises that challenge or undermine the prevailing order. The second is the way in which stakeholder actors choose to actually respond to the latter crises. To understand these factors accurately requires close attention to the political, economic and ideological strictures of resource exploitation, consumption and distribution between different social groups and classes. Overlooking the systematic causes of social crisis leads to a heightened tendency to problematise its symptoms, in the forms of challenges from particular social groups. This can lead to externalisation of those groups, and the legitimisation of violence towards them.

Ultimately, this systems approach to global crises strongly suggests that conventional policy 'reform' is woefully inadequate. Global warming and energy depletion are manifestations of a civilisation which is in overshoot. The current scale and organisation of human activities is breaching the limits of the wider environmental and natural resource systems in which industrial civilisation is embedded. This breach is now increasingly visible in the form of two interlinked crises in global food production and the global financial system. In short, industrial civilisation in its current form is unsustainable. This calls for a process of wholesale civilisational transition to adapt to the inevitable arrival of the post-carbon era through social, political and economic transformation.

Yet conventional theoretical and policy approaches fail to (1) fully engage with the gravity of research in the natural sciences and (2) translate the social science implications of this research in terms of the embeddedness of human social systems in natural systems. Hence, lacking capacity for epistemological self-reflection and inhibiting the transformative responses urgently required, they reify and normalise mass violence against diverse 'Others', newly constructed as traditional security threats enormously amplified by global crises - a process that guarantees the intensification and globalisation of insecurity on the road to ecological, energy and economic catastrophe. Such an outcome, of course, is not inevitable, but extensive new transdisciplinary research in IR and the wider social sciences - drawing on and integrating human and critical security studies, political ecology, historical sociology and historical materialism, while engaging directly with developments in the natural sciences - is urgently required to develop coherent conceptual frameworks which could inform more sober, effective, and joined-up policy-making on these issues.

### 1nc---disad

#### Obama is prioritizing capture over drone strikes now

David Corn 13, Washington Bureau Chief at Mother Jones, 5/23/13, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.¶ The New York Times received the customary pre-speech leak and reported:¶ A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.¶ Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.¶ These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)¶ Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.¶ With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism. But the speech may well mark a pivot point. Not shockingly, Obama is attempting to find middle ground, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

#### Restricting detention policies means we kill and extradite prisoners

Jack Goldsmith 09, a professor at Harvard Law School and a member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### Increased drone use sets a precedent that causes South China Sea conflict

Roberts 13 (Kristen, News Editor at National Journal, “When the Whole World Has Drones”, 3/22/13, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

#### South China Sea conflicts cause extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", www.huntingtonnews.net/14446)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

### 1nc---cred adv

#### PRISM destroyed soft power / credibility

Migranyan 7/5 (Andranik is the director of the Institute for Democracy and Cooperation in New York. He is also a professor at the Institute of International Relations in Moscow, a former member of the Public Chamber and a former member of the Russian Presidential Council. “Scandals Harm U.S. Soft Power,” 2013, http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

#### Drones destroy U.S. credibility---outweighs detention

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

#### Best evidence concludes no legitimacy impact

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

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

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

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

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

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

AN EROSION OF THE ORDER?

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

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

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

#### No climate multilateralism — nationalism ensures gridlock

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation

Gridlock exists across a range of different areas in global governance today, from security arrangements to trade and finance. This dynamic is, arguably, most evident in the realm of climate change. The diffusion of industrial production across the world—a process enabled by economic globalization—has created a situation in which the basic consumption of each individual directly affects the life chances of every other individual on the planet, as well as the life chances of future generations.¶ This is a powerful and entirely new form of global interdependence. Bluntly put, the future of our civilization depends on our ability to cooperate across borders. And yet, despite twenty years of multilateral negotiations under the UN, a global deal on climate change mitigation or adaptation remains elusive, with differences between developed countries, which have caused the problem, and developing countries, which will drive future emissions, forming the core barrier to progress. Unless we overcome gridlock in climate negotiations, as in other issue areas, we will be unable to continue to enjoy the peace and prosperity we have inherited from the postwar order.¶ There are, of course, several forces that might work against gridlock. These include the potential of social movements to uproot existing political constraints, catalysed by IT innovation and the use of associated technology for coordination across borders; the capacity of existing institutions to adapt and accommodate factors such as emerging multipolarity (the shift from the G-5/7 to the G-20 is one example); and efforts at institutional reform which seek to alter the organizational structure of global governance (for example, proposals to reform the Security Council or to establish a financial transaction tax). ¶ Whether there is the political will or leadership to move beyond gridlock remains a pressing question. Social movements find it difficult to convert protests into consolidated institutional change. At the same time, the political leadership of the great power blocs appears dogged by national concerns: Washington is sharply divided, Europe is preoccupied with the future of the Euro and China is absorbed by the challenge of sustaining economic growth as the prime vehicle of domestic legitimacy. Against this background, the further deepening of gridlock and the continuing failure to address global collective action problems appears likely.

#### 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."

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

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

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

### 1nc---terror adv

#### Exec flexibility on detention powers now

Michael Tomatz 13, Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon. AND Colonel Lindsey O. Graham B.A., University of South Carolina, J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina, “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION,” 69 A.F. L. Rev. 1

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

#### Indefinite detention reforms result in catastrophic terrorism---releases terrorists and kills intel gathering

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

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

#### Allied terror coop is high now, despite frictions

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

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

#### 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.

#### EU cooperation on terrorism intel high and inevitable – in their self interest

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

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

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

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

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

#### US anti-terror intel is fine on its own – outstrips everybody else

Barton Gellman and Greg Miller, 8-29-2013, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

“The United States has made a considerable investment in the Intelligence Community since the terror attacks of 9/11, a time which includes wars in Iraq and Afghanistan, the Arab Spring, the proliferation of weapons of mass destruction technology, and asymmetric threats in such areas as cyber-warfare,” Director of National Intelligence James Clapper said in response to inquiries from The Post. “Our budgets are classified as they could provide insight for foreign intelligence services to discern our top national priorities, capabilities and sources and methods that allow us to obtain information to counter threats,” he said. Among the notable revelations in the budget summary: Spending by the CIA has surged past that of every other spy agency, with $14.7 billion in requested funding for 2013. The figure vastly exceeds outside estimates and is nearly 50 percent above that of the National Security Agency, which conducts eavesdropping operations and has long been considered the behemoth of the community. The CIA and NSA have launched aggressive new efforts to hack into foreign computer networks to steal information or sabotage enemy systems, embracing what the budget refers to as “offensive cyber operations.” The NSA planned to investigate at least 4,000 possible insider threats in 2013, cases in which the agency suspected sensitive information may have been compromised by one of its own. The budget documents show that the U.S. intelligence community has sought to strengthen its ability to detect what it calls “anomalous behavior” by personnel with access to highly classified material. U.S. intelligence officials take an active interest in foes as well as friends. Pakistan is described in detail as an “intractable target,” and counterintelligence operations “are strategically focused against [the] priority targets of China, Russia, Iran, Cuba and Israel.” In words, deeds and dollars, intelligence agencies remain fixed on terrorism as the gravest threat to national security, which is listed first among five “mission objectives.” Counterterrorism programs employ one in four members of the intelligence workforce and account for one-third of all spending. The governments of Iran, China and Russia are difficult to penetrate, but North Korea’s may be the most opaque. There are five “critical” gaps in U.S. intelligence about Pyongyang’s nuclear and missile programs, and analysts know virtually nothing about the intentions of North Korean leader Kim Jong Un. Formally known as the Congressional Budget Justification for the National Intelligence Program, the “Top Secret” blueprint represents spending levels proposed to the House and Senate intelligence committees in February 2012. Congress may have made changes before the fiscal year began on Oct 1. Clapper is expected to release the actual total spending figure after the fiscal year ends on Sept. 30. The document describes a constellation of spy agencies that track millions of individual surveillance targets and carry out operations that include hundreds of lethal strikes. They are organized around five priorities: combating terrorism, stopping the spread of nuclear and other unconventional weapons, warning U.S. leaders about critical events overseas, defending against foreign espionage and conducting cyber operations. In an introduction to the summary, Clapper said the threats now facing the United States “virtually defy rank-ordering.” He warned of “hard choices” as the intelligence community — sometimes referred to as the “IC” — seeks to rein in spending after a decade of often double-digit budget increases. This year’s budget proposal envisions that spending will remain roughly level through 2017 and amounts to a case against substantial cuts. “Never before has the IC been called upon to master such complexity and so many issues in such a resource-constrained environment,” Clapper wrote. The summary provides a detailed look at how the U.S. intelligence community has been reconfigured by the massive infusion of resources that followed the Sept. 11 attacks. The United States has spent more than $500 billion on intelligence during that period, an outlay that U.S. officials say has succeeded in its main objective: preventing another catastrophic terrorist attack in the United States. The result is an espionage empire with resources and reach beyond those of any adversary, sustained even now by spending that rivals or exceeds the levels reached at the height of the Cold War.

#### ZERO risk of an impact—terrorists are a bunch of bumbling idiots

John Mueller and Mark G. Stewart 12, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute AND Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, "The Terrorism Delusion," Summer, International Security, Vol. 37, No. 1, politicalscience.osu.edu/faculty/jmueller//absisfin.pdf

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8¶ This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme.¶ In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”¶ In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. ¶ In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12¶ The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14¶ In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15

# 2NC CP

#### NSC is the best solution to the detainee issue---other options fail

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)

“The administration is now fully aware that this is a vastly complex issue – and one that requires a complex solution,” Sulmasy said.¶ “The President, in an eloquent speech at the National Archives in late May, identified there would be various options to consider for the detainees: diplomatic re-patriation, the use of military commissions, civilian Article III federal courts, and that he was still reviewing what to do with the 75-100 detainees that do not fit neatly in any of these regimes. That is where the National Security Court system provides the best, most pragmatic alternative for those difficult cases, as well as those inevitable future captures in the War on al Qaeda,” Sulmasy said.¶ Sulmasy continued: “Recent reports discuss the possibility of a hybrid court held on military bases within the US. Of course, I am delighted to hear of such ideas and progress. However, the nation needs to go further and create one court system that is best suited for this unique Al Qaeda fighter once captured. Rather than offering options to the detainees of either choosing a military commission or a civilian court, the National Security Court system provides one forum to attain the necessary balance between human rights, due process, and national security."¶ “We have to move forward, and recognize that the two existing paradigms – use of our traditional federal courts or the use of the law of war model (military commissions) – are simply jamming a square peg in a round hole. The administration now has the opportunity to statutorily create a legal system that best serves the needs of the nation, as well as the detainees.”¶ “The key distinction with my system from those now proposed by various commentators and scholars … is that the NSCS must be presumptively adjudicatory – and not used as a means of preventative detention,” Sulmasy said, noting that “the presumption should be to try, and if determined by the Commander-in-Chief and the military that such a trial would be either too risky or not possible, then as an exception such a decision can be made. This distinction is important and vital to ensure we fully support the rule of law, promote the national security, and still garner and maintain international support for our efforts.”

