# 1AC Plan Text

#### The United States federal judiciary should apply a clear statement principle to the statutorily defined indefinite detention war powers authority of the President of the United States on the grounds that executive indefinite detention violates the Suspension Clause.

# 1AC Afghanistan

#### Advantage 1 is Afghanistan

#### Afghanistan will implement indefinite detention policies- their judiciary is modeled on the United States

Rodgers 12 (Chris Rogers is a human rights lawyer for the Open Society Foundations specializing in human rights and conflict in Afghanistan and Pakistan, May 14, “Karzai's bid for a dictatorial detention law”, <http://afpak.foreignpolicy.com/posts/2012/05/14/karzais_bid_for_a_dictatorial_detention_law>)

As part of the agreement to transfer control of Bagram, the Afghan government is creating the authority to hold individuals without charge or trial for an indefinite period of time on security grounds-a power it has never before said it needed. While such "administrative detention" regimes are permissible under the laws of war, this new detention power is being established in order to hand over a U.S. detention facility, not because changes in the conflict have convinced Afghan officials that it is necessary. A surge in U.S. detention operations like night raids has driven the prison population to over 3,000 detainees, most of whom the United States lacks evidence against for prosecution under Afghans law. Because the Afghan constitution, like the United States', protects individuals from being detained without charge or trial, the Afghan government needs a new detention law, which is now being modeled on deeply problematic U.S. detention policies and practices. As a result, Bagram's real legacy may be the establishment of a detention regime that will be ripe for abuse in a country with pervasive corruption and weak rule of law. Despite potentially far-reaching consequences, the development of this new detention power has been hidden from public view. When I met with leading Afghan lawyers and civil society organizations in Kabul several weeks ago, few knew that the government was proposing to create a new, non-criminal detention regime. Their reaction was disbelief and dismay. None had even seen a copy of the proposed regime, which the Afghan government has not made public and is trying to adopt by presidential fiat. The Open Society Foundations recently obtained a copy of the proposed detention regime, and after review, we have found what it details deeply troubling. The proposed changes leave open critical questions about the nature and scope of this proposed detention regime, which if left unanswered make it ripe for abuse. Who can be held in administrative detention and for how long? Where will it apply? When will the government cease to have this power? How will the government ensure it will not be abused to imprison the innocent or suppress political opposition? Most alarming is the failure to address the serious, long-term risks posed by such a regime. From apartheid South Africa to modern day China, administrative detention regimes adopted on security grounds have too often been used as tools of repression. In Egypt, the former government used administrative detention for decades to commit gross human rights violations and suppress political opposition, relying on a state of emergency declared in 1958, and nominally lifted only after last year's revolution. Across the border in Pakistan, the draconian Frontier Crimes Regulations are another stark reminder of the long, dark shadow that such legal regimes can cast. The ongoing imposition of these British, colonial-era laws, which among other things legalize collective punishment and detention without trial, are cited by many as a key driver of the rise of militancy in the tribal areas of Pakistan. But there is still time for the United States to avoid this legacy in Afghanistan. If the Afghan government cannot be dissuaded from adopting an administrative detention regime, then the United States should urge the Afghan government to include provisions that limit its scope and reduce its vulnerability to abuse. First, a ‘sunset' provision should be adopted, which would impose a time limit on such powers, or require an act by the Afghan Parliament to extend their duration. Second, the regime should be limited to individuals currently held by the United States at Bagram prison. There is no clear reason why the handover of Bagram detainees requires the creation of a nation-wide administrative detention regime. More generally, the scope of who can be detained must be clearly defined and limited. Third, detainees must have right to counsel as well as access to the evidence used against them in order to have a meaningful opportunity to challenge their detention-a fundamental right in international law. At present it seems the government will follow the well-documented due process shortfalls of the U.S. model. The United States and its Afghan partners must be honest about the serious, long-term risks of establishing an administrative detention regime in Afghanistan-particularly one that lacks clear limits and is democratically unaccountable. Protection from arbitrary or unlawful deprivation of life or liberty is at the constitutional core of the United States, and is essential to lasting stability and security in Afghanistan. Living up to the President's promise of responsibly ending the war in Afghanistan requires defending, not betraying this principle.

Indefinite detention erodes faith in the rule of law and ruins the Afghan judiciary

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

U.S. detention policy has frequently been cited by Afghan and international legal experts as one of the chief obstacles to restoring balance to the Afghan justice system and citizens’ faith in the rule of law.233 The operation of parallel U.S.-controlled prisons has been problematic from the start. Thousands of Afghans have been detained since the start of Operation Enduring Freedom in 2001 without recourse to trial or the means to challenge their detention. Abuse of prisoners at the U.S.-run Bagram Theatre Internment Facility in the early years of its operation under the Bush administration has been well documented, including the use of harsh interrogation techniques that resulted in the deaths of two Afghans.234 Extrajudicial detentions at Bagram have eroded support for foreign troops and for many Afghans – Pashtuns in particular – stand as a symbol of oppression. Like its sister facility at the U.S. military base in Guantanamo, Cuba, the Bagram prison has provided much grist for Taliban propaganda mills.235 U.S. officials under the Obama administration appear to have begun to recognise that extrajudicial detentions have negatively impacted Afghan perceptions of the rule of law. In January 2009, the U.S. government announced plans to close the facility at Guantanamo and to re-evaluate its detainee programs overall. A U.S. federal district court ruling in April 2009 concluding that non-Afghan detainees held at the Bagram facility have a right to challenge their detention in American courts has hastened the need to find solutions to the legal conundrum posed by the extrajudicial status of prisoners at Bagram.236 In September 2009, the U.S. Department of Defense adopted a new framework for evaluating the status of detainees in U.S. facilities in Afghanistan. Responsibility for detainee policy and operations now falls to Task Force 435, an interagency unit under joint military-civilian leadership whose mission is to bring detention and rule of law practices in line with U.S. strategic goals in Afghanistan. The old Bagram facility has since been replaced by the more modern Detention Facility in Parwan (DFIP), which opened in 2009 at the edge of the Bagram military base. Under this new policy, new detainee review board (DRB) procedures were adopted to bring detention practices in Afghanistan more in line with U.S. and international law. They replaced the Unlawful Enemy Combatant Review Boards, which had been generally deemed inadequate because they afforded detainees few, if any, opportunities to challenge their arrest or to review evidence in cases brought against them in closed hearings. Under the new procedures, a military panel determines if a detainee has been properly captured and poses a future threat to the Afghan government or international security forces. Although the U.S. government is careful not to characterise the proceedings as legal or adversarial in the sense that a trial might be, detainees are allowed to some extent to present their version of events with the help of a U.S.-assigned “personal representative”. Hundreds of detainees have had their cases reviewed since the new review procedures were adopted and a number have been released because of insufficient evidence that they posed a threat to the Afghan government.237 These new guidelines are an important step forward, but they are far from replicating internationally recognised fair trial standards. A number of other actions must be taken to make U.S. detention policy more transparent, humane and fair and to bring it in line with international law. Specifically, U.S. investigation and intelligence gathering standards must be improved and the review board process must incorporate a more vigorous mechanism that allows detainees to review and challenge evidence brought against them, including measures for classified evidence. Transition to Afghan control of specially designated detainees will also necessitate a re-evaluation of classification procedures both at the point of capture and across agencies – both Afghan and U.S. The current process of declassifying information is far too cumbersome and there is a demand for greater clarity on the rules of transfer of information from coalition and Afghan sources to Afghan government sources.238 Changes in declassification policy will necessitate a serious review of current Afghan law and investigative practices and procedures employed by the Afghan National Directorate of Security and other security organs. In January 2010, the U.S. and Afghan government signed a memorandum of understanding calling for the DFIP to pass from U.S. to Afghan control in July 2011. By that time, review proceedings should be conducted entirely by Afghan judges and prosecutors; an Afghan judge in the Parwan provincial courts has already reviewed a number of detainee cases.239 The U.S. has set up a rule of law centre at the new facility with a view to training Afghan legal professionals to build cases against the roughly 1,100 detainees housed at the prison. The training and transition are important first steps toward dismantling the parallel legal systems that have co-existed uneasily in Afghanistan since the start of the U.S. military engagement. The transition could entail some tricky procedural challenges in terms of potential conflicts between Afghan courts and U.S. military authorities over the danger posed by “highrisk” detainees.240 This and other issues should be clarified before the transition in 2011.

