# AT: Circumvention

#### Clear statement requirement solves- no circumvention

Landau 9 (Joseph, Associate-in-Law, Columbia Law School. MUSCULAR PROCEDURE: CONDITIONAL DEFERENCE IN THE EXECUTIVE DETENTION CASES Washington Law Review Vol. 84:661, 2009)

The executive detention cases of the past several years have prompted renewed debate over the proper scope of judicial deference to the executive branch’s claimed need to limit individual liberties during times of crisis. Some theorists argue that courts should resolve large policy questions raised by individual challenges to assertions of executive power.1 Others believe that courts should decide as little as possible, asking only whether executive action is grounded within statutory authority.2 However, a number of the post-9/11 national security decisions have accomplished a great deal without following either approach. In these cases, the Supreme Court and a number of lower courts have put procedural devices to surprisingly “muscular” uses. The decisions illustrate a rare but critical assertion of procedural law where the political branches fail to legislate or properly implement substantive law. This is “muscular procedure”—the invocation of a procedural rule to condition deference on coordinate branch integrity. The cases provide a framework for understanding the role of judicial review in the post-9/11 executive detention decisions, with implications for other fields of law as well.3 Many commentators have criticized the Supreme Court’s executive detention decisions as “merely” procedural rulings, pointing out that the Court has generally addressed itself to questions about adjective law or the ground rules of litigation: whether the Court has jurisdiction; whether detainees can access the courts; and whether the government is required to provide discovery, and if so, how much.4 Far fewer decisions have resolved substantive questions such as the scope of executive power and the content of individual liberty—that is, whom the Executive can hold and for how long, and the specific constitutional protections that apply. But regardless of whether a particular decision turns on “process” or “substance”—an age-old distinction that resists clear definition5—courts have affected the law of national security in profound ways by explicitly requiring the political branches to adhere to a judicially imposed standard of transparency and deliberation. In individual cases, rulings about seemingly mundane procedural issues such as discovery and evidentiary standards have accelerated the release of enemy combatant detainees who were held at Guantánamo Bay years after being cleared of any wrongdoing.6 More broadly, procedural devices have been used to smoke out and put in check Congress’s lack of oversight of the executive branch and its misguided interpretations and implementation of authorizing legislation.7 In a number of these cases, courts have resolved the merits of an enemy combatant8 challenge by scrutinizing the Executive’s adherence \ to baseline procedural safeguards—rejecting determinations based on absolute secrecy, innuendo, tentativeness, or multiple levels of hearsay, while affirming executive branch decisions satisfying minimal standards of reliability.9 In the process, the judiciary has rebuffed the President’s extreme interpretations of vague authorizing legislation,10 reexamined inadequately reasoned decisions by various arms of the executive branch in implementing a congressional delegation,11 and stimulated legislative action where Congress has failed to oversee executive decision-making through the legislative process.12 Throughout these decisions, procedure functions as a corrective to decision-making by one (or both) of the political branches that, if left undisturbed, would violate a judicially imposed standard requiring lucid, intelligible procedures.

# Deference

#### The abstention advantage outweighs and solves the disadvantage

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, <http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf>)

The larger and more striking point of the example is that, even during emergencies, when the stakes are high and time is of the essence, agents should follow rules rather than improvise. In this way, agents should be constrained.^^ This argument has potentially radical implications. Recall that the conventional objection to deference is that the risk of executive abuse exceeds the benefits of giving the executive a free hand to counter al Qaeda. Professor Holmes argues—although at fimes he hedges—that in fact the benefits of giving the President a free hand are zero: A constrained executive, like a constrained medical technician, is more effective than an unconstrained executive. If the benefits of lack of constraint are zero, then the deference thesis is clearly wrong. Constraints both prevent executive abuses such as violations of civil liberties and ensure that counterterrorism policy is most effective.

#### Alt causes to deference solving conflict

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Even if the promoters of unfettered executive power were justified in associating legal rules with ineffectiveness during emergencies, their single-minded obsession with circumventing America's allegedly "super-legalistic culture" n33 would need explaining. Let us stipulate, for the sake of argument, that civil liberties, due process, treaty obligations, and constitutional checks and balances make national-security crises somewhat harder to manage. If so, they would still rank quite low among the many factors that render the terrorist threat a serious one. None of them rivals in importance the extraordinary vulnerabilities created by technological advances, especially the proliferation of compact weapons of extraordinary destructiveness, in the context of globalized communication, transportation, and banking. None of them compares to a shadowy, dispersed, and elusive enemy that cannot be effectively deterred. And none of them is as constraining as the scarcity of linguistically and culturally knowledgeable personnel and other vital national-security assets, including satellite coverage of battle zones, which the government must allocate in some rational way in response to an obscure, evolving, multidimensional, and basically immeasurable threat.¶ The curious belief that laws written for normal times are especially important obstacles to defeating the terrorist enemy is based less on evidence and argument than on a hydraulic reading of the liberty-security relationship. One particular implication of the hydraulic model probably explains the psychological appeal of a metaphor that is patently inadequate descriptively: if the main thing preventing us from defeating the enemy is "too much law," then the pathway to national security is easy to find; all we need to do is to discard [\*318] the quaint legalisms that needlessly tie the executive's hands. That this comforting inference is the fruit of wishful thinking is the least that might be said.

#### Thus, cred matters more than flexibility

Schwarz 7 senior counsel, and Huq, associate counsel at the Brennan Center for Justice at NYU School of Law, (Frederick A.O., Jr., partner at Cravath, Swaine & Moore, chief counsel to the Church Committee, and Aziz Z, former clerk for the U.S. Supreme Court, Unchecked and Unbalanced: Presidential Power in a Time of Terror, p. 201)

The Administration insists that its plunge into torture, its lawless spying, and its lock-up of innocents have made the country safer. Beyond mere posturing, they provide little evidence to back up their claims. Executive unilateralism not only undermines the delicate balance of our Constitution, but also lessens our human liberties and hurts vital counterterrorism campaigns. How? Our reputation has always mattered. In 1607, Massachusetts governor John Winthrop warned his fellow colonists that because they were a "City on a Hill," "the eyes of all people are upon us."4 Thomas Jefferson began the Declaration of Independence by invoking the need for a "decent respect to the opinions of mankind:' In today's battle against stateless terrorists, who are undeterred by law, morality, or the mightiest military power on earth, our reputation matters greatly.¶ Despite its military edge, the United States cannot force needed aid and cooperation from allies. Indeed, our status as lone superpower means that only by persuading other nations and their citizens—that our values and interests align with theirs, and so merit support, can America maintain its influence in the world. Military might, even extended to the globe's corners, is not a sufficient condition for achieving America's safety or its democratic ideals at home. To be "dictatress of the world," warned John Quincy Adams in 1821, America "would be no longer the ruler of her own spirit." A national security policy loosed from the bounds of law, and conducted at the executive's discretion, will unfailingly lapse into hypocrisy and mendacity that alienate our allies and corrode the vitality of the world's oldest democracy.5

#### Plan destroys cred

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

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

# Daimler

#### Economy instability doesn’t affect international security

Barnett ‘9 (Thomas P.M. Barnett, senior managing director of Enterra Solutions LLC, “The New Rules: Security Remains Stable Amid Financial Crisis,” 8/25/2009, http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx)

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \* No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \* The usual frequency maintained in civil conflicts (in all the usual places); \* Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \* No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \* A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \* No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars." Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order.