#### The counterplan solves criticisms of indefinite detention

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

Of course, some detainees will be a credible threat to join the battle wherever it rages. However, the evidence that would make such a threat credible will frequently provide grounds for charging the terrorist-combatant with war crimes and prosecuting him – such that it will not be necessary to detain him interminably merely as an enemy combatant (which is the principal international objection to current U.S. policy). Other detainees will only be credible local threats, and will not be a continuing national security challenge for the United States once combat operations have been completed in the place where they were captured. Such combatants should be repatriated once combat operations in their region have wound down (and it bears mention here that the United States has, in fact, released hundreds of combatants from Guantanamo Bay).72 Moreover, as progress is made in the war on terror, and particularly if functioning governments replace tyrannical regimes, it will increasingly be possible to repatriate combatants with the confidence that they will be treated appropriately (including by prosecution, if grounds exist) by the new governments in their home countries (or in countries where they have committed crimes). This should further reduce the need to detain those combatants who will not be subjected to trials in the NSC. ¶ In any event, once the government could no longer certify that combat operations were ongoing in the relevant theater(s) for a particular combatant, it would be given six months either to release the combatant, charge him with crimes in the NSC, or show probable cause, to the satisfaction of an NSC judge, to believe the combatant, if released, would take up arms against the United States in another theater of combat. ¶ The latter proceeding would be akin to a bail hearing in the federal courts. The combatant would be entitled to be present, and to have counsel drawn from the approved panel of NSC counsel. The government would be permitted to make its showing by proffer; it would be insufficient for the government merely to establish that combat operations were ongoing in some location; it would have to make a particularized showing of a basis to believe the combatant at issue would participate in the war there. The proceeding could be held under seal to the extent necessary to protect national security (and especially information about combat operations), and the government could introduce classified information on the same basis as is now done in CSRTs. ¶ If the NSC found in favor of the government, the determination would be reviewed annually, just as original CSRT determinations were reviewed annually. The combatant would be permitted as of right to appeal a ruling in favor of the government. If the NSC ruled in favor of the combatant, the government would also be permitted, as of right, to appeal, during the pendency of which the combatant would continue to be detained. Upon a final appellate ruling against the government, it would have a period of one month either to charge the combatant in the NSC or release him. (Obviously, the onemonth period could be extended as necessary if the government could demonstrate that it was making good faith efforts to repatriate the alien combatant but was having difficulty finding a country willing to accept him). ¶ This system, among other things, would serve to blunt the resonant criticism that detainees could be held interminably because the war on terror may last, as Justice O'Connor surmised in Hamdi, for several generations.73 Again, while that will no doubt be true of the generic war on terror as long as al Qaeda and its affiliates remain capable of projecting force internationally, it is not true of the war's component stages. Combat in Afghanistan, for example, is still ongoing, but appears to be winding down somewhat from prior levels. This, clearly, is why the Defense Department has already released so many Guantanamo Bay detainees. The proceedings described above would provide an oversight role for the independent judiciary without interfering in the conduct of the war; set a reasonable hurdle for the government to surmount if it is deemed necessary to hold combatants after hostilities have ended in the theater where they were operating; and prescribe a finite end-point at which it would be time to charge or release.

#### NSC solves legitimacy—leads to legal clarity

S 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)

Sulmasy insists that a National Security Court “offers the United States a ‘way out’ of GITMO-like problems” in the future.¶ In the July 2007 HSToday.us report, Toward a Homeland Security Court for Captured Terrorists, Sulmasy’s ideas about how best to resolve the dilemma GITMO and the Military Commissions Act (MCA) created were first discussed in detail. They are rooted in the spacious realization that the war on terrorism inherently presents complex new legalities as a consequence of the unparalleled, un-conventional war on terrorists - and it is a war.¶ Sulmasy says the approach he proposes would not only restore respect for America’s system of justice and legitimize the judicial handling of WOAQ prisoners, but it would serve as a template for other nations to emulate.¶ “Another need for [national security] courts is to deal with the latest issues,” Sulmasy explained. “US citizens who turn their backs on the government and seek to overthrow it by engaging in jihad right now are treated differently than jihadists from other countries. A homeland security court would remove this disparity … We cannot, once again, allow the sleeping giant to go back to sleep. We must remain vigilant and recognize that how we deal with the detention of the Al Qaeda jihadists [and like-minded jihadists] is critical to our winning this long war."¶ The Bush administration and Congress unquestionably rushed to conceive an ill-thought-out post-9/11 process for legally meting out the fate of suspected terrorists captured during combat in the WOAQ. But now the US requires a new judicial system for this new non-state war that likely will continue to be waged for decades to come, proponents for this system like Sulmasy argue.¶ “I think they were right, initially: We were being attacked and expecting flurries of attacks over the next few years … five to six years later, however, we need to look at fresh options,” Sulmasy said.¶ “It was understandable the reaction initially by the administration to rely on the tools from the previous wars - they were upheld legally and politically back in the Second World War. Also, we were expecting numerous attacks and have prevented many of them … [but] “the natural evolution in this new war is for the MCA to now morph into something more permanent, a structure that can endure the ‘long war’ we are engaged in. Thus, it seems more evolutionary as we all deal with the new facets of this war than anything drastic … we all are trying to figure out how best to proceed.”

#### 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

#### Allowing exceptions for US citizens kills 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

The extraterritorial custody provision would provide sweeping jurisdiction for the NSC to review the legal sufficiency of persons detained by the government outside U.S. territory as indicated by Boumediene. 94 As pointed out by commentators, Boumediene challenges two distinctions that cannot stand when international legitimacy is in question: the distinction between the constitutional rights of U.S. citizens and those of alien prisoners; and the distinction between the rights of prisoners in the United States and those outside of the United States.95 In short, the common law principle—the law follows the jailer—must be enforced.96 This broad jurisdiction is necessary to provide a consistent, efficient, and adequate Article III review of the basis for and the conditions of detention and treatment of any persons beyond the domestic criminal justice context. Jurisdiction would extend to review of persons detained following capture in hostilities against the United States, determinations by military authorities of a person’s status as “enemy combatant” (such as through the CSRTs), and review of military commission actions conducted under the MCA (replacing the current appellate jurisdiction of the D.C. Circuit Court of Appeals). Jurisdiction would also extend to persons held by the United States but not under military authority, such as those in custody as part of a special activity (i.e., covert action) conducted under presidential finding and authorization, socalled extraordinary rendition.97

#### The counterplan solves rights

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

These rules bring the trial of alien enemy combatants so close to the standards for trials of American citizens in civilian courts that the complaints about them border on the frivolous. It is true, for example, that the standard for evidentiary admissibility – namely, whether, in the judgment of the court, “the evidence would have probative value to a reasonable person”81 – is slightly less rigorous than that which governs civilian trials and courts martial.82 As argued earlier, however, less rigor must be allowed for given the drastic differences between evidence collection in combat and domestic law enforcement spheres; and the commission standard would pass constitutional muster if applied to citizens, let alone to alien enemy combatants. Similarly, discovery is somewhat more limited in the commission context than in civilian trials and courts martial.83 But, again, the marginal difference is eminently justifiable and comfortably within constitutional norms – notwithstanding that it is being applied to those who have no constitutional rights. ¶ The existing procedures, with Article III judges presiding but under circumstances where Congress had made clear the limits on their authority and provided liberally for the executive branch to seek immediate review of judicial excesses, would be more than adequate to provide trials that were models of fairness and integrity. A few additional provisions would also be helpful. For example, the statute of limitations for terrorist crimes should be eliminated (as it is for murder in many jurisdictions) so that trials could be delayed as necessary to avoid holding them – and risking disclosures helpful to the enemy – during combat in the pertinent theater.84 It should also be made crystal clear that defendants are not permitted to represent themselves in NSC proceedings.85

# 2NC Legitimacy adv

#### Even if they win legitimacy’s important, there’s no impact---global institutions are fundamentally broken---makes it impossible for “boosting legitimacy” to solve global problems

Patrick Cottrell 11, Assistant Professor of Political Science, Linfield College, July 2011, “Hope or Hype? Legitimacy and US Leadership in a Global Age,” Foreign Policy Analysis, Vol. 7, No. 3, p. 337-358

Many experts converge on the point that it is critical for the United States to reengage and rebuild international institutions in the post-Bush era. Realists see international institutions as a way to preserve an international order that is favorable to US national interests—a key tool in “translating power into consensus” (Kissinger 2004).32 Liberals also see international institutions as foundations of a global order that is underpinned by democratic values and promotes not just US interests, but also a greater good (Ikenberry 2001; Deudney and Ikenberry 1999; Leffler and Legro 2008). In this sense, the United States is the world’s “indispensable nation,” uniquely configured with the resources and value system to lead even in a “new world order” defined by the rise of nonstate actors and multilayered governance networks (Slaughter 2005).

However, the preceding analysis suggests that while US engagement remains critical, we must temper our expectations for an order that rests squarely on the shoulders of a “benevolent hegemon.”33 Section I unpacked the concept of legitimacy vis-à-vis international institutions and underscored the difficulties in reconciling US national interests and international norms in a way that would allow of a particular brand of “legitimate” leadership. Section II highlighted the major domestic political impediments that help explain why these difficulties exist and why they are likely to persist. Consequently, this section suggests that much more attention needs to be paid to the international institutions themselves.

Many of today’s most prominent multilateral institutions were established in the years following World War II and thus reflect a very different era.34 However, while some of the more mainstream US foreign policy prescriptions that seek to revitalize these institutions —promoting UN Security Council reform, assuming a more proactive role on climate change, hosting a nuclear summit, and ratifying the Comprehensive Nuclear Test Ban Treaty—would help, they are unlikely to go far enough either in increasing the legitimacy of these institutions or in solving global problems. Accomplishing these goals requires the fundamental questioning of our received understandings of international law and institutions a globalized environment. Which legal and institutional constellations have the most potential to solve the complex problems we face? While the specific answers to these questions vary by issue area and circumstances, a general goal in updating and reinvigorating international institutions should be creating an order that recognizes the imperative of harnessing US power and ideals, but can still make progress in solving problems and retain legitimacy even when US leadership wanes. Recent developments in the study of experimental forms of governance in the international legal arena hold considerable potential in this regard.

#### No impact to legitimacy---U.S. power’s resistant to challenge on legitimacy grounds and allows the U.S. to shape the rules in our interest without backlash

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

Constructivist scholarship suggests that the United States’ need for international legitimacy produces a strong constraint on its security policy, either structurally induced by the contradiction between unipolar power and the international system’s constitutive norms of equilibrium or one that is strongly conditional upon U.S. actions seen to violate core rules. As we showed, however, there are no grounds for the constructivists’ argument that rule breaking always leads to lost legitimacy, nor for the contention that constraints derived from the need for legitimacy necessarily rise in tandem with U.S. power. On the contrary, advantages in power capabilities expand the range and scope of various strategies the United States can use to build legitimacy and mold institutions to its purposes. Ultimately, our analysis shows that the constraint of legitimacy is weakly conditional, not strongly conditional or structural, as many constructivists now posit.