#### Starting with US policy is key- perception of hypocrisy replicates indefinite detention

Eviatar 12 (Daphne Eviatar Law and Security Program Human Rights First, 1-9, “The Latest Skirmish in Afghanistan: Hate to Say We Told You So”, <http://www.humanrightsfirst.org/2012/01/09/the-latest-skirmish-in-afghanistan-hate-to-say-we-told-you-so/>)

Responsibility begins with due process. As we wrote in our report in May, based on our observations of the hearings given to detainees at the U.S.-run detention facility at Bagram: “the current system of administrative hearings provided by the U.S. military fails to provide detainees with an adequate opportunity to defend themselves against charges that they are collaborating with insurgents and present a threat to U.S. forces.” As a result, the U.S. hearings “fall short of minimum standards of due process required by international law.” For President Karzai, that’s an argument that the U.S. should immediately turn the thousands of detainees it’s holding over to the government of Afghanistan. But that would do little to solve the problem. TheUnited Nations reported in October that Afghanistan’s intelligence service systematically tortures detainees during interrogations. The U.S. government cannot hand prisoners over to the Afghans if they’re likely to be tortured, according to its obligations under international law. And unfortunately, as we also noted in our report, the Afghan justice system, although improving with the growing introduction of defense lawyers, is still hardly a model of due process. Still, unlike the United States, at least Afghan law does not permit detention without criminal charge, trial and conviction. The United States hasn’t exactly proven itself the best model for the Afghan justice system. Restoring U.S. credibility is going to be key to our ability to withdraw from Afghanistan without it becoming a future threat to U.S. national security. The U.S. government can’t credibly insist that the Afghans improve their justice system and treatment of detainees if the U.S. military doesn’t first get its own detention house in order. Whether for the sake of international law, U.S. credibility, or merely to improve relations with the Karzai government, upon which U.S. withdrawal from Afghanistan depends, the U.S. military needs to start providing real justice to the thousands of prisoners in its custody.

#### Strong Afghan judiciary key to post-drawdown strategy

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, <http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx>)

A substantial course correction is needed to restore the rule of law in Afghanistan. Protecting citizens from crime and abuses of the law is elemental to state legitimacy. Most Afghans do not enjoy such protections and their access to justice institutions is extremely limited. As a result, appeal to the harsh justice of the Taliban has become increasingly prevalent. In those rare instances when Afghans do appeal to the courts for redress, they find uneducated judges on the bench and underpaid prosecutors looking for bribes. Few judicial officials have obtained enough education and experience to efficiently execute their duties to uphold and enforce the law. Endemic problems with communications, transport, infrastructure and lack of electricity mean that it is likely that the Afghan justice system will remain dysfunctional for some time to come. Restoring public confidence in the judiciary is critical to a successful counter-insurgency strategy. The deep-seated corruption and high levels of dysfunction within justice institutions have driven a wedge between the government and the people. The insurgency is likely to widen further if Kabul does not move more swiftly to remove barriers to reform. The first order of business must be to develop a multi-year plan aimed at comprehensive training and education for every judge and prosecutor who enters the system. Pay-and-rank reform must be implemented in the attorney general’s office without further delay. Building human capacity is essential to changing the system. Protecting that capacity, and providing real security for judges, prosecutors and other judicial staff is crucial to sustaining the system as a whole. The international community and the Afghan government need to work together more closely to identify ways to strengthen justice institutions. A key part of any such effort will necessarily involve a comprehensive assessment of the current judicial infrastructure on a province-byprovince basis with a view to scrutinising everything from caseloads to personnel performance. This must be done regularly to ensure that programming and funding for judicial reform remains dynamic and responsive to real needs. More emphasis must be placed on public education about how the system works and where there are challenges. Transparency must be the rule of thumb for both the government and the international community when it comes to publishing information about judicial institutions. Little will change without more public dialogue about how to improve the justice system. The distortions created in the justice system by lack of due process and arbitrary detentions under both Afghan institutions and the U.S. military are highly problematic. Until there is a substantial change in U.S. policy that provides for the transparent application of justice and fair trials for detainees, the insurgency will always be able to challenge the validity of the international community’s claim that it is genuinely interested in the restoration of the rule of law. If the international community is serious about this claim, then more must be done to ensure that the transition from U.S. to Afghan control of detention facilities is smooth, transparent and adheres to international law.