#### Markets are especially resilient now

Paulsen 9/18 (Ph.D. in Economics, Iowa State University, the chief investment strategist at Wells Capital Management. An investment management industry professional since 1983, Jim develops investment strategies that assist in the management of separate institutional account assets as well as mutual and collective investment funds. In 1997, he joined Norwest Investment Management, Inc., which later combined with Wells Capital Management. Prior to that, Jim was the senior managing director and chief investment strategist for Investors Management Group in Des Moines, Iowa. Earlier, he was president of SCI Capital Management in Cedar Rapids, Iowa) September 18, 2013 “What Will Spur U.S. Economy?” http://online.barrons.com/article/SB50001424052748703320204579083050383449522.html?mod=BOL\_da\_wsbm#articleTabs\_article%3D0

Ninth, the U.S. and global economic recoveries appear to be entering a period of synchronization, which should keep overall growth stronger and less vulnerable to external shocks. For the first time, the U.S. recovery is enjoying simultaneous expansions in both the manufacturing industry and the services sector (i.e., the ISM surveys for both are above the 50 expansion level), much improved housing activity, rising home prices and a steadily falling unemployment rate. The U.S. recovery is still growing slowly, but its performance is much "broader" helping to boost and maintain confidence in the future. International economic growth has also broadened and become more synchronized. For this first time since early in this recovery, the U.S., Europe, and Japan are all growing at the same time!

#### Normal means is the DC circuit court acting and SCOTUS denying cert to make the aff a law- no link to the DA

Horowitz 13 (J.D. Candidate, 2014, Fordham University School of Law. Captain, U.S. Army, participating in the Funded Legal Education Program, April, “SYMPOSIUM: THE GOALS OF ANTITRUST: NOTE: CREATING A MORE MEANINGFUL DETENTION STATUTE: LESSONS LEARNED FROM HEDGES V. OBAMA”, Lexis)

This part examines how the D.C. District and Circuit courts struggled with the legal boundaries of detention while evaluating the habeas corpus petitions of detainees from 2008 to 2012. It focuses on how the D.C. courts analyzed what would become the three criteria for detention in section 1021(b)(2) of the NDAA: (1) being "part of" Al Qaeda or the Taliban; (2) "substantially supporting" Al Qaeda or the Taliban; and (3) being part of "associated forces" of Al Qaeda or the Taliban. n143 The Supreme Court has not decided the merits of a detention case since Boumediene in 2008. n144 Additionally, in 2011 the Supreme Court denied certiorari to six different Guantanamo detainee cases appealed from the [\*2872] D.C. Circuit. n145 As a result of its continued abstention, the Supreme Court has had little impact in shaping the substantive parameters of executive detention. n146 The substantive law of executive detention has been primarily created by the D.C. District Court and the D.C. Circuit as they evaluate habeas corpus petitions from detainees held at Guantanamo Bay. n147 As the law has evolved since 2008, the D.C. courts have often applied different or changing standards, and some believe that "the D.C. Circuit's opinions almost uniformly favor the government." n148 Additionally, some commentators have expressed concerns about "the habeas process as a lawmaking device" and fear that the standards established by the D.C. Courts are "interim steps" or "a kind of draft" until the Supreme Court eventually steps in to resolve the issues. n149 The judges of the D.C. courts recognize that they are creating law. In their opinions, they have often commented on the lack of guidance from the Supreme Court n150 and their significant role in shaping substantive detention law with each decision. n151 The subsections below focus on the three detention criteria listed in section 1021(b)(2) of the NDAA. Although these criteria were codified in the NDAA in late 2011, the D.C. courts struggled with their meaning in the years after the Boumediene decision in 2008. As one court admitted in [\*2873] 2010, "much of what our Constitution requires for this context remains unsettled." n152

#### Uniqueness overwhelms the link

Bashman 13 (Howard, Nationally Known Attorney and Appellate Commentator, "Looking Ahead: October Term 2013" CATO Supreme Court Review, )

First, in DaimlerChrysler AG v. Bauman, the Court has agreed to decide whether a court may exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum state.18 “General jurisdiction” means that the lawsuit need not concern the defendant’s actual activities within the state, or even be targeted toward the state, in which the defendant is being sued. At issue here is whether Daimler may be sued in California for alleged human-rights violations committed in Argentina by an Argentine subsidiary against Argentine residents. The Ninth Circuit answered “yes.” Chances are that a majority of the Supreme Court will disagree.

#### Capital is bulletproof

Gibson 12 (James L. Gibson, Sidney W. Souers Professor of Government (Department of Political Science), Professor of African and African-American Studies, and Director of the Program on Citizenship and Democratic Values (Weidenbaum Center on the Economy, Government, and Public Policy) at Washington University in St. Louis; and Fellow at the Centre for Comparative and International Politics and Professor Extraordinary in Political Science at Stellenbosch University (South Africa), 7/15/12, “Public Reverence for the United States Supreme Court: Is the Court Invincible?”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107587>)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London 1 and Citizens United v. Federal Election Commission 2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital. The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions. At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore 3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans. 4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”; 5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy. Political scientists have been studying the legitimacy of the Supreme Court for decades now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells: ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bulletproof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.

#### Turn popularity- The public overwhelming supports the aff

Greenwald 9 (Glenn- former Constitutional and civil rights litigator and is the author of three New York Times Bestselling books: two on the Bush administration's executive power and foreign policy abuses, and his latest book, With Liberty and Justice for Some, an indictment of America's¶ two-tiered system of justice. Greenwald was named by The Atlantic as one of the 25 most influential political commentators in the nation. He is the recipient of the first annual I.F. Stone Award for Independent Journalism, and is the winner of the 2010 Online Journalism Association Award for his investigative work on the arrest and oppressive detention of Bradley Manning, citing NYT/CBS Poll, June 18, “Overwhelming majority oppose preventive detention without charges”, http://www.salon.com/2009/06/18/detention/)