The result is a very different picture of legitimacy and American primacy. History’s leading states have used power resources to shape rules to suit their interest—and not just in the aftermath of major upheavals, as established by John Ikenberry and others, but also in situations more analogous to the one the United States seems to face today. Indeed, even the Bush administration—saddled with globally unpopular policies and maladroit diplomacy—endeavored on occasion to deploy strategies of hegemonic rule revision with some modest success.

#### NSA scandal wrecks terror coop

Matthew Feeney 10/25, Reason, "EU Leaders: Latest NSA Revelations Could Threaten Fight Against Terrorism", 2013, reason.com/blog/2013/10/25/eu-leaders-latest-nsa-revelations-could

The latest reporting on the documents leaked by Edward Snowden reveals that the NSA has spied on 35 world leaders, who have not been named.¶ From The Guardian:¶ The National Security Agency monitored the phone conversations of 35 world leaders after being given the numbers by an official in another US government department, according to a classified document provided by whistleblower Edward Snowden.¶ The confidential memo reveals that the NSA encourages senior officials in its "customer" departments, such as the White House, State and the Pentagon, to share their "Rolodexes" so the agency can add the phone numbers of leading foreign politicians to their surveillance systems.¶ The document notes that one unnamed US official handed over 200 numbers, including those of the 35 world leaders, none of whom is named. These were immediately "tasked" for monitoring by the NSA.¶ The news comes days after the French newspaper Le Monde reported that the NSA spied on millions of French phone records, the German newspaper Der Spiegel reported that the NSA hacked into the Mexican president’s public email account, and German Chancellor Angela Merkel called President Obama over concerns that her cellphone was targeted by American intelligence.¶ The timing of these revelations is not good for the Obama administration. European Union leaders recently began their latest summit in Brussels, and unsurprisingly both the French and the Germans are pushing for a “no-spying” agreement with the U.S.¶ While the NSA revelations from this week make up only some of the latest embarrassing news facing the Obama administration, it is the only news that could have long-lasting diplomatic and national security implications.¶ Ironically, the behavior of the NSA (which is supposedly tasked with helping keep the U.S. safe) could threaten the fight against terrorism. A statement from the heads of state and government of European Union nations reads in part:¶ "Alongside our foreseen work, we had a discussion tonight about recent developments concerning possible intelligence issues and the deep concerns that these events have raised among European citizens.¶ The Heads of State or government underlined the close relationship between Europe and the USA and the value of that partnership. They expressed their conviction that the partnership must be based on respect and trust, including as concerns the work and cooperation of secret services.¶ They stressed that intelligence gathering is a vital element in the fight against terrorism. This applies to relations between European countries as well as to relations with the USA. A lack of trust could prejudice the necessary cooperation in the field of intelligence gathering.

#### EU counter-terror policy has been supra-nationalized---taken out of the control of individual member-states

Sally McNamara 11, Senior Policy Analyst in European Affairs in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation, 3/8/11, “The EU–U.S. Counterterrorism Relationship: An Agenda for Cooperation,” http://www.heritage.org/research/reports/2011/03/the-eu-us-counterterrorism-relationship-an-agenda-for-cooperation

But despite an unprecedented display of transatlantic solidarity following the 9/11 terrorist attacks, the EU–U.S. counterterrorism relationship has been marked as much by confrontation as cooperation. The Lisbon Treaty, introduced on December 1, 2009, formally abolished the EU’s pillar structure, which had previously reserved “justice and home affairs” as a purely intergovernmental competence. Post Lisbon, the EU now formally enjoys shared competency with the member states in JHA, and the EU’s role in counterterror policymaking has become truly supra-nationalized. In particular, the European Parliament has enjoyed a huge boost in powers—and it has not been afraid to flex its legislative muscle.

#### That makes effective intel sharing impossible---the U.S. is only willing to cooperate bilaterally

Sally McNamara 11, Senior Policy Analyst in European Affairs in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation, 3/8/11, “The EU–U.S. Counterterrorism Relationship: An Agenda for Cooperation,” http://www.heritage.org/research/reports/2011/03/the-eu-us-counterterrorism-relationship-an-agenda-for-cooperation

How to disseminate intelligence with key allies has long been a major issue for nation-states. The exchange of sensitive information can reveal a nation’s assets, its methods of collection, and its third-party sources. Trust is therefore critical in these transactions. As international security expert Professor Richard Aldrich states:

Often characterized as sinister, the realm of intelligence is instead perhaps the most human of all aspects of government and consists to a large degree of personal relationships. The universal currency is trust. Achieving congruence on a grand counter-terrorism strategy may require common ideals, but joint intelligence operations are driven by a more basic sense of mutual reliance and a track record of competence in the field.[46]

Despite Brussels’s increased role in counterterror policymaking, the EU has not replaced the bilateral relationships that have been formed between lawmakers, intelligence officers, and the security services over many decades. Equally, the U.S. is unlikely to share its highest-level intelligence in multilateral forums such as Europol and will continue to rely on its bilateral relationships, especially when conducting large-scale counterterrorism operations. And U.S.–European bilateral counterterror operations have enjoyed a number of extraordinary successes. The Anglo–American relationship stands out in particular for the remarkable ease with which intelligence officers operate together.

#### Allied coop on law enforcement is unnecessary and has lots of barriers

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

Despite these growing U.S.-EU ties and agreements in the law enforcement area, some U.S. critics continue to doubt the utility of collaborating with EU-wide bodies given good existing bilateral relations between the FBI and CIA (among other agencies) and national police and intelligence services in EU member states. Many note that Europol lacks enforcement capabilities, and that its effectiveness to assess and analyze terrorist threats and other criminal activity largely depends on the willingness of national services to provide it with information. Meanwhile, European officials complain that the United States expects intelligence from others, but does not readily share its own. Others contend that European opposition to the U.S. death penalty or resistance to handing over their own nationals may still slow or prevent the timely provision of legal assistance and the extradition of terrorist suspects in some cases.

#### The EU is mad about ALL indefinite detention, not just domestic captures – the aff is wildly insufficient to remedy concerns over US violations of Article 6, their evidence

Stacy K. **Hayes**. “INTERPRETING THE NEW LANGUAGE OF THE NATIONAL DEFENSE AUTHORIZATION ACT: A POTENTIAL BARRIER TO THE EXTRADITION OF HIGH VALUE TERROR SUSPECTS”, 58 Wayne L. Rev. 567, Summer 20**12** (BJN)