#### That’s key to long-term stability

The Nation 9 (Nov. 11, 2009, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/International/11-Nov-2009/UN-body-urges-Karzai-to-fight-corruption)

UNITED NATIONS - The UN General Assembly has urged the government of re-elected Afghan President Hamid Karzai to press ahead with “strengthening of the rule of law and democratic processes, the fight against corruption (and) the acceleration of justice sector reform.” The 192-member assembly made that call Monday night by unanimously adopting a resolution that also declared that Afghanistan’s presidential election “credible” and “legitimate”, despite allegations of widespread fraud that led Karzai’s main challenger Abdullah Abdullah to pull out of the run-off round of the election. But the UN assembly raised no doubts about Karzai’s mandate or his right to continue leading the war-torn country. The resolution welcomed “the efforts of the relevant institutions to address irregularities identified by the electoral institutions in Afghanistan and to ensure a credible and legitimate process in accordance with the Afghan Election Law and in the framework of the Afghan Constitution.” It appealed to the international community to help Afghanistan in countering the challenges of the militants’ attacks that threaten its democratic process and and economic development. Before the assembly approved the resolution, 24 countries, including Pakistan, spoke in the debate on the deteriorating situation in Afghanistan in which they stressed the need for the Afghan Government and the global community to work closely together. Pakistan’s Acting Permanent Representative Amjad Hussain Sial said the core of violence and conflict in Afghanistan emanated from terrorist groups, foreign militants such as Al-Qaeda, and militant Taliban who were not prepared to reconcile and give up fighting. The nexus with drug traders was increasingly discernable. The key to long-term stability in Afghanistan, he said, was reformation of the country’s corrupt governmental systems. Equally important was building the civilian institutions at the central and subnational levels.

#### Post-drawdown Afghan state collapse leads to nuclear war

Cronin 13 (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72 <http://dx.doi.org/10.1080/0163660X.2013.751650>)

With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it. Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. As the United States draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years\_/except this time the outcome could be not just terrorism but nuclear war.

**Multiple scenarios for escalation**

**Rubin, 11** (Joel, Director of Policy and Government Affairs, Ploughshares Fund, former congressional aide and diplomat, fellow at the State Department in both Near Eastern Affairs and Political-Military Affairs, Master’s degree in Public Policy and Business Administration from Carnegie Mellon University and a Bachelor’s degree in Politics from Brandeis University, Huffington Post, 77/2011, http://www.huffingtonpost.com/joel-rubin/middle-east-nuclear-threat\_b\_891178.html)

The national security calculus of keeping U.S. forces in Afghanistan has shifted. Any gains that we made from keeping 100,000 American soldiers in harm's way are now questionable, especially since al Qaeda has been dealt a significant blow with the killing of Osama bin Laden. President Obama's decision to end the surge by late next year only reinforces this reality. Yet many of the underlying sources of conflict and tension in South and Central Asia will remain after an American withdrawal. In a region that has deep experience on nuclear matters -- with nuclear aspirant Iran bordering Afghanistan on one side and nuclear-armed Pakistan and India on the other -- the United States must take into account the potential for regional nuclear insecurity caused by a poorly executed drawdown in Afghanistan. As much as we may like to, we can't just cut and run. So as the United States draws down its forces, we must take care to leave stable systems and relationships in place; failure to do so could exacerbate historic regional tensions and potentially create new national security risks. It is therefore essential that Washington policymakers create a comprehensive nuclear security strategy for the region as part of its Afghanistan withdrawal plans that lays the groundwork for regional stability. We have only to look to our recent history in the region to understand the importance of this approach. In the 1980s, the U.S. supported the Mujahedeen against the Soviet Union. When that conflict ended, we withdrew, only to see the rise of al Qaeda -- and its resultant international terrorism -- in the 1990s because we didn't pull out responsibly from Afghanistan. Our choices now in Afghanistan will determine the shape of our security challenges in the region for the foreseeable future. And we can't afford for nuclear weapons to become to South and Central Asia in the 21st century what al Qaeda was in the 1990s to Afghanistan. To avoid such an outcome, several key objectives must be included in any Afghanistan withdrawal plan. First, current levels of regional insecurity -- which already are extremely high -- will continue to drive tensions, and quite possibly conflict, amongst the regional powers. Therefore, we must ensure the implementation of a regional approach to military withdrawal. These efforts must bring all relevant regional players to the table, particularly the nuclear and potentially nuclear states. Iran and all the countries bordering Afghanistan must be part of this discussion. Second, the United States must be mindful to not leave a governance vacuum inside Afghanistan. While it is clear that the current counter-insurgency policy being pursued in Afghanistan is not working at a pace that meets either Western or Afghan aspirations, it is still essential that Afghanistan not be allowed to implode. We do not need 100,000 troops to do this, and as the Afghanistan Study Group has recommended, credible political negotiations that emphasize power-sharing and political reconciliation must take place to keep the country intact while the United States moves out. Third, while the rationale for our presence in Afghanistan -- to defeat al Qaeda -- has dissipated, a major security concern justifying our continued involvement in the region -- potential nuclear conflict between India and Pakistan -- will remain and may actually rise in importance. It is crucial that we keep a particularly close eye on these programs to ensure that all is done to prevent the illicit transfer or ill-use of nuclear weapons. Regardless of American troop levels in Afghanistan, the U.S. must maximize its military and intelligence relationships with these countries to continue to both understand their nuclear intentions and help prevent potential conflict. We must avoid a situation where any minor misunderstanding or even terrorist act, as happened in Mumbai in 2008, does not set off escalating tensions that lead to a nuclear exchange. Ultimately, the U.S. will one day leave Afghanistan -- and it may be sooner than anyone expects. The key here is to leave in a way that promotes regional stability and cooperation, not a power vacuum that could foster proxy conflicts. To ensure that our security interests are protected and that the region does not get sucked in to a new level of insecurity and tension, a comprehensive strategy to enhance regional security, maintain a stable Afghanistan, and keep a watchful eye on Pakistan and India is essential. Taking such steps will help us to depart Afghanistan in a responsible manner that protects our security interests, while not exacerbating the deep strategic insecurities of a region that has the greatest risk of arms races and nuclear conflict in the world.