¶ A new NYT/CBS News poll just released today asked a question designed to test support for Obama’s proposal to indefinitely detain Guantanamo detainees without charges — and it found overwhelming opposition to that plan (click to enlarge):¶ ¶ ¶ The view that detainees should be charged with crimes or released is often depicted as the fringe “Far Left” view. Like so many views that are similarly depicted, it is — in reality — the overwhelming consensus view among Americans (68%). As is so often the case, it is the view depicted as the Serious Centrist position — the U.S. should keep people in cages for as long as it wants without charging them with any crime — that is the fringe view held by only a small minority (24%). While some may express surprise at the outcome of this question, it really shouldn’t be surprising: Americans are taught from childhood that one of the primary distinctions between free countries and tyrannies is that, in the former, the state lacks the power to imprison people without charging and convicting them of a crime. Is it really that surprising that an overwhelming majority of Americans see such charge-free imprisonment as wrong even when it comes to Guantanamo detainees, probably the single most dehumanized group on the planet?¶

#### That’s key to court capital

Hoekstra 3 [Valerie J. Hoekstra, Associate Professor of Political Science at ASU, *Public Reactions to Supreme Court Decisions* Cambridge University Press 2003]

In some respects, comparisons with Congress or the presidency are neither appropriate nor fair. Unlike its democratically selected and accountable counterparts, the Supreme Court appears relatively isolated from and unconstrained by public opinion. Its members do not run for election, and once in office, they essentially serve for life. While this certainly places them in an enviable position, the justices must rely on public support for the implementation of their policies since they possess “neither the purse nor the sword.” The Court’s lack of many enforcement mechanisms makes public support even more essential to the Court than it is to the other institutions. This public support may generate an important source of political capital for the Court (Choper 1980).

The court will rule on all of the things

Pieklo 9/17 ([Jessica Mason Pieklo](http://rhrealitycheck.org/author/jessica-pieklo/), Senior Legal Analyst, RH Reality Check. “6 Supreme Court Cases to Watch This Term” http://rhrealitycheck.org/article/2013/09/17/six-supreme-court-cases-to-watch-this-term/)