**Article 6** most **closely parallels U.S. Constitutional Amendment V in providing for the right to a fair trial and due process of law for the criminally charged**. n42 Article 6 includes inter alia the right to a fair trial [\*574] by an independent and impartial tribunal, the presumption of innocence, that legal assistance will be provided in the event the accused cannot afford to defend himself, and the right to examine the evidence against him. n43 Modern extradition cases demonstrate that the American view on capital punishment, and whether such punishment amounts to inhuman and degrading (or cruel and unusual) punishment, differs greatly from the European view so much so that it is a barrier to extradition. **To date, Article 6 and whether or not American courts provide a fair trial has not proven to be a barrier to extradition because European courts are persuaded that American courts offer more than adequate due process for those on trial**. n44 ***Military tribunals however, present a different concern.*** **Tribunals pose a threat to extradition in that terror suspects may claim Article 6 violations, arguing that a trial by military tribunal deprives them of due process and denies them a right to a fair trial.** D. Do Military Commissions Violate Article 6? **The past decade highlighted the difficulties of achieving success within the military commission process and cast a dark shadow of doubt** [\*575] **as to their efficacy**. n45 **The examples of al-Fawwaz and the other terror suspects currently fighting extradition demonstrate that the European community expects assurances that the *U*nited *S*tates will try these suspects in regularly constituted courts and not by military commissions.** n46 **The past ten years have produced *no evidence*** **that the European community will now be more comfortable with trial by military commission than it was before**. n47 It is safe to assume that **if the United States wants to extradite these terror suspects, it will** ***have to provide*** the same **assurances, namely a promise of trial by regularly constituted courts** with no prospect of the death penalty ***and avoidance of detention by the military***. Military commissions have a long history in the United States, reemerging at the forefront of the political landscape after the September 11th terrorist attacks when President George W. Bush deemed terror suspects enemy combatants to be tried by military tribunals instead of in civilian courts. n48 The prosecution of these cases was soon mired in protracted legal challenges, and in 2006, President Bush signed the Military Commissions Act (MCA) to authorize and establish procedures for military tribunals in response to the Supreme Court decision in Hamdan v. Rumsfeld. n49 Following Hamdan, pro-military tribunal advocates fought hard to pass legislation limiting terror suspects solely to military tribunals, arguing inter alia that federal law enforcement and criminal procedures were inadequate to garner much needed intelligence from detained suspects and that the American public would not stand for terrorist trials in civilian courts that are essentially in their own backyards. n50 Those opposed to limiting terror suspects to military [\*576] tribunals encompassed a wide variety of groups including law enforcement officials, human rights advocates, academics, and legal professionals. n51 Law enforcement argued primarily that such a limitation would burden the United States unnecessarily in the fight against terrorism; a fight that should use all available assets, including the FBI and intelligence agencies. n52 Human rights advocates, academics, and legal professionals argued that in fighting the war on terror, it was critical the United States abide by its long-standing commitments to due process of law and to international humanitarian law, such as the Geneva Conventions. n53 In 2009, President Barack Obama signed into law a revised version of the MCA intended to address concerns that the 2006 MCA ran afoul of the Geneva Conventions and the U.S. Constitution. n54 However, even with these revisions, the 2009 MCA failed to bring the military tribunal system into compliance with international human rights law. n55 For instance, the 2009 MCA did nothing to revise the controversial Section 7 of the 2006 MCA, which means Section 7 continues to strip the federal court system of its capacity to review petitions for writs of habeas corpus. n56 Unsatisfied that the 2006 and 2009 MCAs went far enough, and despite the U.S. Supreme Court's ruling in Hamdan, some conservative members of Congress continued to fight to limit trials of terror suspects exclusively to military tribunals, thereby cutting the judiciary entirely out of the terror suspect trial loop. n57 Meanwhile, the federal courts spent the [\*577] past decade successfully trying and convicting hundreds of suspects, n58 perhaps demonstrating the irrational fear of the pro-military tribunal advocates that those who have their day in court may not be convicted. In addition to these convictions, the Supreme Court granted certiorari to four Guantanamo cases, subsequently finding in favor of the detainees, n59 thereby demonstrating the full range of the federal court system. On December 31, 2011, these failed attempts to limit trials to military tribunals finally met measured success when President Obama signed the NDAA into law. n60 **Subtitle D of the NDAA, entitled "Counterterrorism" includes long-sought-after provisions designed to limit terror suspect trials to military tribunals, effectively by-passing the federal court system**. n61 **In particular, Sections 1021 and 1022 address the authority and action required by the U.S. military to detain terror suspects indefinitely pending disposition under the law of war.** n62 Even with the success of passage, **these provisions were modified enough from their original hard-lined proposals to result in merely codifying existing practices under the 2001 Authorization for Use of Military Force** (AUMF) and the 2006 and 2009 MCAs. n63 As this Note reveals, **these modifications are crucial because they allow the United *States to continue to provide assurances necessary to secure the extradition of known terrorists***. Viewed another way, **this codification greatly hampers both federal law enforcement and the Obama Administration in their respective roles in the fight against terrorism**, ***making it more difficult for the United States to treat terror suspects on a case-by-case basis.*** **In order to bring some of the most sought-after terrorists to justice, the *U*nited *S*tates must continue to provide and uphold** ***assurances*** **to her European allies that the terror suspects being extradited to the United States will not be subjected to inhuman or degrading treatment and will be given a fair and impartial trial.** **Without these assurances, the U.K. and Europe will not likely** [\*578] **extradite the currently detained high-value terror suspects to the United States.** 1. The Procedural Shortcomings Amount to a Lack of Due Process, and the 2009 MCA Falls Short in Correcting Deficiencies As mentioned earlier, the Obama Administration sought many changes to the highly criticized 2006 MCA. But even with the 2009 modifications, the use of military tribunals under the MCA and AUMF still fails to meet international human rights standards for a fair and impartial trial, most notably because of the lack of independence and impartiality. n64 The importance of a tribunal being independent and [\*579] impartial is such that it "requires that judges be both de facto impartial and independent as well as appear to be impartial and independent." n65 Two more glaring deficiencies in military tribunals include the lack of the presumption of innocence and denial of access to the writ of habeas corpus. In Combatant Status Review Tribunals (CSRT), which are precursors to a detainee's trial by military commission, instead of a presumption of innocence favoring the defendant, there is a rebuttable presumption in favor of the government's evidence. n66 CSRTs provide a rebuttable presumption that the government's evidence submitted to determine whether the detainee is an enemy combatant is genuine and accurate. n67 To date, detained persons held in the United States have relied on habeas corpus to show that their detention is not in accord with due process, n68 but this important check still does not exist for detainees held under U.S. control outside of the United States. n69 Other procedural deficiencies with the military commission process include deprivation of the right to counsel (particularly in the beginning stages), the right to be informed (with most restrictions to information surrounding classified information, with classification being determined by the prosecution), the right to be present (the prosecution may exclude the detainee from his own hearing for reasons of national security, as determined by the prosecution), the requirement for equality (detainees are usually denied requests to call witnesses and in 89% "of the tribunals, no evidence whatsoever was presented on the detainee's behalf"), and the admittance of coerced evidence. n70 The 2009 MCA made slight improvements to some of these deficiencies by stating that "the defense shall have a reasonable opportunity to obtain witnesses and evidence," and by entirely barring the "use of statements obtained through cruel, inhuman or degrading treatment." n71 However, the new witness and evidence requirements of the 2009 MCA fall short of meeting the requirements of equal opportunity among the parties. In addition, the bar to improperly obtained statements [\*580] does not apply to former CSRTs. n72 Ensuring due process, access to counsel, and access to all proceedings and all evidence are critical guarantees that must be provided to offer a fair trial. n73 As it stands, military commissions, despite some marked improvements, are not likely to meet the standards necessary to establish the right to a fair trial as set forth in Article 6 of the Convention. 2. European Court Insight on Article 6 Compliance What are the expectations of the European Court relative to Article 6 compliance? In twenty-two years of jurisprudence handed down from the European Court since Soering, the court never found an expulsion, until 2012, that violated Article 6 despite the claim's repeated assertion. n74 As Soering established, the European Court demands a showing of a "real risk of a flagrant denial of justice" to invoke a claim under Article 6. n75 This means that the claimant must meet a higher burden under Article 6 than Article 3; but in "assessing whether this test has been met, the Court considers that the same standard and burden of proof should apply as in Article 3 expulsion cases." n76 The court stated that the Article 6 test is a "stringent test of unfairness" and that a "flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself." n77 In defining flagrant denial of justice, the court noted that it is: Synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein. Although it has not yet been required to define the term in more precise terms, the Court has nonetheless indicated that certain forms of unfairness could amount to a flagrant denial of justice. These have included: conviction in absentia with no possibility subsequently to obtain a fresh determination of the merits of the charge; [\*581] a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; and deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country. n78 On January 17, 2012 in Othman (Abu Qatada), the court determined that evidence obtained by torture would amount to a flagrant denial of justice invoking Article 6. n79 The court went further to state that similar considerations may apply in a case that presented evidence obtained by other forms of ill-treatment that fall short of torture as well. n80 In addition to the guidelines for Article 6 that Othman now provides, the European Court previously made clear that the guarantees of a right to a fair trial apply to all types of judicial proceedings, even those deemed administrative. n81 Moreover, the court has stated that special proceedings, such as military court-martial, may "be subject to Article 6 scrutiny because of the serious criminal nature of the crime with which the defendant had been accused." n82 Thus, it is safe to assume that military tribunals, as well as their administrative precursors, CSRTs, are very likely to amount to a flagrant denial of justice under Article 6. III. Analysis of How the NDAA Affects Extradition **Understanding how the European Court views Article 6 compliance and the current perceptions of the U.S. military tribunal system, one can surmise that the European Court is** ***likely to block extradition*** if a suspect will face trials in a military tribunal. Current cases demonstrate how [\*582] **terror suspects** have **successfully employed Article 3 to deter extradition**, and **forecast the future use of Article 6**. n83 These cases indicate that **it would be wise for the United States to** continue to **grant assurances that terror suspects will not be at risk of** the death penalty, **military detention, or trial by military commission**. **How the U.S. government interprets and applies the language of the NDAA, specifically Sections 1021 and 1022**, n84 ***will prove pivotal*** **in the fight to win extradition of these known terror suspects and ultimately bring them to justice.** A. Recent Extradition Cases Recent cases of terror suspects invoking Article 3 to fight extradition to the United States exemplify how the European Court may respond to Article 6 claims. These cases provide insight into how the United States should proceed with regard to statutory interpretation of the NDAA, particularly when requesting extradition of terror suspects. 1. Al-Fawwaz, Bary, and Eidarous Have Successfully Thwarted Extradition Since 1998 Using Article 3 Three terror suspects, who were arrested in London in the late 1990s, have successfully fought extradition for over a decade using Article 3. Khalid al-Fawwaz, alleged not only to be an al-Qaeda member, but also one of Osama bin Laden's key lieutenants, n85 was indicted for the 1998 U.S. embassy bombings in East Africa which killed 224 people and injured more than 4,500. n86 Adel Abdel Bary and Ibrahim Eidarous, both alleged members of Egyptian Islamic Jihad, operated alongside al-Fawwaz in the London al-Qaeda cell, n87 and were subsequently arrested "on an extradition warrant following a request from the United States" in 1999 for their involvement in the bombings. n88 For several years, al-Fawwaz, Bary, and Eidarous successfully fought extradition through a [\*583] series of appeals within the U.K. n89 In 2008, the U.K. Secretary of State issued warrants for their extradition to the United States, finding that the U.S. government met the prima facie case and provided reliable assurances. n90 Thus, the men would not be at "risk of the death penalty, indefinite detention or trial by a military commission." n91 Eidarous was diagnosed with advanced cancer, put on house-arrest, and subsequently died in 2008. n92 In 2009, al-Fawwaz and Bary began their final appeal against the 2008 findings of the Secretary of State, with the British High Court of Justice finding no breach of Article 3, and al-Fawwaz's claim for breach of Article 6 unsubstantiated. n93 They soon appealed to the European Court and the case is still pending. n94 [\*584] **If the United States does not uphold** the original **assurances provided in 2004, the European Court could deny extradition of** these **long-sought-after terror suspects, destroying an otherwise perfect record of honoring the assurances the United States has provided to the U.K. and her European allies**. **The implications would disrupt the ultimate goal of bringing wanted terrorists to justice*. It is imperative*** **that the *U*nited *S*tates maintain the assurances** as provided in 2004 **and *demonstrate*** **that the new statutory language of the NDAA does not impede the President from dealing with each terror suspect case on an individual basis** **and as necessary to continue to effectively fight the war on terrorism.**

#### The problem is military commissions, not domestic capture

Peter **Margulies** of the Roger Williams School of Law, “Peter Margulies on the NDAA and Extradition”, December 20**11**, http://www.lawfareblog.com/2011/12/peter-margulies-on-the-ndaa-and-extradition/ (BJN)

Even more seriously, **making military prosecution the rule** and Article III courts the exception **would ramp up anti-extradition efforts in Europe and elsewhere**. **Extradition** to face criminal charges in Article III courts **already faces severe obstacles, as the United Kingdom case of Abu Hamza demonstrates. Abu Hamza,** whom the US has charged with recruiting terrorists for Al Qaeda, has **argued that the United States would impose a prison term disproportionate to his crimes** and that confinement in a supermax facility would violate the European Convention on Human Rights’ bar on inhuman and degrading treatment. In Babar Ahmad v. UK, the European Court of Human Rights held that Abu Hamza and others had raised “serious questions” on the legality of their extradition. Even after significant procedural reforms and the recent installation of the widely respected General Mark Martins as head of the prosecution office at the commissions, **transnational tribunals will** probably **view military commissions as offering fewer procedural rights and stiffer sentences than Article III courts. This will make extradition an even tougher sell in those tribunals,** whose jurisprudence has developed as a push-back against Bush administration policies such as coercive interrogation implemented in the immediate aftermath of September 11. **Particular countries, such as Germany, go even further, expressly barring extradition when the defendant faces trial in an “extraordinary” court or for a “purely military” offense.** **Arguments that military commission jurisdiction fell within either or both of these bars may take years to resolve.** Moreover, **advocates for these detainees and others have mobilized substantial political support in Britain against extradition.** Opposing extradition is already the cause du jour for some European celebrities. **Political opposition will strengthen** if military commissions became the rule, rather than the exception.In some cases, **American investigators may not even be able to get their foot in the door of the cell of a detainee held abroad** when military commissions are the norm. As Assistant Attorney General Monaco suggested at last week’s ABA conference, **the specter of military commissions may shut off access to suspected terrorists, and may hinder real-time information- sharing by our allies. Prompt detection and investigation of terrorist plots *could be the NDAA’s unintended first casualty.***

#### CO2 concentrations 18 times higher than current levels didn’t cause extinction

Kathy J. Willis et al 10, Professor of Long-Term Ecology at the University of Oxford; Keith D. Bennett, professor of late-Quaternary environmental change at Queen's University Belfast, guest professor in palaeobiology at Uppsala University in Sweden, et al, 2010, “4°C and beyond: what did this mean for biodiversity in the past?,” Systematics and Biodiversity, Vol. 8, No. 1, p. 3-9

Within a time-frame of Earth's history, current atmospheric CO2 levels at 380 ppmv are relatively low compared with the past; geological evidence and geochemical models suggest intervals of time when levels have been up to 18 times higher than present (Royer, 2008). The fossil record thus provides plenty of opportunity to assess biotic responses to intervals of higher global atmospheric CO2 and temperatures. However, this only makes sense if it is also possible to examine the responses of extant species, which have modern-day distributions; and where the position of global lithospheric plates is relatively similar to the present. Therefore, an ideal time interval for consideration is the past 65 million years when many of the ancestors of modern tropical and temperate trees had evolved (Willis & McElwain, 2002; Murat et al., 2004; Morley, 2007). It is also fair to assume that these species had broadly similar ecological tolerances to present day; it has been demonstrated in a number of studies that most species are remarkably conservative in their ecological niches (Wiens & Graham, 2005), and that these remain relatively unchanged through time despite populations persisting through intervals of wide amplitude fluctuations in climate (Svenning & Condit, 2008).