Advantage two is US-Europe relations

Indefinite detention risks outright collapse of US-EU joint counterterrorism operations

Archick 13 (Kristin- US government based Specialist in European Affairs providing a congressional report on US-EU counter-terrorism cooperation, May 21, “U.S.-EU Cooperation Against Terrorism”, http://www.fas.org/sgp/crs/row/RS22030.pdf)

U.S. and European officials alike maintain that the imperative to provide freedom and security at ¶ home should not come at the cost of sacrificing core principles with respect to civil liberties and ¶ upholding common standards on human rights. Nevertheless, the status and treatment of ¶ suspected terrorist detainees has often been a key point of U.S.-European tension. Especially ¶ during the former George W. Bush Administration, a number of U.S. policies were subject to ¶ widespread criticism in Europe; these included the U.S.-run detention facility at Guantánamo ¶ Bay, Cuba; U.S. plans to try enemy combatants before military commissions; and the use of ¶ “enhanced interrogation techniques.” The U.S. practice of “extraordinary rendition” (or ¶ extrajudicial transfer of individuals from one country to another, often for the purpose of ¶ interrogation) and the possible presence of CIA detention facilities in Europe also gripped ¶ European media attention and prompted numerous investigations by the European Parliament, ¶ national legislatures, and judicial bodies, among others. Some individuals held at Guantánamo ¶ and/or allegedly subject to U.S. rendition have been European citizens or residents. ¶ Many European leaders and analysts viewed these U.S. terrorist detainee and interrogation ¶ policies as being in breach of international and European law, and as degrading shared values ¶ regarding human rights and the treatment of prisoners. Moreover, they feared that such U.S. ¶ policies weakened U.S. and European efforts to win the battle for Muslim “hearts and minds,” ¶ considered by many to be a crucial element in countering terrorism. The Bush Administration, ¶ however, defended its detainee and rendition polices as important tools in the fight against ¶ terrorism, and vehemently denied allegations that such policies violated U.S. human rights ¶ commitments. The Bush Administration officials acknowledged European concerns about ¶ Guantánamo and sought agreements with foreign governments to accept some Guantánamo ¶ detainees, but maintained that certain prisoners were too dangerous to be released. ¶ U.S.-EU frictions over terrorist detainee policies have subsided to some degree since the start of ¶ the Obama Administration. EU and other European officials welcomed President Obama’s ¶ announcement in January 2009 that the United States intended to close the detention facility at ¶ Guantánamo within a year. They were also pleased with President Obama’s executive order ¶ banning torture and his initiative to review Bush Administration legal opinions regarding ¶ detention and interrogation methods. In March 2009, the U.S. State Department appointed a ¶ special envoy to work on closing the detention facility, tasked in particular with persuading ¶ countries in Europe and elsewhere to accept detainees cleared for release but who could not be ¶ repatriated to their country of origin for fear of torture or execution. Some EU members accepted ¶ small numbers of released detainees, but others declined. At the same time, the Obama Administration has faced significant challenges in its efforts to close ¶ Guantánamo. Some observers contend that U.S. officials have been frustrated by the reluctance of ¶ other countries, including some in Europe, to take in more detainees. Congressional opposition to ¶ elements of the Administration’s plan for closing Guantánamo, and certain restrictions imposed ¶ by Congress (including on the Administration’s ability to transfer detainees to other countries ¶ amid concerns that some released detainees were engaging in terrorist activity), have also ¶ presented obstacles. Consequently, the Obama Administration has not fulfilled its promise to shut ¶ down Guantánamo. The Administration asserts that it remains committed to closing the detention ¶ facility, but in March 2011, President Obama signed an executive order that in effect creates a ¶ formal system of indefinite detention for those detainees at Guantánamo not charged or convicted ¶ but deemed too dangerous to free. The Administration also announced in March 2011 an end to ¶ its two-year freeze on new military commission trials for Guantánamo detainees. In January ¶ 2013, the duties of the State Department’s special envoy were assumed by a different office; ¶ many observers have interpreted this latest move as signaling that the Administration recognizes ¶ that closing Guantánamo is unlikely in the near future. Press reports indicate that 166 detainees ¶ currently remain at Guantánamo.46¶ Some European policymakers continue to worry that as long as Guantánamo remains open, it ¶ helps serve as a recruiting tool for Al Qaeda and its affiliates. Some European officials have also ¶ voiced concern about those detainees at Guantánamo who have been on hunger strikes since ¶ February 2013, and recent clashes between prison guards and some detainees. In mid-April 2013, ¶ during a plenary session, the European Parliament discussed the current situation at Guantánamo; ¶ a number of MEPs representing several political groups introduced a joint resolution that ¶ expresses concern for those on hunger strike, calls upon the United States to close the ¶ Guantánamo detention facility, and recalls the willingness of EU member states to assist U.S. ¶ authorities in shutting down Guantánamo.47¶ Many Europeans also remain concerned about the past role of European governments in U.S. ¶ terrorist detainee policies and practices. In September 2012, the European Parliament passed a ¶ non-binding resolution (by 568 votes to 34, with 77 abstentions) calling upon EU member states ¶ to investigate whether CIA detention facilities had existed on their territories.48 The resolution ¶ urged Lithuania, Poland, and Romania in particular to open or resume independent investigations, ¶ and called on several other member states to fully disclose all relevant information related to ¶ suspected CIA flights on their territory.Meanwhile, some U.S. and European officials worry that ¶ allegations of U.S. wrongdoing and rendition-related criminal proceedings against CIA officers in ¶ some EU states (stemming from the Bush era) continue to cast a long shadow and could put vital ¶ U.S.-European intelligence cooperation against terrorism at risk.49

**Only guaranteeing civilian criminal proceedings relieves EU backlash**

Oona **Hathaway et al**, Professor, International Law, Yale Law School, Samuel Adelsberg, Spencer Amdur, Philip Levitz, Freya Pitts and Sirine Shebaya, “The Power to Detain: Detention of Terrorism Suspects after 9/11,” YALE JOURNAL OF INTERNATIONAL LAW v. 38, Winter 20**13**, p. 161-167.

3. Strategic Advantages There is clear evidence that other countries recognize and respond to the difference in legitimacy between civilian and military courts and that they are, indeed, more willing to cooperate with U.S. counterterrorism efforts when terrorism suspects are tried in the criminal justice system. Increased international cooperation is therefore another advantage of criminal prosecution. Many key U.S. allies have been unwilling to cooperate in cases involving law-of-war detention or prosecution but have cooperated in criminal [\*166] prosecutions**.** In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court**.** n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the United Kingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the European Court of Human Rights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. federal criminal justice system and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus hinder extradition and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.