The United States Supreme Court term begins in October, and while the entire docket has not yet been set, already it’s shaping up to be a historic term, with decisions on abortion protests, legislative prayer, and affirmative action, just to name a few. Here are the key cases we’re keeping an eye on as the term starts up. 1. Cline v. Oklahoma Coalition for Reproductive Justice The Supreme Court looks poised to re-enter the abortion debate, and it could do so as early as this year if it takes up Cline, the first of the recent wave of state-level restrictions to reach the high court. Cline involves a [challenge to an Oklahoma statute](http://rhrealitycheck.org/article/2013/06/28/scotus-poised-to-enter-medical-abortion-ban-debate/) that requires abortion-inducing drugs, including [RU-486](http://rhrealitycheck.org/tag/ru-486/), to be administered strictly according to the specific Food and Drug Administration labeling despite the fact that new research and best practices make that labeling out of date. Such “off-label” use of drugs is both legal and widespread in the United States as science, standards of care, and clinical practice often supercede the original FDA label on a given drug. In the case of cancer drugs, for example, the American Cancer Society [notes](http://www.cancer.org/treatment/treatmentsandsideeffects/treatmenttypes/chemotherapy/off-label-drug-use) that “New uses for [many] drugs may have been found and there’s often medical evidence from research studies to support the new use [even though] the makers of the drugs have not put them through the formal, lengthy, and often costly process required by the FDA to officially approve the drug for new uses.” Off-label use of RU-486 is based on the most recent scientific findings that suggest lower dosages of the drug and higher rates of effectiveness when administered in conjunction with a follow-up drug (Misoprostol). According to trial court findings, the alternative protocols are safer for women and more effective. But, according to the state and defenders of the law, there is great uncertainty about these off-label uses and their safety. When the issue reached the supreme court of Oklahoma, the court held in a very brief opinion that the Oklahoma statute was facially invalid under [Planned Parenthood v. Casey](http://www.oyez.org/cases/1990-1999/1991/1991_91_744). In Casey, a plurality of justices held that a state may legitimately regulate abortions from the moment of gestation as long as that regulation does not impose an undue burden on a woman’s right to choose an abortion. Later, in [Gonzales v. Carhart](http://www.oyez.org/cases/2000-2009/2006/2006_05_380), a majority of the Supreme Court, led by Justice Anthony Kennedy, interpreted Casey to allow state restrictions on specific abortion procedures when the government “reasonably concludes” that there is medical uncertainty about the safety of the procedure and an alternative procedure is available. Cline, then, could present an important test on the limits of Casey and whether, under Gonzales, the Court will permit states to ban medical abortions. But it’s not entirely clear the Court will actually take up Cline. At the lower court proceedings, the challengers argued that the Oklahoma statute bars the use of RU-486’s follow-up drug (Misoprostol) as well as the use of Methotrexate to terminate an ectopic pregnancy. If so, the statute then bars both any drug-induced abortion and eliminates the preferred method for ending an ectopic pregnancy. Attorneys defending the restriction deny the law has those effects, and do not argue that if it did such restrictions would be constitutional. With this open question of state law—whether the statute prohibits the preferred treatment for ectopic pregnancies—the Supreme Court told the Oklahoma Supreme Court those disputed questions of state law. So a lot depends on how the Oklahoma Supreme Court proceeds. Should the Oklahoma Supreme Court hold that the Oklahoma statute is unconstitutional because it prohibits the use of Misoprostol and Methotrexate, this case could be over without the Supreme Court weighing in. But if the Oklahoma Supreme Court invalidates the law insofar as it prohibits alternative methods for administering RU-486, the Supreme Court will almost certainly take a look. 2. Town of Greece v. Galloway The Roberts Court is set to weigh in on the issue of when, and how, [government prayer](http://rhrealitycheck.org/article/2013/05/24/reason-for-concern-as-roberts-court-agrees-to-hear-government-prayer-case/) practices can exist without violating the Establishment Clause’s ban on the intermingling of church and state. In [Marsh v. Chambers](http://www.oyez.org/cases/1980-1989/1982/1982_82_23), the Supreme Court upheld Nebraska’s practice of opening each legislative session with a prayer, based largely on an unbroken tradition of that practice dating back to the framing of the Constitution. In Marsh, the Court adopted two apparent limits to a legislative prayer practice: The government may not select prayer-givers based on a discriminatory motive, and prayer opportunities may not be exploited to proselytize in favor of one religion or disparage another. Prior to 1999, the town of Greece, New York, opened every legislative session with a moment of silence. Then, in 1999 and at the request of the town’s supervisor, the town switched to opening its legislative sessions with a prayer. Nearly all of those prayers were delivered by Christian clergy members and, unlike other city councils, there was no requirement that the prayers be inclusive or non-denominational. City officials selected speakers off a list of local religious leaders provided by the Greece Chamber of Commerce. From 1999 through 2007, Christians delivered every single invocation prayer, in part because the list provided by the area Chamber of Commerce included only Christian religious officials despite the fact that other denominations exist in the community. The practice was challenged by a group of citizens who argued it violated the Establishment Clause. The U.S. Court of Appeals for the Second Circuit acknowledged that the Town of Greece had not violated either of Marsh’s limits in its practices, but still invalidated the town’s practices. Applying the “reasonable observer” standard drawn from [County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter](http://www.oyez.org/cases/1980-1989/1988/1988_87_2050), the court concluded that a reasonable observer would view the town as endorsing Christianity over other religions, because its process of composing a list of prayer-givers from clergy within its geographic boundaries and volunteers virtually guaranteed the person delivering the prayer would be a Christian, because most of the prayers contained uniquely Christian references, and because prayer-givers invited participation and town officials participated in the prayers. The reasonable observer test appears headed for a fall. In County of Alleghany, Justice Kennedy in his dissent criticized the reasonable observer test as insensitive to traditions and unworkable for governments and courts to apply. He argued that religious accommodations are consistent with the Establishment Clause as long as they do not coerce attendance at, or participation in, a religious observance, or directly fund religion. Justice Kennedy’s perspective is an important one. To begin with, the makeup of the Court is different now than the last time it considered these issues. Justice Sandra Day O’Connor has been replaced by Justice Samuel Alito, for example, and the Court has veered hard to the right. It is conceivable then that the Court could view this case as an opportunity to abandon, or at least reconsider and revise, the reasonable observer test. If so, the decision could affect not only the constitutionality of legislative prayers, but also all religious accommodations, including the public display of religious symbols. It could also offer a glimpse into the Court’s thinking on another religious accommodation likely to come before it this term: the challenges under the [Religious Freedom Restoration Act](http://www.law.cornell.edu/uscode/text/42/chapter-21B) to the [contraception benefit](http://rhrealitycheck.org/tag/birth-control-benefit/) in the Affordable Care Act. 3. McCullen v. Coakley Regardless of whether or not the Supreme Court ultimately takes up Cline v. Oklahoma Coalition for Reproductive Justice, the Court will take up the issue of abortion clinic protests in [McCullen v. Coakley](http://www.scotusblog.com/case-files/cases/mccullen-v-coakley/), a challenge that looks at the constitutionality of Massachusetts’ clinic buffer zone law. The last time the Supreme Court looked at the issue of clinic buffer zones was in [Hill v. Colorado](http://www.oyez.org/cases/1990-1999/1999/1999_98_1856). In Hill, the Court held that a law limiting protest and “sidewalk counseling” within eight feet of a person entering a health-care facility in order to protect persons entering the facility from unwanted speech did not violate the First Amendment. Critical to the Court’s decision in Hill was its conclusion that the prohibition was content neutral because it arguably prevented both pro-choice and anti-choice speakers from entering the eight-foot zone. The Massachusetts statute at issue in McCullen takes a different approach to get to the same purpose as the law upheld in Hill. The Massachusetts law prohibits anyone from entering a public sidewalk within 35 feet of a reproductive health-care facility, but exempts from that buffer employees of the facility acting within the scope of employment. The Massachusetts statute raises questions not resolved in Hill, including whether the employee exemption renders the Massachusetts statute content-based, meaning that it places a limitation on free speech depending on the subject matter, since arguably employees can use the exemption to deliver pro-choice messages. The Massachusetts statute differs in two other potentially significant differences also. First it applies only to reproductive health-care facilities, making its abortion-specific purpose more apparent, and has a larger buffer zone, making conversational speech more difficult. Ultimately, this case may end up being more about whether the Supreme Court sympathizes with anti-abortion protestors rather than the differences between the Massachusetts statute and Hill. In Hill, the justices in the majority were especially sympathetic to the plight of patients who want to undergo a private medical procedure in peace, without being subjected to the emotional turmoil of confrontational protests. The dissenters in Hill now find themselves in the conservative majority under the Roberts Court, a fact that could drive the outcome here. In Hill, conservative justices like Antonin Scalia ignored the plight of patients and instead accused the majority of creating a special brand of reduced First Amendment protection for abortion protesters that would be viewed as intolerable if applied to any other speaker. And that perspective shift—from concerns over patients’ rights to concerns over protesters’ rights—could make all the difference in this case. 4. McCutcheon v. Federal Election Commission If you thought Citizens United was bad, just wait until you hear about [McCutcheon v. Federal Election Commission](http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/) (FEC). In [Citizens United v. FEC](http://www.oyez.org/cases/2000-2009/2008/2008_08_205), the Court held that restrictions on independent campaign expenditures that prohibited corporations from direct election spending violate the First Amendment. As bad as that decision was, it left intact the underlying holding in [Buckley v. Valeo](http://www.oyez.org/cases/1970-1979/1975/1975_75_436) that Congress may limit campaign contributions on the reasoning that limits on campaign contributions are thought to impinge less on First Amendment freedoms and have a stronger nexus to preventing corruption. At issue in McCutcheon is this underlying holding in Buckley when the Court considers the constitutionality of federal aggregate contribution limits—that is, the total amount that can be contributed to all candidates, party committees, or political action committees (PACs). Those are in contrast to base limits on candidate contributions that set limits on individual donations. In Buckley, the Court summarily upheld aggregate contribution limits as a means of preventing circumvention of the base limits on candidate contributions. The rationale was that, without aggregate limits, persons could circumvent the base limits on candidate contributions through massive un-earmarked contributions to political committees likely to contribute to a person’s favored candidate. The Roberts Court appears eager to take up aggregate limits because they limit not only the amount a person can contribute to a candidate, but the number of persons to whom a person can make a full base-level contribution. These kinds of restrictions appear all but certain to fall in a post-Citizens United world. At the time Buckley was decided, there were no base limits on party committees or PACs. Now there are. If the Supreme Court feels those new base limits adequately address the risk of circumvention that justified Buckley’s upholding aggregate contribution limits, then by Supreme Court logic there’s no reason to keep the aggregate limits in place. The Obama administration is defending the aggregate limits, arguing it is just as easy now to circumvent the base limits as when Buckley was decided, which is why the aggregate limits are necessary. Given the slow unwind of campaign finance law by the Roberts Court, it seems unlikely they will be persuaded by the Obama administration’s reasoning. 5. Schuette v. Coalition to Defend Affirmative Action If the Roberts Court appears set on dismantling individual contribution limits, it also appears set to strike another blow to affirmative action plans. Last summer, in [Fisher v. University of Texas at Austin](http://www.law.cornell.edu/supct/cert/11-345), the Court held that universities have limited authority to consider race in admissions to further diversity. At issue in [Schuette](http://www.scotusblog.com/case-files/cases/schuette-v-coalition-to-defend-affirmative-action/) is whether or not Michigan violated the Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public university admissions decisions. In 2006, Michigan voters approved the Michigan Civil Rights Initiative (MCRI), a measure that amended the state constitution to prohibit all use of race in public university admissions, as well as in public contracting and employment. A coalition of African-American student groups, faculty members, and public-sector labor unions immediately challenged the MCRI as a violation of the Fourteenth Amendment. In answering that question, the Court will have to tackle the restricting doctrine. Under the restricting doctrine, a state may not remove authority to decide a racial issue from one political entity and lodge it in another when doing so creates a more burdensome political hurdle. The Court has applied that doctrine only twice, first in [Hunter v. Erickson](http://holmes.oyez.org/cases/1960-1969/1968/1968_63), to invalidate a reallocation of authority over the decision to prohibit racial discrimination in housing, and then in [Washington v. Seattle School District No. 1](http://www.oyez.org/cases/1980-1989/1981/1981_81_9), to invalidate a reallocation of authority over the decision whether to bus students to achieve racial integration in the schools. The question before the Roberts Court is whether the political restructuring doctrine invalidates the MCRI. The Sixth Circuit Court of Appeals held that it did, because affirmative action is a racial issue of particular concern to racial minorities, and it is more difficult for minorities to obtain favorable action through the constitutional amendment process. In defending the MCRI, Michigan argues the political restructuring doctrine applies to reallocations of authority over measures to ensure equal opportunity, not those that give racial preference. It’s difficult to see the distinction, especially given the connection between graduating college and economic opportunity, but it is a distinction Michigan stands by. Michigan also argues that the political restructuring doctrine should not apply to admission decisions made by unelected university officials because they are not part of any “political process” as envisioned in earlier decisions. Should the Court accept Michigan’s argument, voters in any state dissatisfied with the affirmative action policies at their state universities could follow Michigan’s lead and vote to eliminate them through constitutional amendment. On the other hand, a decision finding the MCRI did in fact violate equal protection guarantees of the 14th Amendment would protect current policies from falling victim to voter dissatisfaction like in Michigan. 6. Township of Mount Holly v. Mount Holly Gardens Citizens in Action The Supreme Court is also poised to gut federal housing discrimination protections when it considers [whether to limit the federal housing discrimination law](http://www.scotusblog.com/case-files/cases/mount-holly-v-mt-holly-gardens-citizens-in-action-inc/) to cases of actual and proven bias against racial minorities. Mount Holly, New Jersey, argues it cannot be held liable for housing discrimination for redeveloping a depressed neighborhood and reducing the number of homes that are available to African Americans and Latinos. Specifically, the Roberts Court will examine whether the Fair Housing Act forbids actions by cities or mortgage lenders that have a “discriminatory effect” on racial minorities. According to census data, Mount Holly has a white majority. The town council decided that one neighborhood of about 330 homes was “in need of redevelopment.” Known as Mount Holly Gardens, this neighborhood was home to most of the Black and Latino residents in the town. The town council then voted to buy all the homes in the Gardens area for prices ranging from $32,000 to $49,000. They were to be replaced with new homes ranging from $200,000 to $250,000. In 2008, a community group representing the Gardens residents sued the city, arguing that its redevelopment plan was discriminatory and illegal because it would have a disparate impact on low-income African Americans and Latinos. City officials counter that they were not trying to displace minorities—rather, they were trying to improve a blighted part of town, not engage in illegal discrimination. Furthermore, they claim, the [Fair Housing Act](http://www.justice.gov/crt/about/hce/title8.php) does not cover these kinds of discrimination claims. Given the Roberts Court’s willingness to severely restrict the scope of other key pieces of civil rights legislation, like Title VII and the Voting Rights Act, there’s plenty of reason to believe the Fair Housing Act is the next to get gutted. In addition to these high-profile challenges, the Supreme Court will also look at whether individual government workers can be held liable for [age discrimination claims](http://www.scotusblog.com/case-files/cases/madigan-v-levin/), whether or not federal labor laws allow employees to [change clothes at work](http://www.scotusblog.com/case-files/cases/sandifer-v-united-states-steel-corporation/), and the extent of President Obama’s [recess appointment powers](http://www.scotusblog.com/case-files/cases/national-labor-relations-board-v-noel-canning/). In many ways, the Roberts Court is picking up right where it left off last term—with an eye toward narrowing as much as possible the reach and effect of the greatest achievements of the civil rights movement.