The most recent climate models and fossil evidence for the early Eocene Climatic Optimum (53–51 million years ago) indicate that during this time interval atmospheric CO2 would have exceeded 1200 ppmv and tropical temperatures were between 5–10 °C warmer than modern values (Zachos et al., 2008). There is also evidence for relatively rapid intervals of extreme global warmth and massive carbon addition when global temperatures increased by 5 °C in less than 10 000 years (Zachos et al., 2001). So what was the response of biota to these ‘climate extremes’ and do we see the large-scale extinctions (especially in the Neotropics) predicted by some of the most recent models associated with future climate changes (Huntingford et al., 2008)? In fact the fossil record for the early Eocene Climatic Optimum demonstrates the very opposite. All the evidence from low-latitude records indicates that, at least in the plant fossil record, this was one of the most biodiverse intervals of time in the Neotropics (Jaramillo et al., 2006). It was also a time when the tropical forest biome was the most extensive in Earth's history, extending to mid-latitudes in both the northern and southern hemispheres – and there was also no ice at the Poles and Antarctica was covered by needle-leaved forest (Morley, 2007). There were certainly novel ecosystems, and an increase in community turnover with a mixture of tropical and temperate species in mid latitudes and plants persisting in areas that are currently polar deserts. [It should be noted; however, that at the earlier Palaeocene–Eocene Thermal Maximum (PETM) at 55.8 million years ago in the US Gulf Coast, there was a rapid vegetation response to climate change. There was major compositional turnover, palynological richness decreased, and regional extinctions occurred (Harrington & Jaramillo, 2007). Reasons for these changes are unclear, but they may have resulted from continental drying, negative feedbacks on vegetation to changing CO2 (assuming that CO2 changed during the PETM), rapid cooling immediately after the PETM, or subtle changes in plant–animal interactions (Harrington & Jaramillo, 2007).]

#### Adaptation solves: it takes a CENTURY to see their impacts if you assume ZERO mitigation---predictions ignore innovation---that’s Mendelsohn

#### Tech and adaptive advances prevent all climate impacts---warming won’t cause war

Dr. S. Fred Singer et al 11, Research Fellow at The Independent Institute, Professor Emeritus of Environmental Sciences at the University of Virginia, President of the Science and Environmental Policy Project, a Fellow of the American Association for the Advancement of Science, and a Member of the International Academy of Astronautics; Robert M. Carter, Research Professor at James Cook University (Queensland) and the University of Adelaide (South Australia), palaeontologist, stratigrapher, marine geologist and environmental scientist with more than thirty years professional experience; and Craig D. Idso, founder and chairman of the board of the Center for the Study of Carbon Dioxide and Global Change, member of the American Association for the Advancement of Science, American Geophysical Union, American Meteorological Society, Arizona-Nevada Academy of Sciences, and Association of American Geographers, et al, 2011, “Climate Change Reconsidered: 2011 Interim Report,” online: <http://www.nipccreport.org/reports/2011/pdf/FrontMatter.pdf>

Decades-long empirical trends of climate-sensitive measures of human well-being, including the percent of developing world population suffering from chronic hunger, poverty rates, and deaths due to extreme weather events, reveal dramatic improvement during the twentieth century, notwithstanding the historic increase in atmospheric CO2 concentrations.¶ The magnitude of the impacts of climate change on human well-being depends on society's adaptability (adaptive capacity), which is determined by, among other things, the wealth and human resources society can access in order to obtain, install, operate, and maintain technologies necessary to cope with or take advantage of climate change impacts. The IPCC systematically underestimates adaptive capacity by failing to take into account the greater wealth and technological advances that will be present at the time for which impacts are to be estimated.¶ Even accepting the IPCC's and Stern Review's worst-case scenarios, and assuming a compounded annual growth rate of per-capita GDP of only 0.7 percent, reveals that net GDP per capita in developing countries in 2100 would be double the 2006 level of the U.S. and triple that level in 2200. Thus, even developing countries' future ability to cope with climate change would be much better than that of the U.S. today.¶ The IPCC's embrace of biofuels as a way to reduce greenhouse gas emissions was premature, as many researchers have found "even the best biofuels have the potential to damage the poor, the climate, and biodiversity" (Delucchi, 2010). Biofuel production consumes nearly as much energy as it generates, competes with food crops and wildlife for land, and is unlikely to ever meet more than a small fraction of the world's demand for fuels. ¶ The notion that global warming might cause war and social unrest is not only wrong, but even backwards - that is, global cooling has led to wars and social unrest in the past, whereas global warming has coincided with periods of peace, prosperity, and social stability.

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

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

It is frequently asserted that climate change could have devastating consequences for poor countries. Indeed, this assertion is used by the UN Intergovernmental Panel on Climate Change (IPCC) and other organizations as one of the primary justifications for imposing restrictions on human emissions of greenhouse gases.¶ But there is an internal contradiction in the IPCC’s own claims. Indeed, the same highly influential report from the IPCC claims both that poor countries will fare terribly and that they will be much better off than they are today. So, which is it?¶ The apparent contradiction arises because of inconsistencies in the way the IPCC assesses impacts. The process begins with various scenarios of future emissions. These scenarios are themselves predicated on certain assumptions about the rate of economic growth and related technological change.¶ Under the IPCC’s highest growth scenario, by 2100 GDP per capita in poor countries will be double the U.S.’s 2006 level, even taking into account any negative impact of climate change. (By 2200, it will be triple.) Yet that very same scenario is also the one that leads to the greatest rise in temperature—and is the one that has been used to justify all sorts of scare stories about the impact of climate change on the poor. ¶ Under this highest growth scenario (known as A1FI), the poor will logically have adopted, adapted and innovated all manner of new technololgies, making them far better able to adapt to the future climate. But these improvements in adaptive capacity are virtually ignored by most global warming impact assessments. Consequently, the IPCC’s “impacts” assessments systematically overestimate the negative impact of global warming, while underestimating the positive impact.

#### Human rights leadership is impossible---alt causes overwhelm and the US won’t exercise its influence

Alemayehu Mariam 13, 8/18/13 PhD, JD, teaches political science at California State University, San Bernardino “Is America Disinventing Human Rights?,” http://www.ethiopianreview.us/48632