**Failure to end indefinite detention spills over to other issues- ends cooperation on energy security and regional crises**

Smith 7 (JULIANNE, DIRECTOR AND SENIOR ¶ FELLOW, EUROPE PROGRAM, CENTER FOR STRATEGIC AND ¶ INTERNATIONAL STUDIES, April 17, “EXTRAORDINARY RENDITION IN U.S.¶ COUNTERTERRORISM POLICY: THE IMPACT ON¶ TRANSATLANTIC RELATIONS”, http://archives.republicans.foreignaffairs.house.gov/110/34712.pdf)

As a European analyst, who spends a considerable amount of ¶ time in Europe meeting with policymakers and addressing a variety of public audiences, I can confirm that the issue of extraordinary rendition, along with press revelations about secret prisons ¶ in Europe, have cast a rather dark shadow on our relationship with ¶ our European allies. While transatlantic intelligence and law enforcement cooperation does continue, European political leaders are ¶ coming under increasing pressure to distance themselves from the ¶ United States. Over time, I do believe that this could pose a threat ¶ to joint intelligence activity with our European allies. ¶ Now it is well known that America’s image in Europe has declined quite steadily over the last couple of years, and some of the ¶ reasons for that were cited earlier this afternoon, in part due to the ¶ decision of the United States to go to Iraq, human rights abuses ¶ at Abu Ghraib and allegations of torture at Guantanamo bay. But ¶ we seemed to move away from some of these dark days in the ¶ transatlantic relationship as we moved into 2005, as both sides of ¶ the Atlantic I think, both Europe and the United States, made a ¶ conscious effort to renew transatlantic ties. ¶ When it was alleged, however, later in 2005—at the end of 2005 ¶ that the United States was detaining top terror suspects in socalled ‘‘black sites’’ in eight countries and that the CIA was flying ¶ terror suspects between secret prisons and countries in the Middle ¶ East that have been known to torture detainees, the United States ¶ image in Europe took another dive. ¶ On the particular issues of rendition, as we have heard earlier, ¶ Europeans appear to have two primary concerns, one, Washington’s ¶ unwillingness to grant due process to terror suspects and, two, violation of suspects’ human rights during interrogation. ¶ Now the allegations that have been submitted and the resulting ¶ investigation by the European Parliament have in many ways in ¶ my mind confirmed Europeans’ worst fears. Many Europeans, particularly at the public level, believe that they have plenty of evidence right now to prove a long-suspected gap between United ¶ States stated policies and U.S. action. As a result, U.S. promises ¶ not to torture terror suspects and to uphold the fundamental pillars of international law are no longer seen as credible. ¶ The question is, does any of this matter? President Bush has ¶ noted on several occasions that making policy is not a popularity ¶ contest, and he is right about that. But when political leads in other countries start to feel that standing shoulder to shoulder ¶ with the United States is a political liability, I think that low ¶ favorability ratings can indeed hinder America’s ability to solve ¶ global challenges with its many partners and allies around the ¶ world; and I would cite a couple of reasons for this. ¶ First, as we have seen with the tensions over the issue of rendition, this particular issue has put unnecessary strain, in my ¶ mind, on what has been, in many cases, a very positive relationship. In fact, it is distracting the two sides from the core task at ¶ hand; and that is, of course, combating terrorism. ¶ Second, as I mentioned earlier, European political leaders are ¶ under pressure from their publics to keep the United States at ¶ arm’s length. I don’t know that this pressure will ever halt counterterrorism cooperation with our European allies in full or certainly ¶ not in the near term, but there are signs that negative public opinion is making it more difficult for our European allies to cooperate ¶ with the United States. One only has to look at the latest European responses to United States requests for more support in Afghanistan to find one such example. ¶ Finally, I would point out that the United States and Europe are ¶ facing a long list of challenges above and beyond terrorism, things ¶ like energy security, nonproliferation, brewing regional crises, ¶ Darfur; and the list goes on and on. In many of these areas, the ¶ United States are asking—we are asking Europe to do more. ¶ But differences in our counterterrorism relationship with Europe ¶ have affected our relationship at other levels. Again, negative public sentiment toward the United States will never succeed in halting our cooperation with Europe entirely, but it does make asking ¶ for greater European support in other areas that much more challenging. ¶ Just to conclude, I would point out—and I feel very strongly—¶ that Europe is one of America’s most important partners in combating radical extremism, and there is certainly no shortage of success stories in the many things we have done together, particularly ¶ over the past 6 years in this area. But I do feel—again based on ¶ my experience traveling back and forth to Europe on a regular ¶ basis—that this relationship that we share is currently played with ¶ mistrust and divisions over strategy and tactics.

**EU security cooperation is a conflict filter- periods of declining relations cause multiple nuclear conflicts**

-terror

-NK and Iran nuclearization

-prolif

-Russia’s transition into international sphere

-China Rise

-Integrating the economies in the Caucasian and Central Asian States

-Balkan Stability

-Middle East Stability

-Poverty

-Climate Change

-AIDS

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There is no doubt that US-European relations are in a period of transition, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations.¶ The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of North Korea and especially Iran, the proliferation of weapons of mass destruction (WMD), the transformation of Russia into a stable and cooperative member of the international community, the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration and stabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels.¶ Therefore, cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.¶ The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense.¶ Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements.¶ There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.¶ If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment. ¶ There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.¶ Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance.¶ There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime in Ukraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to WMD will fall into the wrong hands; and second, the spread of conflict along those countries’ periphery could destabilize neighboring countries and provide safe havens for terrorists and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE.¶ This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other political issues in the Middle East are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the rising power of China through engagement but also containment.¶ The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be determined above all by U.S. policy towards Europe and the Atlantic Alliance.¶ Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that takes Europe for granted and routinely ignores or even belittles European concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits.¶ There is no doubt that the U.S. and Europe have considerable potential to pursue common security interests. Several key steps must be taken to make this potential a reality. First, it is critical to avoid the trap of ‘division of labor’ in the security realm, which could be devastating for the prospects of future cooperation. Second, and closely related to avoiding division of labor as a matter of policy, is the crucial necessity for Europe to develop at least some ‘high-end’ military capabilities to allow European forces to operate effectively with the U.S. Third, is the need for both the U.S. and Europe to enhance their ability to contribute to peacekeeping and post-conflict stabilization and reconstruction. Fourth, is the importance of preserving consensus at the heart of alliance decision-making. Some have argued that with the expansion of NATO, the time has come to reconsider the consensus role. One way to increase efficiency without destroying consensus would be to strengthen the role of the Secretary General in managing the internal and administrative affairs of the alliance, while reserving policy for the member states. Fifth is the need to make further progress on linking and de-conflicting NATO and EU capabilities. Sixth is the need for enhanced transatlantic defense industrial cooperation. Seventh, one future pillar for transatlantic cooperation is to strengthen US-European coordination in building the infrastructure of global governance through strengthening institutions such as the UN and its specialized agencies, the World Bank, the IFM, G-8, OECD and regional development banks. ¶ Finally, cooperation can also be achieved in strengthening the global economic infrastructure, sustaining the global ecosystem, and combating terrorism and international crime.¶ To translate the potential of the transatlantic relationship into a more positive reality will require two kinds of development. First, the EU itself must take further steps to institutionalize its own capacity to act in these areas. Foreign policy and especially defense policy remain the areas where the future of a ‘European’ voice is most uncertain. Second, the U.S. and Europe need to establish more formal, effective mechanisms for consultation and even decision-making.¶ The restoration of transatlantic relations requires policies and actions that governments on both sides of the Atlantic should simultaneously adopt and not only a unilateral change of course. Developing a new, sustainable transatlantic relationship requires a series of deliberate decisions from both the U.S. and EU if a partnership of choice and not necessity is to be established.¶ For the U.S., this means avoiding the temptation, offered by unprecedented strength, to go it alone in pursuit of narrowly defined national interests. For the EU, the new partnership requires a willingness to accept that the EU plays a uniquely valuable role as a leader in a world where power still matters, and that a commitment to a rule-based international order does not obviate the need to act decisively against those who do not share that vision.