#### Hedges appeal coming out- the court will rule on INDEFINITE DETENTION

RT 9/3 (Supreme Court to rule on fate of indefinite detention for Americans under NDAA http://rt.com/usa/ndaa-scotus-hedges-suit-359/)

The United States Supreme Court is being asked to hear a federal lawsuit challenging the military’s legal ability to indefinitely detain persons under the National Defense Authorization Act of 2012, or NDAA. According to Pulitzer Prize-winning journalist Chris Hedges — a co-plaintiff in the case — attorneys will file paperwork in the coming days requesting that the country’s high court weigh in on Hedges v. Obama and determine the constitutionality of a controversial provision that has continuously generated criticism directed towards the White House since signed into law by President Barack Obama almost [two years ago](http://rt.com/trends/national-defense-authorization-act-indefinite-detention/) and defended adamantly by his administration in federal court in the years since.

# 2AC Congress CP

#### CP doesn’t solve and links to the net-benefit- Congressional statues would be reviewed by the Supreme Court, but wouldn’t be effective and would take years to solidify

Eviatar 10 (Daphne- Senior Associate in Human Rights First’s Law and Security Program, June 10, “Judges to Congress: Don't Legislate Indefinite Detention”, http://www.huffingtonpost.com/daphne-eviatar/judges-to-congress-dont-l\_b\_607801.html)