In a New York Times op-ed piece in June 2012, Carter cautioned, “At a time when popular revolutions are sweeping the globe, the United States should be strengthening, not weakening, basic rules of law and principles of justice enumerated in the Universal Declaration of Human Rights. But instead of making the world safer, America’s violation of international human rights abets our enemies and alienates our friends.”¶ Carter also raised a number of important questions: Has the U.S. abdicated its moral leadership in the arena of international human rights? Has the U.S. betrayed its core values by maintaining a detention facility at Guantánamo Bay, Cuba, and subjecting dozens of prisoners to “cruel, inhuman or degrading treatment or punishment” and leaving them without the “prospect of ever obtaining their freedom”? Does the arbitrary killing of a person suspected to be an enemy terrorist in a drone strike along with women and children who happen to be nearby comport with America’s professed commitment to the rule of law and human rights?¶ In 1948, the U.S. played a central leadership role in “inventing” the principal instrument which today serves as the bedrock foundation of modern human rights. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in December 1948, set a “common standard of achievement for all peoples and all nations” in terms of equality, dignity and rights. Mrs. Eleanor Roosevelt, the widow of President Franklin D. Roosevelt, chaired the committee that drafted the UDHR. Eleanor remains an unsung heroine even though she was the mother of the modern global human rights movement. Without her, there would have been no UDHR; and without the UDHR, it is doubtful that the plethora of subsequent human rights conventions and regimes would have come into existence. Remarkably, she managed to mobilize, organize and proselytize human rights even though she had no legal training, diplomatic experience or bureaucratic expertise. She used her skills as political activist and advocate in the cause of freedom, justice and civil rights to work for global human rights.¶ Is America disinventing human rights?¶ It seems the U.S. is “disinventing” human rights through the pursuit of double (triple, quadruple) standard of human rights policy wrapped in a cover of diplocrisy. In Africa, the U.S. has one set of standards for Robert Mugabe’s Zimbabwe and Omar al-Bashir’s Sudan. Mugabe and Bashir are classified as the nasty hombres of human rights in Africa. The U.S. has targeted both regimes for crippling economic sanctions and diplomatic pressure. The U.S. has frozen the assets of Mugabe’s family and henchmen because the “Mugabe regime rules through politically motivated violence and intimidation and has triggered the collapse of the rule of law in Zimbabwe.”¶ The U.S. calls “partners” equally brutal regimes in Africa which serve as its proxies. Paul Kagame of Rwanda, Yuweri Museveni of Uganda and the deceased leader of the regime in Ethiopia are lauded as the “new breed of African leaders” and crowned “partners”. Uhuru Kenyatta, recently elected president of Kenya and a suspect under indictment by the International Criminal Court (ICC) for crimes against humanity is said to be different than Bashir who faces similar ICC charges. In 2009, Ambassador Susan E. Rice, then-U.S. Permanent Representative to the United Nations, demanded Bashir’s arrest and prosecution: “The people of Sudan have suffered too much for too long, and an end to their anguish will not come easily. Those who committed atrocities in Sudan, including genocide, should be brought to justice.” No official U.S. statement on Uhuru’s ICC prosecution was issued.¶ The U.S. maintains excellent relations with Teodoro Obiang Nguema Mbasogo of Equatorial Guinea who has been in power since 1979 because of that country’s oil reserves; but all of the oil revenues are looted by Obiang and his cronies. In 2011, the U.S. brought legal action in federal court against Obiang’s son to seize corruptly obtained assets including a $40 million estate in Malibu, California overlooking the Pacific Ocean, a luxury plane and a dozen super-sports cars worth millions of dollars. The U.S. has not touched any of the other African Ali Babas and their forty dozen thieving cronies who have stolen billions and stashed their cash in U.S. and other banks.¶ Despite lofty rhetoric in support of the advancement of democracy and protection of human rights in Africa, the United States continues to subsidize and coddle African dictatorships that are as bad as or even worse than Mugabe’s. The U.S. currently provides substantial economic aid, loans, technical and security assistance to the repressive regimes in Ethiopia, Congo (DRC), Uganda, Rwanda and elsewhere. None of these countries holds free elections, allow the operation of an independent press or free expression or abide by the rule of law. All of them are corrupt to the core, keep thousands of political prisoners, use torture and ruthlessly persecute their opposition. Yet they are deemed U.S. “partners”.¶ “Principled disengagement” as a way of reinventing an American human rights policy?¶ If the Obama Administration indeed has a global or African human rights policy, it must be a well-kept secret. In March 2013, Michael Posner, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor said American human rights policy is based on “principled engagement”: “We are going to go to the United Nations and join the Human Rights Council and we’re going to be part of it even though we recognize it doesn’t work… We’re going to engage with governments that are allies but we are also going to engage with governments with tough relationships and human rights are going to be part of those discussions.” Second, the U.S. will follow “a single standard for human rights, the Universal Declaration of Human Rights, and it applies to all including ourselves…” Third, consistent with President “Obama’s personality”, the Administration believes “change occurs from within and so a lot of the emphasis… [will be] on how we can help local actors, change agents, civil society, labor activists, religious leaders trying to change their societies from within and amplify their own voices and give them the support they need…”¶ On August 14, according to Egyptian government sources, 525 protesters, mostly members of the Muslim Brotherhood, were killed and 3,717 injured at the hands of Egyptian military and security forces. It was an unspeakably horrifying massacre of protesters exercising their right to peaceful expression of grievances.¶ On August 15, President Obama criticized the heavy-handed crackdown on peaceful protesters with the usual platitudes. “The United States strongly condemns the steps that have been taken by Egypt’s interim government and security forces. We deplore violence against civilians.” His message to the Egyptian people was somewhat disconcerting in light of the massacre. “America cannot determine the future of Egypt. We do not take sides with any particular party or political figure. I know it’s tempting inside Egypt to blame the United States.”¶ In July 2009, in Ghana, President Obama told Africa’s “strongmen”, “History offers a clear verdict: governments that respect the will of their own people are more prosperous, more stable, and more successful than governments that do not…. No person wants to live in a society where the rule of law gives way to the rule of brutality… Make no mistake: history is on the side of these brave Africans [citizens and their communities driving change], and not with those who use coups or change Constitutions to stay in power. Africa doesn’t need strongmen, it needs strong institutions.”¶ President Obama has a clear choice in Egypt between “those who use coups to stay in power” and the people of Egypt peacefully protesting in the streets. Now he says, “We don’t take sides…” By “not taking sides”, it seems he has taken sides with Egypt’s strongmen who “use coups to stay in power”. So much for “principled engagement”!¶ Obama reassured the Egyptian military that the U.S. does not intend to end or suspend its decades-old partnership with them. He cautioned the military that “While we want to sustain our relationship with Egypt, our traditional cooperation cannot continue as usual while civilians are being killed in the streets.” He indicated his disapproval of the imposition of “martial law” but made no mention of the manifest military coup that had ousted Morsy. He obliquely referred to it as a “military intervention”. He made a gesture of “action” cancelling a symbolic military exercise with the Egyptian army. There will be no suspension of U.S. military aid to Egypt and no other sanctions will be imposed on the Egyptian military or government.¶ I am not clear what Obama’s human rights policy of “principled engagement” actually means. But I have a lot of questions about it: Does it mean moral complacency and tolerance of the crimes against humanity of African dictators for the sake of the war on terror and oil? Is it a euphemism for abdication of American ideals on the altar of political expediency? Does it mean overlooking and excusing the crimes of ruthless dictators and turning a blind eye to their bottomless corruption? Does “principled engagement” mean allowing dictators to suck at the teats of American taxpayers to satisfy their insatiable aid addiction while they brutalize their people?¶ The facts of Obama’s “principled engagement” tell a different story. In May 2010, after the ruling party in Ethiopia declared it had won 99.6 percent of the seats in parliament, the U.S. demonstrated its “principled engagement” by issuing a Statement expressing “concern that international observers found that the elections fell short of international commitments” and promised to “work diligently with Ethiopia to ensure that strengthened democratic institutions and open political dialogue become a reality for the Ethiopian people.” There is no evidence that the U.S. did anything to “strengthen democratic institutions and open political dialogue to become a reality for the Ethiopian people.”¶ When two ICC indicted suspects in Kenya (Kenyatta and Ruto) won the presidency in Kenya a few months ago, the U.S. applied its “principled engagement” in the form of a robust defense of the suspects. Johnnie Carson, the former United States Assistant Secretary of State for African Affairs, said the ICC indictments of Bashir and Uhuru/Ruto are different. “I don’t want to make a comparison with Sudan in its totality because Sudan is a special case in many ways.” What makes Bashir and Sudan different, according to Carson, is the fact that Sudan is on the list of countries that support terrorism and Bashir and his co-defendants are under indictment for the genocide in Darfur. Since “none of that applies to Kenya,” according to Carson, it appears the U.S. will follow a different policy.¶ President Obama says the U.S. will maintain its traditional partnership with Egypt’s military, Egypt’s “strongmen”. At the onset of the Egyptian Revolution in 2011, Obama and his foreign policy team froze in stunned silence, flat-footed and twiddling their thumbs and scratching their heads for days before staking out a position on that popular uprising. They could not bring themselves to use the “D” word (dictator as in Hosni Mubarak) to describe events in Egypt then. Today Obama cannot bring himself to say the “C” word (as in Egyptian military coup).¶ Obama is in an extraordinary historical position as a person of color to advance American ideals and values throughout the world in convincing and creative ways. But he cannot advance these ideals and values through a hollow notion of “principled engagement.”¶ Rather, he must adopt a policy of “principled disengagement” with African dictators. That does not mean isolationism or a hands off approach to human rights. By “principled disengagement” I mean a policy and policy outcome that is based on measurable human rights metrics. Under a policy of “principled disengagement”, the U.S. would establish clear, attainable and measurable human rights policy objectives in its relations with African dictatorships. The policy would establish minimum conditions of human rights compliance. For instance, the U.S. could set some basic criteria for the conduct of free and fair elections, press and individual freedoms, limits on arbitrary arrests and detentions, prevention of extrajudicial punishments, etc. Using its annual human rights assessments, the U.S. could make factual determinations on the extent to which it will engage or disengage with a particular regime. “Partnership” status and the benefits that come with it will be reserved to those regimes that have good and improving records on specific human rights measures. Regimes that steal elections, win elections by 99.6 percent, engage in arbitrary arrests and detentions and other human rights violations would be denied “partnership” status and denied aid, loans and technical assistance. Persistent violators of human rights would be given a compliance timetable to improve their records and provided appropriate assistance to achieve specific human rights goals. If regimes persist in a pattern and practice of human rights violations, the U.S. could raise the stakes and impose economic and diplomatic sanctions.¶ The ‘‘Ethiopia Democracy and Accountability Act of 2007’’ contained many important statutory provisions that could serve as a foundation for “principled disengagement”.¶ Obama’s “principled engagement” seems to be a justification for expediency at the cost of American ideals. Until he decides to stand for principle, instead of standing behind the rhetoric of “principled engagement”, he will continue to find himself on a tightrope of moral, legal and political ambiguity. The U.S. cannot “condemn” and “deplore” its way out of its human rights obligations or global leadership role. Yes, the U.S. must take sides! It must take a stand either with the victims of human rights abuses throughout the world or the human rights abusers of the world. If Obama wants to save the world from strongmen with boots and in designer suits with briefcases full of cash, he should pursue a policy of “principled disengagement”. But he should start by reflecting on the words he spoke during his first inauguration speech:

# 1NR Polx

#### **Immigration reform is key to all aspect of heg---[competitiveness, hard and soft power]**

Nye 12 Joseph S. Nye, a former US assistant secretary of defense and chairman of the US National Intelligence Council, is a Professor at Harvard University. “Immigration and American Power,” December 10, Project Syndicate, http://www.project-syndicate.org/commentary/obama-needs-immigration-reform-to-maintain-america-s-strength-by-joseph-s--nye

CAMBRIDGE – The United States is a nation of immigrants. Except for a small number of Native Americans, everyone is originally from somewhere else, and even recent immigrants can rise to top economic and political roles. President Franklin Roosevelt once famously addressed the Daughters of the American Revolution – a group that prided itself on the early arrival of its ancestors – as “fellow immigrants.”¶ In recent years, however, US politics has had a strong anti-immigration slant, and the issue played an important role in the Republican Party’s presidential nomination battle in 2012. But Barack Obama’s re-election demonstrated the electoral power of Latino voters, who rejected Republican presidential candidate Mitt Romney by a 3-1 majority, as did Asian-Americans.¶ As a result, several prominent Republican politicians are now urging their party to reconsider its anti-immigration policies, and plans for immigration reform will be on the agenda at the beginning of Obama’s second term. Successful reform will be an important step in preventing the decline of American power.¶ Fears about the impact of immigration on national values and on a coherent sense of American identity are not new. The nineteenth-century “Know Nothing” movement was built on opposition to immigrants, particularly the Irish. Chinese were singled out for exclusion from 1882 onward, and, with the more restrictive Immigration Act of 1924, immigration in general slowed for the next four decades.¶ During the twentieth century, the US recorded its highest percentage of foreign-born residents, 14.7%, in 1910. A century later, according to the 2010 census, 13% of the American population is foreign born. But, despite being a nation of immigrants, more Americans are skeptical about immigration than are sympathetic to it. Various opinion polls show either a plurality or a majority favoring less immigration. The recession exacerbated such views: in 2009, one-half of the US public favored allowing fewer immigrants, up from 39% in 2008.¶ Both the number of immigrants and their origin have caused concerns about immigration’s effects on American culture. Demographers portray a country in 2050 in which non-Hispanic whites will be only a slim majority. Hispanics will comprise 25% of the population, with African- and Asian-Americans making up 14% and 8%, respectively.¶ But mass communications and market forces produce powerful incentives to master the English language and accept a degree of assimilation. Modern media help new immigrants to learn more about their new country beforehand than immigrants did a century ago. Indeed, most of the evidence suggests that the latest immigrants are assimilating at least as quickly as their predecessors.¶ While too rapid a rate of immigration can cause social problems, over the long term, immigration strengthens US power. It is estimated that at least 83 countries and territories currently have fertility rates that are below the level needed to keep their population constant. Whereas most developed countries will experience a shortage of people as the century progresses, America is one of the few that may avoid demographic decline and maintain its share of world population.¶ For example, to maintain its current population size, Japan would have to accept 350,000 newcomers annually for the next 50 years, which is difficult for a culture that has historically been hostile to immigration. In contrast, the Census Bureau projects that the US population will grow by 49% over the next four decades.¶ Today, the US is the world’s third most populous country; 50 years from now it is still likely to be third (after only China and India). This is highly relevant to economic power: whereas nearly all other developed countries will face a growing burden of providing for the older generation, immigration could help to attenuate the policy problem for the US.¶ In addition, though studies suggest that the short-term economic benefits of immigration are relatively small, and that unskilled workers may suffer from competition**,** skilled immigrants can be important to particular sectors – and to long-term growth. There is a strong correlation between the number of visas for skilled applicants and patents filed in the US. At the beginning of this century, Chinese- and Indian-born engineers were running one-quarter of Silicon Valley’s technology businesses, which accounted for $17.8 billion in sales; and, in 2005, immigrants had helped to start one-quarter of all US technology start-ups during the previous decade. Immigrants or children of immigrants founded roughly 40% of the 2010 Fortune 500 companies.¶ Equally important are immigration’s benefits for America’s soft power. The fact that people want to come to the US enhances its appeal, and immigrants’ upward mobility is attractive to people in other countries. The US is a magnet, and many people can envisage themselves as Americans, in part because so many successful Americans look like them. Moreover, connections between immigrants and their families and friends back home help to convey accurate and positive information about the US.¶ Likewise, because the presence of many cultures creates avenues of connection with other countries, it helps to broaden Americans’ attitudes and views of the world in an era of globalization. Rather than diluting hard and soft power, immigration enhances both.¶ Singapore’s former leader, Lee Kwan Yew, an astute observer of both the US and China, argues that China will not surpass the US as the leading power of the twenty-first century, precisely because the US attracts the best and brightestfrom the rest of the world and melds them into a diverse culture of creativity. China has a larger population to recruit from domestically, but, in Lee’s view, its Sino-centric culture will make it less creative than the US.¶ That is a view that Americans should take to heart. If Obama succeeds in enacting immigration reform in his second term, he will have gone a long way toward fulfilling his promise to maintain the strength of the US.