**Relations key to effective EU Navy- solves laundry list of hotspot escalation**

Seidler ’14 ( Journalist for the Institute for Security Studies Kiel, Member of the German Council on Foreign Relations , the German Atlantic Association , Berlin Working Group Security Policy and the Center for International Maritime Security, “What Should be in EU's New Maritime Security Strategy”, <http://www.seidlers-sicherheitspolitik.net/2014/01/emss.html>, January 7, 2014)

What Should be in EU's New Maritime Security Strategy Maritime great power politics is back and here to stay. Hence, EU needs to adapt and rediscover geopolitics. Although hard power matters most, Europe's naval decline is likely to continue: Less money, less navies. To be nevertheless a serious player, EU has to adapt a smart power approach. Most important is that EU says what it does and does what it says. Time to leave strategic no man's land The European Council's December session on security policy offers only one remarkable result: In June 2014, EU will endorse a new Maritime Security Strategy (EMSS). After years of economic crisis, geopolitical decline and military constraints, an EMSS could give EU a new push to adapt to the evolving security environment. Such a push is more than necessary. Ten years after the European Security Strategy (ESS), Europe drifted from large ambitious into the strategic no man's land: Soft power becomes more and more irrelevant, harsh great power competitions and geopolitics are back on the stage - just look at the Middle East and East Asia. In consequence, neither is anybody talking about a more secure Europe nor about EU building a better world. However, in the maritime domain Europe could come back on track. Therefore, EMSS must address three key points. First, it has to define Europe's strategic-maritime aims and set out the means to implement them. Second, due to the capabilities, there has to be a clear work-sharing with NATO, because the Alliance is much stronger in maritime security than EU. Third, EMSS must outline how EU wants to adapt to a geopolitical/-strategic environment that will not only develop to Europe's disadvantage, but also to the advantage of other powers. In the EMSS' development, there is no need for a long debate about security challenges, risks and threats, because the problems are well known: Terrorism, piracy, proliferation, organized crime, energy security, choke points, critical infrastructure, disaster relief and so forth. Not war-fighting or deterrence, but rather MOOTW are likely to dominate the operational agenda. What changed, in contrast to ESS 2003, are not the security challenges, risks and threats, but rather the players and theaters. Relevant heaters: Arctic, Med', Indo-Pacific Source: EUISS Report No. 16, p. 17 As the EMSS is about "security", the Baltic and the North Sea do not matter (when Russia tries to provoke, so what?). These are NATO/EU inland-seas and, therefore, only subject to regular politics and not to military considerations. What should concern Europe, are the Arctic, the Indo-Pacific and primarily the Mediterranean (Med'). The Gulf of Guinea is an area of operational, but not of strategic concern. Present piracy can be tackled by regional actors with international support. The Arctic's emerging geopolitical relevance is stressed by the relatively high number of applicants for observer status in the Arctic Council. In May 2013, EU suffered a serious defeat, as Brussels' application was rejected, while China, India, Italy, Japan, South Korea and even Singapore became observers. For EMSS it has therefore to be said, that there is no military role for EU in the High North. Sweden and Finland are Arctic Council members, but without direct access to the Arctic waters. What matters for EU are trade routes and resources. Thus, an EMSS should define how EU can contribute to safe and secure Arctic shipping lanes and how Europe's resource interests can be preserved. After the rejection, however, it is clear that EU will not be one of the major players in the High North. Instead, other theaters should receive more attention. Indian Navy show its two carriers (Source: WiB) The Indo-Pacific should be of great concern for EU. Due to China's and India's naval rise along with the growing seaborne trade, Indian and Pacific Ocean have to be seen as one theater. Moreover, there is an Emerging Asian Power Web made by bi-, tri- and multilateral maritime security partnerships among Indo-Pacific states. EU's interests in Indo-Pacific security are primarily motivated by economics. In 2012, the total value of goods shipped from Europe to Asia was 816 billion Euros. While EU can and should play a role in the Indian Ocean, the Union will hardly become relevant East of Malacca Strait. EU has been rejected three times as an observer at the East Asia Summit. Thus, an EMSS has to put a strong emphasis on the Indian Ocean and the Persian Gulf, but it also has to accept that EU will remain irrelevant between Singapore and Vladivostok. Only France and Britain could make themselves relevant in maritime East Asia. However, while budgetary under constraints, they will only choose to go there in case of a major incident. During its disaster relief operation on the Philippines, the Royal Navy demonstrated that the UK is still capable of acting East of Malacca. However, the British posture also showed the Royal Navy's limits. Moreover, it can be ruled out that Paris and London develop some kind of EU maritime security altruism and make an expeditionary EU presence a national priority. Instead, both will allocate their expensive warships to operations concerning their national interests, but not to EU (or NATO and UN) tasks. Hence, EMSS has to outline what European states want to do together in the Indo-Pacific and what not. It does not make any sense to write high expeditionary ambitions into a strategy, when it is clear from the beginning that those who have the means for implementing have no interest in doing so. Less can be more. This means the EMSS should contain realistic and credible ambitions in the Indo-Pacific, making the EU an actor who says what it does, and does what it says. Otherwise, EU is doomed to irrelevance East of Suez. In addition, EU has to withstand the seduction of a new free-riding with maritime stability and security provided by Asian powers. There is no guarantee that those powers will remain friendly to European interests. Most important for EU is the Med'. Not only by the refugee issue, but also by the new great power plays in the Eastern Med'. Russia has returned as a serious naval actor with its largest expeditionary operation since 1991. New conflicts about offshore gas will emerge. Moreover, the growing instability in North Africa from Tunisia to the Suez-Canal calls for EU action. Therefore, Brussels' main challenge will be to define in the EMSS, how EU wants to cooperate further will its Med' partners. In addition, EMSS has to say how EU aims to contribute from the maritime domain to stability ashore. Although terrorism, proliferation, human trafficking, illegal migration and organized crime are subject to EU's maritime agenda, the solutions are to be found on land, not on the waters. Dealing with new maritime powers After the USSR's collapse, only the United States and EU countries, in particular Britain and France, possessed the monopoly on long-range power projection. Until present, there is no other country, which is be able to go for Falklands-War-Style missions. This is going to change. While France and Britain are struggling to keep their capabilities alive, especially China, Russia and India are preparing themselves for expeditionary missions. In 2013, we have seen Russia's largest expeditionary deployment in the Med' since 1991. In terms of expeditionary power projection, Australia, Brazil, Japan and South Korea could become more capable players, if their governments decide to pursue that track. Rather than focusing on security challenges, EMSS has to address how Europe wants to deal with emerging naval powers. Of course, cooperation for promoting common interests, like safe and secure sea-lanes or mutual trust-building, should be a top priority. However, Brussels tends to see the world too much through pink glasses, where the world becomes good by itself as long as there are talks about multilateralism and global governance. Instead, the maritime environment can remain friendly to EU interest, but due to great power politics this cannot be taken for granted. Therefore, EMSS has to address how EU will react (it will not take the initiative) in case of fundamental state-driven changes to a maritime environment, which is hostile to European interests. Thus, advancing partnerships with like-minded democracies like India, Japan, Australia and South Korea has to be an EMSS priority. Potential partners are also Singapore, Indonesia and New Zealand. Cooperation with China is likely to become much more difficult, because recent Chinese actions (ADIZ) showed that Beijing's approach continues to become much more assertive. EU's aims Defining realistic and achievable aims for EU is that simple: Stability, security, safety and prosperity. Stability is the most important of all aims. It enables the flow of trade and the opportunities of doing non-hard power related politics. However, stability requires security and safety. Those three lead to the fourth aim: Prosperity by the maritime domain as an