For months now, certain commentators and legislators have been arguing that Congress needs to pass a new law authorizing the indefinite detention without charge or trial of suspected terrorists and their supporters.¶ On its face, that would seem to violate some basic tenets of the U.S. Constitution. But the U.S. government is already detaining hundreds of suspects captured abroad at Guantanamo Bay and elsewhere. The question is whether Congress should expand that authority and define it in more detail.¶ Writers such as Benjamin Wittes of the Brookings Institution and lawmakers such as Senator Lindsey Graham of South Carolina argue that even though hundreds of people have been detained over the last eight years at Guantanamo Bay, the law that justifies their detention or mandates their release isn't clear, and Congress needs to step in and make new rules.¶ In fact, as a new report issued today by 16 former federal judges makes clear, that's nonsense. The people in the best position to decide when military detention is legal are already doing just that. The new report, published by Human Rights First and the Constitution Project, explains exactly how that process is working -- and demonstrates that it's actually working very well. Responding to a series of habeas corpus petitions, where Guantanamo detainees have asked the federal court to review the legality of their detentions, federal district court judges in Washington, D.C., have already issued written opinions concerning 50 different detainees that set out the legal standard for indefinite wartime detention, and which cases do and do not meet it.¶ The claim by Wittes and Graham that judges are somehow overstepping their bounds and usurping the role of Congress reflects a fundamental misunderstanding of how the federal courts and judges work. In fact, the courts are doing just what they're supposed to do: interpret the law.¶ The reason judges are so well-situated to explain the contours of U.S. detention authority is because, according to judicial rulings, the right to detain arises out of existing laws, including the Authorization for Use of Military Force against Terrorists, or AUMF, passed by Congress in 2001; the traditional law of war; and the U.S. Constitution.¶ Traditionally, a government at war can detain fighting members of the enemy's forces, under humane conditions, until the war is over. Although that authority is less clear when the government is fighting a loose coalition of insurgent forces around the world rather than another country, the Supreme Court has said that at least in some circumstances, pursuant to the AUMF, the United States can detain enemy fighters seized on the battlefield.¶ It's the Supreme Court's rulings on the subject, combined with the law of war and the mandates of the U.S. Constitution, that highly experienced federal judges have been applying to the habeas corpus cases that have come before them. Applying those rulings, they've developed a clear and consistent body of law that explains what kind of evidence the government needs to have amassed against a suspected insurgent to justify his military detention.¶ Under the D.C. District Court's rulings, for example, Fouad Al Rabiah, a 43-year-old, 240-pound, Kuwaiti Airways executive with a long history of volunteering for Islamic charities who'd been discharged from compulsory military service in Kuwait due to a knee injury, and who suffered from high blood pressure and chronic back pain, did not meet the requirement of being "part of" or having "substantially supported" al Qaeda, the Taliban or associated forces. Although seized while attempting to leave Afghanistan in 2001, by the time of Al Rabiah's hearing, even the government had decided the witnesses who claimed he'd helped al Qaeda weren't credible. The government's own interrogators didn't believe his "confessions," which the court determined had been coerced and were "entirely incredible."¶ On the other hand, Fawzi Al Odah, also Kuwaiti, did meet the law's detention standards. The same judge found that he'd attended a Taliban training camp, learned to use an AK-47, traveled with other armed fighters on a route common to jihadists, and took directions from Taliban leaders - all making it more likely than not that he was a member of Taliban fighting forces.¶ Still, despite the courts' careful analysis in these cases, Congress could step in and write its own new law on indefinite detention. But how can any one statute possibly address all the vastly different factual scenarios, many spanning several countries and decades, that constitute the government's claims that any particular individual is detainable? What's more, any new law will still have to meet the requirements of the U.S. Constitution, and the Supreme Court gets the ultimate say on that. Any new statute passed by Congress, then, would likely be challenged as soon as it's applied, causing more confusion about what the law really is until the U.S. Supreme Court weighs in on that new statute several years later.¶ The federal judges of the D.C. District Court and Court of Appeals are already way ahead of that game. In addition to the trial court opinions, the appellate court recently issued its own opinion setting out the law of detention and the government's constitutional authority. That decision may be appealed to the Supreme Court, whose opinion would set out the binding standard that every judge and future U.S. administration will have to follow.¶ The upshot of all this is that if Congress legislates some new detention standard now, it will actually take a lot longer to get a clearly-defined and binding law that guides the government than it would if Congress just let the courts continue to play the role they're supposed to: deciding the legality of government detention.¶ Wittes, Graham and others may secretly be hoping that Congress will legislate in this area anyway and try to expand the government's indefinite detention autuhority beyond Guantanamo Bay to reach even suspects arrested on U.S. soil. But that would create a whole new constitutional firestorm, resulting in exactly the opposite of what they say they're after: a clear and reliable statement of the law.

# 2AC K

#### Deconstructing law fails to regulate detention

Jenks and Talbot-Jensen 11 (INDEFINITE DETENTION UNDER THE LAWS OF WAR Chris Jenks\* & Eric Talbot Jensen\*\* Lieutenant Colonel, U.S. Army Judge Advocate General's Corps. Presently serving as the Chief of the International Law Branch, Office of The Judge Advocate General, Washington D.C. The views expressed in this Article are those of the author and not The Judge Advocate General's Corps, the U.S. Army, or the Department of Defense. \*\* Visiting Assistant Professor, Fordham Law School. The authors wish to thank Sue Ann Johnson for her exceptional research and editing skills, and the organizers and attendees at both the 3rd Annual National Security Law Jtinior Faculty Workshop at the University of Texas School of Law, where we first discussed the ideas for this article, and the Stanford Law and Policy Review National Defense Symposium, where we first presented the finished product. STANFORD LAW & POLICY REVIEW [Vol. 22:1] Page Lexis)

Those who would deconstruct the law of war as applied to detention stemming from armed conflict with non state actors may achieve victory, but in an academic, and, practically speaking, pyrrhic sense. Arguing that the Geneva Conventions for Prisoners and Civilians do not, on their face, apply to members of al-Qaeda or the Taliban may be correct, and in more than one way. But in so arguing, the deconstructionist approach removes a large portion of intemationally recognized and accepted provisions for regulating detention associated with armed conflict—^the Geneva Conventions—^while leaving the underlying question of how to govern detention unanswered. At some point, even the deconstmctionist must shift to positivism and propose an altemative, an altemative we submit would inevitably resemble that which is already extant in the law of war. Moreover, while there has been discussion about the strained application of the Geneva Conventions and Additional Protocols to states combating transnational terrorism, attempts at a new convention have gained little traction. Our approach is more an attempt at pragmatism than radicalism—there are individuals currently detained, purportedly indefinitely and under the law of war. Yet despite years of such detention, two administrations have provided little if any information on what exactly such detention means, how and by what it is govemed, and if and how it ends. Conflating aspects of intemationally recognized law of war conventions allows for a transparent process that could be promulgated now. Whether for the up to fifty or so individuals currently detained at Guantanamo or for those who may be detained in the future, we posit that the law of war provides a legitimate model for indefinite detention. And, as the Walsh Report recognized,^' the longer detainees are held, the more concern for their individual situations must be given. We therefore analyze the complete protections provided by the law of war and advocate that all of them, over time and to varying degrees, be applied to the detainees in Guantanamo. In this way, detention under the laws of war can provide a humane system of indefinite detention that strikes the right balance between the security of the nation and the rights of individuals

#### Pragmatic reasoning is correct- prior questions cause policy failure

Kratochwil, IR Prof @ Columbia, 8 [Friedrich Kratochwil is Assistant Professor of International Relations at Columbia University, Pragmatism in International Relations “Ten points to ponder about pragmatism” p11-25]

Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” ( *prattein*), thereby preventing some false starts. Since, as historical beings placed in a specific situations, we do not have the luxury of deferring decisions until we have found the “truth”, we have to act and must do so always under time pressures and in the face of incomplete information. Precisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear *ex ante*, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties.

 Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter

#### Using debate as a space to challenge indefinite detention via legal strategy is effective pedagogy, especially as the starting point for an liberatory social formation

Serrano and Minami, ‘03 (Susan, Project Director, Equal Justice Society; J.D. 1998, William S. Richardson School of Law, University of Hawai', partner, Minami, Lew & Timaki, Asian Law Journal, Korematsu v. United States: A "Constant Caution" in a Time of Crisis, p. Lexis)

Today, a broadly conceived political identity is critical to the defense of civil liberties. In 1942, Japanese Americans stood virtually alone, without allies, and suffered the banishment of their entire race. Forty years later, Japanese Americans, supported by Americans of all colors, were able to extract an apology and redress from a powerful nation. That lesson of the need for political empowerment was made even more obvious after September 11, 2001, when Arab and Muslim American communities, politically isolated and besieged by hostility fueled by ignorance, became targets of violence and discrimination. In the aftermath of September 11, Japanese Americans knew from history that the United States, which turned on them in 1942, could repeat itself in 2001. Therefore, on September 12, 2001, the Japanese American Citizens' League, the oldest Asian American civil rights organization in the country, immediately issued a press release warning against racial discrimination against Arab and Muslim Americans and supporting their  [**[\*49]**](http://www.lexis.com/research/retrieve?_m=bee887063044547ab12532f483726d11&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAk&_md5=f0e31afba24c7755402ea0ead0b3cfb6&focBudTerms=%2522serrano%2522%20and%20%2522minami%2522%20and%20%2522korematsu%2522&focBudSel=all)  civil rights.n60 Other Japanese American individuals and groups have offered their friendship, political support, and solidarity with Arab and Muslim Americans. Japanese Americans also knew from their Redress experience that political power was the strongest antidote. The coram nobis legal teams understood the political dimensions of their cases and adopted a course of litigation that would discredit the Wartime Cases by undermining the legal argument that the Supreme Court had legitimized the World War II exclusion and detention. This impaired (though did not overturn) the value of Korematsu, Hirabayashi, and Yasui as legal precedents for mass imprisonments of any definable racial group without due process. The even larger vision of these cases, however, was the long-term education of the American public. Many still believed (and continue to believe) that there were valid reasons for incarcerating Japanese Americans en masse: the coram nobis cases strongly refuted that notion and boldly illuminated the essentially political nature of the judicial system. In doing so, the coram nobis cases have contributed to the public's education about the frailty of civil rights and the evanescence of justice in our courts. As such, these cases highlight the need for continuing political activism and constant vigilance to protect our civil rights. In today's climate of fear and uncertainty, we must engage ourselves to assure that the vast national security regime does not overwhelm the civil liberties of vulnerable groups. This means exercising our political power, making our dissents heard, publicizing injustices done to our communities as well as to others, and enlisting allies from diverse communities. Concretely, this may mean joining others' struggles in the courts, Congress, schools and union halls; organizing protests against secret arrests, incarcerations, and deportations; building coalitions with other racial communities; writing op-ed essays or letters to politicians; launching media campaigns; donating money; and writing essays and articles.n61 Through these various ways, "our task is to compel our institutions, particularly the courts, to be vigilant, to "protect all.'" n62 The lesson of the Wartime Cases and coram nobis cases taken together is not that the government may target an entire ethnic group in the name of national security; the cases teach us instead that civil rights and liberties are best protected by strongly affirming their place in our national character, especially in times of national crisis. As Fred Korematsu avowed nearly twenty years ago, we must not let our governmental  **[[\*50]](http://www.lexis.com/research/retrieve?_m=bee887063044547ab12532f483726d11&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtz-zSkAk&_md5=f0e31afba24c7755402ea0ead0b3cfb6&focBudTerms=%2522serrano%2522%20and%20%2522minami%2522%20and%20%2522korematsu%2522&focBudSel=all)**  institutions mistreat another racial group in such a manner again. To do this, we must "collectively [turn] the lessons learned, the political and economic capital gained, the alliances forged and the spirit renewed, into many small and some grand advances against continuing harmful discrimination across America."n63 We must become, as Professor Yamamoto has argued, "present-day social actors, agents of justice, because real, hard injustices are occurring all around us every day to Asian Americans and other racial communities and beyond." n64

.

#### Detention DA to the alt- only opening up the courts to petitions divests Obama’s authority to detain social justice activists- the impact is forced internment

Stephen Lendman (Research Associate of the Center for Research on Globalization) July 19, 2013 “US Courts Approve Indefinite Detention and Torture” http://www.mathaba.net/news/?x=633237