#### Path to citizenship’s key to reducing illegal immigration --- half-measures fail

Anderson 3 [Stuart, Executive Director of the National Foundation for American Policy, served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003, National Foundation for American Policy, The Impact of Agricultural Guest Worker Programs on Illegal Immigration and Making the Transition from Illegal to Legal Migration, 11/20, http://www.nfap.com/pressreleases/Nov20\_2003\_pr.aspx]

The reports are important and timely as policy makers debate the best approaches to reducing illegal immigration and confronting the status quo of migrant deaths, the black market in labor, and powerful smuggling organizations. The issue of what to do about those already in the country illegally remains controversial. The studies point out the flaws in the current approaches and discuss the best way to make a transition from an illegal to a legal migration system. A primary conclusion of both studies, says Stuart Anderson, author of the reports and Executive Director of the National Foundation for American Policy, is that “The absence of avenues to work legally in the United States is a primary reason for the current levels of illegal immigration.” Copies of both reports are available at: www.nfap.net.¶ In Making the Transition from Illegal to Legal Migration, Anderson concludes, “The approach that offers the most realistic opportunity for significant and positive change is one that combines new temporary worker visas with a transition that addresses those currently in the country illegally. Without such an approach, ten years from now both sides of the debate will still decry the status quo.”¶ The study examines the three choices policy makers grappling with illegal immigration face: 1) maintain the status quo, which is an immigration enforcement-only approach that makes little use of market-based mechanisms; 2) enact legislation to establish new temporary worker visas or improve existing categories; or 3) enact legislation to create new temporary worker visas/improve existing categories combined with a transition that addresses those currently in the country illegally. The study supports option 3, since the status quo or “status quo plus more enforcement” portends no reduction in illegal immigration but rather a continuation of migrant deaths, a black market in labor, and calls for harsher but likely counterproductive enforcement measures. Moreover, a “guest worker only” approach is similar to the status quo in that it has little chance of being successful, since, among other reasons, legislation to enact a new guest worker program without addressing those in the country illegally is unlikely to become law.¶ In The Impact of Agricultural Guest Worker Programs on Illegal Immigration, the report explains how in varying forms from 1942-1964, the bracero program allowed the admission of Mexican farm workers to be employed as seasonal contract labor for U.S. growers and farmers. Although facilitating legal entry for agricultural work proved effective, today, the idea of allowing regulated, legal entry that employs market principles to fulfill labor demand otherwise filled by individuals entering illegally is considered, depending on one’s viewpoint, either novel, radical, or bold.¶ The report finds that “By providing a legal path to entry for Mexican farm workers the bracero program significantly reduced illegal immigration. The end of the bracero program in 1964 (and its curtailment in 1960) saw the beginning of the increases in illegal immigration that we see up to the present day.”¶ It is recognized that the number of INS apprehensions are an important indicator of the illegal flow and that, in general, apprehension numbers drop when the flow of illegal immigration decreases. From 1964 -- when the bracero program ended -- to 1976, INS apprehensions increased from 86,597 to 875,915 – a more than 1,000 percent increase, indicating a significant rise in illegal immigration. The report found that “Additional factors in illegal immigration rising during this period included economic conditions in Mexico and the lack of a useable temporary visa category for lesser skilled non-agricultural jobs.”¶ “This is not to say that the bracero program was without controversy or that workers who entered through the program did not experience problems or even hardships,” says Anderson. “The point is that when lawful temporary admissions were prevalent, illegal entry to the United States was low. After the program was curtailed and later terminated, illegal immigration rose steadily.” The report notes that “No one advocates resurrecting the bracero program in its various forms. Yet a revised H-2A visa category that meets the needs of both employers and employees would make a significant contribution to reducing illegal immigration in agriculture. “¶ The report also concludes:¶ The data show that after the 1954 enforcement actions were combined with an increase in the use of the bracero program, INS apprehensions fell from the 1953 level of 885,587 to as low as 45,336 in 1959 – indicating, based on apprehensions data, a 95 percent reduction in the flow of illegal immigration into the United States. During that time, the annual number of Mexican farm workers legally admitted more than doubled from 201,380 in 1953 to an average of 437,937 for the years 1956-1959. ¶ “Without question the bracero program was . . . instrumental in ending the illegal alien problem of the mid-1940’s and 1950’s,” wrote the Congressional Research Service in a 1980 report.¶ In the 1950s and 1960s, senior law enforcement officials in the U.S. Border Patrol and elsewhere in the Immigration and Naturalization Service (INS) understood and promoted the use of market forces to reduce illegal immigration and control the Southwest border. A February 1958 Border Patrol document from the El Centro (California) district states, “Should Public Law 78 be repealed or a restriction placed on the number of braceros allowed to enter the United States, we can look forward to a large increase in the number of illegal alien entrants into the United States.”¶ When at a Congressional hearing in the 1950s, a top INS official was asked what would happen to illegal immigration if the bracero program ended, he replied, “We can’t do the impossible, Mr. Congressman.”¶ The evidence indicates that a reasonable enforcement deterrent at the border is necessary to enable a temporary worker program such as the bracero program to reduce illegal entry. Yet the evidence is also clear that enforcement alone has not proven effective in reducing illegal immigration. INS enforcement did not grow weaker after the 1960 curtailing of the bracero program or after the program’s subsequent demise in December 1964. And both after 1960 and 1964, without the legal safety valve that the bracero program represented, illegal immigration increased substantially.¶ The current temporary worker visa category for agriculture, which U.S. employers consider burdensome and litigation-prone, fails to attract a sufficient number of participants to be part of the solution to illegal migration,” Anderson concludes. “While the bracero program has been criticized, that does not mean that it is impossible to devise a temporary worker program that takes into account the needs of both workers and employers. That would reduce illegal immigration by providing legal, market-based alternatives to the illegal entry that we see today on the Southwest border of the United States.”

#### 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.

#### a) Tea Party’s weakened---empowers GOP moderates who’re open to reform

Robert Creamer 10-25, political organizer and Partner, Democracy Partners, 10/25/13, “Four Reasons Why Shutdown Battle Increases Odds of Passing Immigration Reform,” http://www.huffingtonpost.com/robert-creamer/four-reasons-why-shutdown\_b\_4162829.html

Yesterday, President Obama renewed his own push for passage of comprehensive immigration reform with a pathway to citizenship.

Portions of the pundit class continue to believe the immigration reform is barely hanging on life support. In fact, in the post-shutdown political environment, there are four major reasons to believe that the odds of Congressional passage of immigration reform have actually substantially increased:

Reason #1. The extreme Tea Party wing of the Republican Party has been marginalized. That is particularly true when it comes to the efficacy of their political judgment. For those Republicans who want to keep the Republican Party in the majority - or who occupy marginal seats and hope to be reelected -- it's a safe bet that fewer and fewer are taking political advice from the likes of Ted Cruz.

The Republican Party brand has sunk to all-time lows. In a post-shutdown Washington Post-ABC News poll, the percentage of voters holding unfavorable views of the Republican Party jumped to 67 percent. Fifty-two percent of the voters hold the GOP responsible for the shutdown, compared with only 31 percent who hold President Obama responsible.

And, of course, far from achieving their stated goal of defunding ObamaCare, they basically got nothing in exchange for spending massive amounts of the Party's political capital.

Increasingly, many Republicans have come to the view that taking political advice from the Tea Party crowd is like taking investment advice from Bernie Madoff.

And many Republicans are coming to realize that hard-core opponents of immigration reform like Congressmen Steve King and Louie Gohmert are just not attractive to swing voters - especially not to suburban women. The fear of being tainted by the Tea Party has grown among moderate Republicans and those in marginal districts.

All of that has lessened the extremist clout within the GOP House caucus.

And it should also be acknowledged that the "shutdown the government - to hell with the debt ceiling" crowd is not entirely the same as the "round up all the immigrants" gang. Immigration reform has a good deal of support among Evangelical activists that might share Tea Party tendencies on other issues. That's also true among a growing group of economic libertarians.

The business community provides most of the money to fuel the Republican political machine. And the business community - which very much wants comprehensive immigration reform (along with the Labor movement) - is furious with the Tea Party wing and is more ready than ever to challenge them - especially on immigration.

Yesterday's Wall Street Journal reports that:

Some big-money Republican donors, frustrated by their party's handling of the standoff over the debt ceiling and government shutdown, are stepping up their warnings to GOP leaders that they risk long-term damage to the party if they fail to pass immigration legislation.

Some donors say they are withholding political contributions from members of Congress who don't support action on immigration, and many are calling top House leaders. Their hope is that the party can gain ground with Hispanic voters, make needed changes in immigration policy and offset some of the damage that polls show it is taking for the shutdown.

#### b) Boehner---his credibility within his own party survived the shutdown and means he has room to work with Obama on immigration

Robert Creamer 10-25, political organizer and Partner, Democracy Partners, 10/25/13, “Four Reasons Why Shutdown Battle Increases Odds of Passing Immigration Reform,” http://www.huffingtonpost.com/robert-creamer/four-reasons-why-shutdown\_b\_4162829.html

Reason #2. House Speaker John Boehner emerged from the shutdown battle with his support in the caucus in tact.

At the beginning of the shutdown one Boehner aide was quoted as saying that the Speaker had to let his Tea Party wing find out that the stove is hot by touch it. That's exactly what Boehner did. Instead of just telling them the consequences of shutting down the government and threatening default over ObamaCare, he showed them. He let them run down their entire strategy, get nothing in return and suffer enormous political damage for their trouble.

Because Boehner stuck with the Tea Party wing to the bitter end, they joined in the standing ovation the GOP Caucus gave Boehner as he was negotiating the terms of surrender.

Had much of the rank and file caucus believed that Boehner sold them out in negotiations with the White House and Senate, he would have had a much more difficult time allowing the House to vote on a pathway to citizenship than is now the case.