area, which provides trade lanes and resources. For EU, it does not matter who owns what. However, Europe's interest is the absence of conflict. Hence, an EMSS has to outline an increased portfolio of cooperation and trust-building programs. Defining Europe's means Europe's soft- and hard-power continue to suffer seriously from the monetary and economic crisis. To be effective and efficient, EU has to follow an approach of smart power. The latter means the combination of civilian and military means. However, as navies are costly, EU's focus should generally be on civilian capabilities, where necessary accompanied by military assets. In case of hard power, there will be no European comeback. Recent celebrations about countries leaving the rescue mechanisms ignore, that ESM and EFSF became irrelevant, because there is a new unofficial rescue mechanism called ECB (which does not include any submission to Troika obligations). The crisis has been managed, but it has not been solved. As the debt track is not left, Europe's armed forces will face further cuts. However, naval hard power matters most, because that is what you need to pursue your interests on the high seas. There is no soft power equivalent. Hence, it is important for Europe that the Royal Navy commissions both new carriers and that France, Italy and Spain preserve their flattops. Moreover, with an eye on Med' and Indo-Pacific theaters, LHD and LPD will be needed for MOOTW. Of course, this requires a balanced fleet with destroyers, frigates and submarines. For long-range power projection, the British and French SSN remain very relevant. Moreover, although extremely unpopular, Europe has to maintain a credible sea-based nuclear deterrent. That is also, why Britain should throw all alternatives in the bin and build four new SSBN. For implementing maritime smart power, coast guard vessels and patrol aircraft are needed, along with partnership teams on land. Especially in the Med', police enforcement capabilities are necessary. Challenges like migration and organized crime are not military issues. Moreover, research ships and new policies for fishing and energy are of great concern. NATO vs. EU? How to deal with the US? Much has been said here about emerging naval powers, while the world's largest seapower - still the US - has not been discussed, yet. Whatever happens, America will remain Europe's most important naval partner, based on common interests and capabilities. That is why NATO has a great maritime relevance, because it links the US Navy to Europe. As the EU does not have any naval links with US yet, EMSS has to clarify the relationship between EU, NATO and the US. What we do not need is a beauty contest, but what we do need is a clearly defined and coordinated work-sharing. Standing NATO Maritime Group 1 (Source) There was never a real reason why both, NATO and EU, had to have maritime operations in the Gulf of Aden. Both organizations wanted to be part of the international maritime beauty contest. In the future, however, Europe cannot afford two organizations doing the same. Therefore, the work-sharing between EU and NATO should look like this: While EU is good at civilian missions and smart power, NATO has decades-old naval hard power experience. Hence, the modus vivendi should be that EU is doing the softer and civilian tasks, while NATO does the hard power jobs; Europe becomes less capable in hard power anyway and only NATO provides access to the needed US assets (and maybe British assets, too, if the UK leaves EU). Moreover, it could be elaborated, if EU could get access to NATO's Standing Maritime Groups. However, NATO's real maritime worth is that the alliance links Britain, Canada, Turkey and Norway to European security. The UK is drifting apart from EU, but the Royal Navy will remain the most capable of all European navies. Turkey in the Med', Canada and Norway in Arctic are indispensable partners. All four countries continue to in their naval capabilities. In the US, NATO and EU triangle, EMSS has to address who does what and where. While US will carry most of the maritime burdens in the Indo-Pacific, also relying on coalitions of the willing, NATO's concern should be hard power missions in the Med' and Indian Ocean. In such a work-sharing, EU's job would be to tackle the civilian and softer issues in the Med' and the Indian Ocean; maybe in the South Atlantic, too. Dealing with decline Chinese frigate Yangcheng in Limassol, Cyprus (Source) To secure the destruction of Syria's chemical weapons, China's navy is now operating from Cyprus, an EU member state, in the Eastern Med'. Yes, it is only access to a port for supplies and it is only on a tactical level. Nevertheless, it is remarkable, while EU is not taken serious in Asia, China shows the flag in European homewaters. Never before has Non-Western power operated from an EU member state. In addition, in 2012, Japan's premier minister Shinzo Abe invited Britain and France to come back to the Asian maritime security theater. Nine years after the ESS' endorsement, it was quite humiliating for EU that not the Union herself, but rather two nation states have been addressed in such a way. Obviously, EU was not taken for serious in terms of hard power. Five megatrends will define the decades to come: (1) digitalization; (2) competition for resources; (3) demographic changes; (4) economic globalization; (5) economic power shifts. Due Europe's economic and demographic problems, European (maritime) decline is real and it is likely to remain so. Until 2030, competition for resources and economic growth will have increased the global sea-lanes' importance, foremost in the Indo-Pacific. Emerging relevance of navies will go along with that. Moreover, 2030 is a point of time, where China, India and Russia (and maybe others) will operate navies capable of medium and long-range power projection. China then could posses the capabilities to fight (and win) Falklands-Style-Wars. Economically, China will have surpassed the US the world's largest economy and European economies will have dropped back in the global economic hierarchy. The consequence will be that Europe will not able anymore to conduct operations like Libya 2011. Moreover, European power projection will be balanced by the emerging naval power of others. Thus, it essential that EU enhances its partnerships with the US and NATO and, moreover, creates new partnerships with like-minded democracies, in particular India. Digitalization and robotics will lead to the fact that coming generations of naval systems can do even more than today, however, will be even more complex and therefore more expensive in procurement and maintenance. Europe's budgetary situation will make the joint development, procurement and operation of new naval system a necessity. If this does not happen, Europe will simple disappear from the maritime domain as a serious, capable actor. In addition, it is likely that emerging navies, in particular China, will have the financial means to effort new high-end warfare assets, which will negatively affect Europe's power. With France on the march into an even worse economic mess, EU's maritime power projection will largely depend on Britain - though the UK remains an EU member. Britain's coming carriers and other high-end warfare capabilties (SSN, SSBN, Type 26 frigates) will be critical for Europe to be capable and taken serious in international maritime power politics. In this regard, the worst that could happen is that London decides to sell the second carrier to an emerging navy (e.g. Brazil). For the maritime balance of power, the second carrier must remain British (or European in some way) or, if it is sold, it has to be given to a like-minded country (e.g. Japan or Australia). After 2030, China likely and India maybe could reach the naval power status of the Soviet Union in the 1980s. This means the capability of global power projection and the ability to conduct at least one high-intensity operation. We will see scenarios where emerging navies conduct expeditionary power projection operations, while Europe will be incapable of doing anything, though there is no reversal of current trends. EU as a capable global, geostrategic and maritime security player is hardly imaginable for the decades to come. Hence, even not a popular idea, Europeans will have to re-discover the transatlantic partnership and NATO - a maritime alliance by nature. No matter how far Asian navies rise, the US Navy will remain the most capable of all and it will further dominate, although more and more challenged, the international maritime order. Europe in decline is well advised to seek close cooperation with the US, because America is likely to recover through the Shale Gas boom. What to do? For EMSS' implementation, preserving and renewing capabilities is essential. Countries like Germany, Denmark, the Netherlands and Poland in the North and Portugal, Spain and Italy in the South have to elaborate new mechanisms to integrate their navies. Jointly operated LPDs or submarines could be a start. Joint task groups out of coast guards, police services, technical and environmental experts (and others) are a necessity. Whatever is agreed in EMSS: As much as decisions matter, it matters that words are followed by actions. In a time of new maritime great power politics, Europe must say what it does and do what it says. Otherwise, EU will not be taken serious and the EMSS can just be dumped in the bin.