Fundamental freedoms are illusory. They're vanishing. They lie in history's dustbin. National Defense Authorization Act (NDAA) provisions let federal troops arrest and imprison US citizens and foreign nationals. They can do it at home or abroad. They can do it anywhere. They can be held indefinitely uncharged and untried. They can be tortured. They can be forced to admit crimes they didn't commit. They can be murdered on Obama's say. Police state lawlessness rules. It's the law of the land. Obama's a tinpot despot. He's judge, jury and executioner. Fundamental rights are gone. They don't apply. Anyone can be arrested, imprisoned, held indefinitely and tortured for doing the right thing. Protesting imperial lawlessness, social injustice, corporate crime, government corruption, or political Washington run of, by and for rich elites can be criminalized. So can free speech, assembly, religion, or anything challenging America's right to kill, destroy and pillage with impunity. It's official. Tyranny rules. America's unsafe to live in. There's no place to hide. Challenging diktat power's criminalized. Police state ruthlessness targets anyone trying. Military dungeons or secret FEMA concentration camps await victims. America's no democracy. It's not beautiful. It's a battleground. It's nightmarish for countless numbers affected. Law Professor Jonathan Turley called NDAA authority ruthlessness "that would have horrified the Framers." "Indefinitely detaining citizens is something (they) were intimately familiar with and expressly sought to bar in the Bill of Rights." Other legal experts agree. Habeas, due process, and other fundamental rights are too precious to lose. They're now quaint artifacts. They're gone. They lie in history's dustbin. Tyranny replaced them. America's no different from other totalitarian states. It's ruthless. It's militarized for control. It's concentrated money power running things. It's fascism writ large. It's wrapped in the American flag. It's scapegoating challengers. It's out-of-control militarism. It's national security justification to brutalize and oppress. It's controlling the message. It's convincing people fundamental rights are abolished for their own good. It's getting most people to believe it. It's stripping off America's mask. It's showing its true face. It's menacing, cruel and unjust. Federal court decisions explain. In 2012, Hedges et al v. Obama challenged NDAA provisions. Last September, Southern District of New York federal Judge Katherine B. Forrest blocked Obama's indefinite detention law. She's the exception, not the rule. She called it "facially unconstitutional: it impermissibly impinges on guaranteed First Amendment rights and lacks sufficient definitional structure and protections to meet the requirements of due process." She added that: "If, following issuance of this permanent injunctive relief, the government detains individuals under theories of ‘substantially or directly supporting’ associated forces, as set forth in” the National Defense Authorization Act, “and a contempt action is brought before this court, the government will bear a heavy burden indeed." At issue is section 1021 of the 2012 National Defense Authorization Act (NDAA). It states in part: "Congress affirms that the authority of the president to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (AUMF) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war." "Covered persons" are defined as: Anyone "who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces." Plaintiffs argued that broad, ambiguous language like "substantially supported," "associated forces" and "directly supported" leaves them and others vulnerable to lawless indefinite detention. Legally meeting someone rightly or wrongly called a terrorist, staying in their homes, inviting them to speak at conferences or in panel discussions, interviewing them, or socializing with them can be called dealing with the enemy. So can writing anti-imperial articles, exposing and/or discussing US crimes of war and against humanity, and participating in anti-war protests. Hedges et al won. Obama officials appealed. On Wednesday, the New York Second Circuit Court of Appeals overturned Judge Forrest's ruling. Three judges did so unanimously. They did it shamelessly. They called indefinite detention uncharged and untried OK. They said Hedges et al lacked standing. It's because federal law "says nothing at all about the president's authority to detain American citizens." False! NDAA covers everyone. US citizens are as vulnerable as foreign nationals. Appeals Court Judge Lewis Kaplan said non-citizens "failed to establish standing because they have not shown a sufficient threat that the government will detain them." Plaintiffs' lawyer Carl Mayer said "(w)e're reviewing what our options are, but I strongly suspect that we will appeal to the Supreme Court." The ruling came on the same day the District of Columbia Court of Appeals overturned a lower court ruling. At issue are oppressive Guantanamo prisoner genital area searches. District Court Judge Royce Lamberth ordered them stopped. Appeals Court judges overruled him. They authorized what's conducted to degrade, harass and humiliate. They're unrelated to security. Separately on July 16, Washington, DC District Court Judge Rosemary Collyer ruled against three Guantanamo hunger strikers. They sued to stop force-feeding. It's lawless. It's medically unethical. It's excruciatingly painful. It's torture as international law defines it. Collyer supports it. Her ruling ignored inviolable laws. She's contemptuously dismissive. She said: "There is nothing so shocking or inhumane in the treatment of petitioners - which they can avoid at will - to raise a constitutional concern that might otherwise necessitate review." "Although framed as a motion to stop feeding via nasograstric tube, Petitioners' real complaint is that the United States is not allowing them to commit suicide by starvation." According to the World Federation of Right to Die Societies: "All competent adults - regardless of their nationalities, professions, religious beliefs, and ethical and political views - who are suffering unbearably from incurable illnesses should have the possibility of various choices at the end of their life." "Death is unavoidable. We strongly believe that the manner and time of dying should be left to the decision of the individual, assuming such demands do not result in harm to society other than the sadness associated with death." Brutalizing indefinite Guantanamo detention constitutes an "incurable disease." It includes hopelessness and unbearable suffering. It prevents any chance for freedom. It denies all rights. Death's unavoidable. It'll come sooner, not later. Dying with dignity's excluded. Permitting it is fundamentally right. Not according to kangaroo federal court justice. Collyer's ruling replicated Judge Glady Kessler's July 10 decision. On the one hand, she called force-feeding "painful, humiliating and degrading." On the other, she abstained from ruling responsibly. She wrongfully claimed federal courts have no authority over Guantanamo. Obama alone has "authority to address the issue," she said. False! Kessler doesn't know the law. Maybe she does but spurned it. She ignored High Court rulings. In Rasul v. Bush (June 2004), the Supreme Court held that Guantanamo detainees may challenge their detention in civil court. In response, Congress enacted the 2005 Detainee Treatment Act. It subverted the ruling. In Hamdan v. Rumsfeld (June 2006), the High Court held that federal courts retain jurisdiction over habeas cases. It ruled against military commissions. It said they lack "the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions." In response, Congress passed the 2006 Military Commissions Act (MCA). In updated form, it's the law of the land. Supreme Court justices can challenge it. They can strike it down. They haven't done so. Perhaps a future court will. In Boumediene v. Bush (June 2008), it affirmed habeas rights for Guantanamo detainees. It let them petition for release from lawlessly imposed custody. Justice Anthony Kennedy wrote the majority opinion. He said America maintains complete jurisdiction over Guantanamo regardless of its offshore location. He opposed political branches "govern(ing) without legal restraint." He expressed concerns about usurping "power to switch the Constitution on or off at will." Doing so "lead(s) to a regime in which they, not this Court, say 'what the law is.' " "Even when the United States acts outside its borders, its powers are not 'absolute and unlimited' but are subject 'to such restrictions as are expressed in the Constitution.' " He called habeas "an indispensable mechanism for monitoring the separation of powers." "The test for determining (its) scope must not be subject to manipulation by those whose power it is designed to restrain." This bedrock right has no adequate substitute. It doesn't matter. Justice in America no longer exists. Diktat power replaced it. Perhaps NDAA enactment was when freedom in America died. Post-9/11, it's been on the chopping block for elimination altogether. Tyranny's the law of the land. It's institutionalized. Fundamental rights don't matter. Democracy's a four-letter word. Out-of-control power runs things. It's unaccountable. Nonbelievers aren't tolerated. The worst is yet to come.

# 1ar

No link to demopromo bad- starting from the position that flawed US policy creates bad norms solves your offense

Youngs 11 – Richard Youngs, President, Fundación para las Relaciones Internacionales y el Diálogo Exterior, a think tank based in Madrid; Assistant Professor of Politics & International Studies at the University of Warwick, January 2011, “Misunderstanding the Maladies of Liberal Democracy Promotion,” online: <http://www.fride.org/download/WP106_Liberal_Democracy2_jan11.pdf>

Democracy promotion has lost traction around the world. This atrophy has myriad causes and a range of consequences. One of its results is that calls have become more audible for a fundamental rethink of what type of ‘democracy’ should be supported in different regions. Many now chorus the view that the ‘democracy’ in ‘democracy promotion’ requires re-examination. Most critics of international policies berate Western governments for an inflexible and inappropriate adherence to a specific form of ‘liberal democracy’. They are right to take democracy promoters to task for the many unduly narrow ways in which they conceive political reform. But it is not convincing to argue that democracy promotion’s most serious problem today is its excessive adherence to a ‘liberal’ form of democracy. This critique fails to grasp the way in which democracy support policies have evolved and confuses what is entailed in meeting local demands for reform in nondemocratic states. The routine admonishments cast at Western governments under the now standard critique of liberal democracy do not weather the scrutiny of empirical evidence. They risk becoming widely accepted myths that have little grounding in reality. Democracy promoters do not overwhelmingly prioritise the procedural over the social and substantive elements of reform; they do not seek deliberately to hollow out the state; they do not conflate economic with political liberalisation; they are not brow-beaten into backing façade democracyby multinational companies; they are not fixated with elections; and they are not completely unreceptive to alternative forms of representation.The problem with democracy promotion lies not in its unbending and overly zealous imposition of liberal norms. Rather, its most serious pathology is governments’ failure to defend core liberal norms in a way that would allow local variations in and choices over democratic reform - along with genuine civic empowermentand emancipation - to flourish. Current criticisms of the democracy agenda risk pushing policy deliberations inexactlythe opposite direction to their required improvement.