#### Immigration reform boosts the US economy in the short- and long-term

Edward Krudy 13, Reuters, 1-29-13, http://www.nbcnews.com/business/economywatch/immigration-reform-seen-boosting-us-economic-growth-1C8159298

The sluggish U.S. economy could get a lift if President Barack Obama and a bipartisan group of senators succeed in what could be the biggest overhaul of the nation's immigration system since the 1980s. ¶ Relaxed immigration rules could encourage entrepreneurship, increase demand for housing, raise tax revenues and help reduce the budget deficit, economists said. ¶ By helping more immigrants enter the country legally and allowing many illegal immigrants to remain, the United States could help offset a slowing birth rate and put itself in a stronger demographic position than aging Europe, Japan and China. ¶ "Numerous industries in the United States can't find the workers they need, right now even in a bad economy, to fill their orders and expand their production as the market demands," said Alex Nowrasteh, an immigration specialist at the libertarian Cato Institute. ¶ The emerging consensus among economists is that immigration provides a net benefit. It increases demand and productivity, helps drive innovation and lowers prices, although there is little agreement on the size of the impact on economic growth. ¶ President Barack Obama plans to launch his second-term push for a U.S. immigration overhaul during a visit to Nevada on Tuesday and will make it a high priority to win congressional approval of a reform package this year, the White House said. ¶ The chances of major reforms gained momentum on Monday when a bipartisan group of senators agreed on a framework that could eventually give 11 million illegal immigrants a chance to become American citizens. ¶ Their proposals would also include means to keep and attract workers with backgrounds in science, technology, engineering and mathematics. This would be aimed both at foreign students attending American universities where they are earning advanced degrees and high-tech workers abroad. ¶ An estimated 40 percent of scientists in the United States are immigrants and studies show immigrants are twice as likely to start businesses, said Nowrasteh. ¶ Boosting legal migration and legalizing existing workers could add $1.5 trillion to the U.S. economy over the next 10 years, estimates Raul Hinojosa-Ojeda, a specialist in immigration policy at the University of California, Los Angeles. That's an annual increase of 0.8 percentage points to the economic growth rate, currently stuck at about 2 percent.

#### Political Capital is key to immigration – overcomes barriers to passage

Richard Andrew, 10-25-2013, “Will the GOP Accept Obama’s Peace Offering?” Ring of Fire, http://www.ringoffireradio.com/2013/10/will-gop-accept-obamas-peace-offering/

President Obama is pushing for immigration reform now while the GOP has been knocked on their heels from the government shutdown. Obama is trying to give them a way out by moving a bill that a majority in both congressional chambers can agree to. The operative word here is compromise. Frank Sharry, executive director of America’s Voice, an immigration advocacy group, told NPR “If they want to take advantage of the get-out-of-jail card Democrats have offered them, this would be the perfect opportunity to do it.” There have been huge rallies around immigration since way before the last presidential election. Groups like America’s Voice are going to step up their rallies regardless of what Congress does. Sharry continues with a determined outcry, “We’re going to throw down until they either say ‘yes’ or they make it clear they’re not going to get to yes and then we’ll pivot to try to un-elect them.” That sounds like a determined group. These advocacy groups believe that, after the shutdown debacle , the GOP is ready to show the country that they can govern. NPR reported that after successfully staring down congressional Republicans in the shutdown-debt ceiling fight, President Obama has pivoted to immigration in a move with almost no downside. I have found the enemy and it is us. If President Obama is trying to push for immigration reform, the Tea Partiers will find a way to turn it against him. Sen. Rubio (R-FL), has already begun to turn the blame towards Obama. Rubio said that “The president has undermined this effort, absolutely, because of the way he has behaved over the last three weeks.” Like Rubio, Rep. Raul Labrador (R-ID), also has immigrant parents. The American Prospect reported him as saying, “After the way the president acted over the last two or three weeks where he would refuse to talk to the Speaker of the House … they’re not going to get immigration reform. That’s done.” The President will have to show some strong leadership skills that can drive a wedge between the Tea Party caucus in both Houses and the more moderate Republicans. What would happen if we have a debate about immigration? That would bring the GOP out of the darkness and into the public light and hold the Tea Party’s feet to the fire. That should be the first thing Congress should do to bring about change on the subject of immigration. The president has already alluded to the second point of attack. In a comment he made on Univision last week, he said, “We had a very strong Democratic and Republican vote in the Senate. The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives.”

#### Obama pushes the plan

Ralph 13 (Talia, April 30, 2013, “President Obama answers tough questions on the 'red line' in Syria, Guantanamo (VIDEO)” http://www.globalpost.com/dispatch/news/regions/americas/united-states/130430/watch-live-president-obama-takes-questions-domes)

"It's no surprise to me we have problems in Guantanamo. I said when I was elected that we need to close Guantanamo. I still think that," Obama answered. Though Congress has prevented the prison's closure despite recommendations that many of the prisoners could be returned to their own countries or third-party nations, Obama said he was going to re-engage with Congress "to make the case that this is not in the best interest of the American people. It's not sustainable." The president reiterated his feeling that Guantanamo is "not necessary to keep America safe." "It is expensive, it is inefficient, it hurts our international standing, it lessens cooperation with our allies, it is a recruitment tool for extremists," he said. The president added that it is a "tough problem" because "for many

# Terrorism adv

#### Detention reforms kill credible info-security---kills allied coop

Anna-Katherine McGill 12, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>

It is clear that diplomacy will continue to be a key component in US counterterrorism coalition building. Intelligence sharing, as a by-product of these efforts, will likely improve for as long as trust is maintained or improved and compromises are made in the greater interest of combating the shared threat of terrorism. However, the US is also likely to face continuing foreseeable challenges from the ever expanding breadth of its international allies, its increasing dependence on its counterterrorism coalitions, and unpredictable setbacks to international trust like WikiLeaks. There are ways, however, to allay the impact of these challenges if not overcome them all together. ¶ With regards to traditional allies the United States must continue to negotiate a close working relationship with its NATO, EU, and 5 EYES partners. Great strides have been made but future disagreements on policy, tactics, and strategy for the war on terrorism are inevitable. The best way to prepare for such future issues is to continue to foster a positive collaborative relationship with these nations so that mutual trust will prevent arguments from threatening the survival of the alliance. This means that the US must carefully manage its international position. It cannot exploit legal loopholes like exporting suspects to other nations for questionable interrogations; it cannot bully its friends nor act unilaterally against their wishes; and it must hold itself to high moral standards befitting a liberal democracy.¶ For new and non-traditional allies, Reveron states that “the long-term challenge for policymakers will be to convert these short-term tactical relationships into meaningful alliances while protecting against counterintelligence threats” (467). Traditional alliances have to start somewhere and over time these new relationships can turn in to tried and tested cooperation. In order to further develop these relationships the US should attempt to iron out policy differences in other arenas rather than turn a blind eye to them and continue providing technical and material support to their development of effective intelligence programs. The US should not however hold CT cooperation supreme over other critical issues such as nuclear and conventional arms proliferation and human rights violations. Nations like Iran and Syria may be helpful in the short term and for limited purposes but this does not negate their less desirable practices.¶ Finally, the US will also need to look inward to prevent more classified information leaks. The US needs to be more critical in the issuance of security clearances, employ digital monitoring of who is downloading information and in what amount to prevent mass dumps, and give greater importance to curtailing the “insider threat” of US citizens leaking information overall. Improving intelligence security will help to mitigate the blowback from WikiLeaks and will go a long way to advancing US credibility and trust building.

#### Detention without trial is crucial to incapacitate high value terrorists---trials wreck intel and result in release of critical leadership because the US would lose the trials

Jack Goldsmith 10, Henry L. Shattuck Professor at Harvard Law School, 10/8/10, “Don’t Try Terrorists, Lock Them Up,” http://www.nytimes.com/2010/10/09/opinion/09goldsmith.html

The real lesson of the ruling, however, is that prosecution in either criminal court or a tribunal is the wrong approach. The administration should instead embrace what has been the main mechanism for terrorist incapacitation since 9/11: military detention without charge or trial.¶ Military detention was once legally controversial but now is not. District and appellate judges have repeatedly ruled — most recently on Thursday — that Congress, in its September 2001 authorization of force, empowered the president to detain members of Al Qaeda, the Taliban and associated forces until the end of the military conflict.¶ Because the enemy in this indefinite war wears no uniform, courts have rightly insisted on high legal and evidentiary standards — much higher than what the Geneva Conventions require — to justify detention. And many detainees in cases that did not meet these standards have been released.¶ Still, while it is more difficult than ever to keep someone like Mr. Ghailani in military detention, it is far easier to detain him than to convict him in a civilian trial or a military commission. Military detention proceedings have relatively forgiving evidence rules and aren’t constrained by constitutional trial rules like the right to a jury and to confront witnesses. There is little doubt that Mr. Ghailani could be held in military detention until the conflict with Al Qaeda ends.¶ Why, then, does the Obama administration seek to prosecute him in federal court? One answer might be that trials permit punishment, including the death penalty. But the Justice Department is not seeking the death penalty against Mr. Ghailani. Another answer is that trials “give vent to the outrage” over attacks on civilians, as Judge Kaplan has put it. This justification for the trial is diminished, however, by the passage of 12 years since the crimes were committed.¶ The final answer, and the one that largely motivates the Obama administration, is that trials are perceived to be more legitimate than detention, especially among civil libertarians and foreign allies.¶ Military commissions have secured frustratingly few convictions. The only high-profile commission trial now underway — that of Omar Khadr, a Canadian who was 15 at the time he was detained — has been delayed for months. Commissions do not work because they raise scores of unresolved legal issues like the proper rules of evidence and whether material support and conspiracy, usually the main charges, can be brought in a tribunal since they may not be law-of-war violations.¶ Civilian trials in federal court, by contrast, often do work. Hundreds of terrorism-related cases in federal court have resulted in convictions since 9/11; this week, the would-be Times Square bomber, Faisal Shahzad, was sentenced to life in prison after a guilty plea.¶ But Mr. Ghailani and his fellow detainees at Guantánamo Bay are a different matter. The Ghailani case shows why the administration has been so hesitant to pursue criminal trials for them: the demanding standards of civilian justice make it very hard to convict when the defendant contests the charges and the government must rely on classified information and evidence produced by aggressive interrogations.¶ A further problem with high-stakes terrorism trials is that the government cannot afford to let the defendant go. Attorney General Eric Holder has made clear that Khalid Shaikh Mohammed, the 9/11 plotter, would be held indefinitely in military detention even if acquitted at trial. Judge Kaplan said more or less the same about Mr. Ghailani this week. A conviction in a trial publicly guaranteed not to result in the defendant’s release will not be seen as a beacon of legitimacy.¶ The government’s reliance on detention as a backstop to trials shows that it is the foundation for incapacitating high-level terrorists in this war. The administration would save money and time, avoid political headaches and better preserve intelligence sources and methods if it simply dropped its attempts to prosecute high-level terrorists and relied exclusively on military detention instead.

#### Due process collapses intelligence gathering --- sources dry up --- destroys the heart of counter-terror policy

Delery Et.al. ’12 - Principal Deputy, Assistant Attorney General, Civil Division, DOJ

Principal Deputy, Assistant Attorney General, Civil Division, STUART F. DELERY

Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

Third. Plaintiffs' claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that "the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny" are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, "'even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to close up like a clam."'1 Id. (quoting Tenet v. Doe, 544 U.S. 1,11 (2005)). And where litigation of a plaintiffs allegations "would inevitably require an inquiry into "classified information that may undermine ongoing covert operations,"\* special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at "8 ("When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.11); Lebron, 670 F.3d at 554 (noting that the "chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplomatic initiatives at the heart of counterterrorism policy1' are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the "extraordinary rendition" context).