**Relations key to solve the environment**

Vig and Faure ‘4 (Norman J. Vig and Michael G. Faure, professor of science, technology and society at Carleton College, Minnesota and professor of comparative and international environmental law at Maastricht U, the Netherlands, Green Giants? Environmental Policies of the United States and the European Union, 2004)

This book stems from our concern that the US and the EU—representing the world’s two largest and most developed economic markets— seem increasingly incapable of resolving differences over the priority of environmental problems and methods of addressing them, thus preventing them from taking the kind of joint leadership role that will be necessary to halt environmental degradation on a global scale. The US and EU together account for at least half of the world’s gross domestic product and consume a disproportionate share of the world’s resources. They also generate about 40 percent of global greenhouse gas emissions and most of the planet’s toxic waste. At the same time, they are the source of much of the world’s advanced technology needed to reduce pollution and provide alternative sources of energy in the future. Without their support, it is unlikely that the 170 other nations of the world will be willing or able to pursue sustainable development policies in the future.

**Ecosystem collapse risks extinction**

Coyne and Hoekstra ‘7 (Jerry and Hopi, \*professor in the Department of Ecology and Evolution at the University of Chicago AND Associate Professor in the Department of Organismic and Evolutionary Biology at Harvard University, New Republic, “The Greatest Dying,” 9/24, <http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying>, September 24, 2007)

But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile, with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster. In many ways, oceans are the most vulnerable areas of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from both sides. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion. In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace. Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant). Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends. Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years. Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul. But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water. In the end, we must accept the possibility that we ourselves are not immune to extinction. Or, if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet. Global warming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, but perhaps the greatest dying of them all.

**Multiple countries have withheld intelligence as a result of indefinite detention- hamstrings NATO operations**

Parker 12 Tom Parker, formerly policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service, “U.S. Tactics Threaten NATO” 9-17-12, http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461

Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom.In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003.Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo.Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts.The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not.The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States.The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

**NATO effectiveness is critical to prevent global deterrence breakdowns- those escalate and go nuclear**

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Simultaneously, the world is witnessing a growing number of general political challenges, very complex and diverse. The most important of them is the confusion of states and their leaders in the face of objective limitations on their ability to control the world market and its impact on national economies. Organized violence remains one of the last spheres where states still have a monopoly. Improving means for using force domestically and, above all, abroad becomes a natural reaction of countries to the reduction of their sovereignty in other areas. The more complex and incomprehensible a threat is, the greater the temptation for states to respond “simply and efficiently.” The crisis of international governability, which was achieved in understandable conditions of the Cold War, also causes countries to rely on weapons as a source of power. The failure of states to find common solutions to the most pressing global problems requires increased capability at the national level, including the right to use force to protect one’s unilateral decisions “where possible and when necessary,” as NATO’s Lisbon Strategic Concept says. The rapid democratization of international politics and the rise of new non-Western centers of power, which demand redistribution of power resources and economic benefits, provokes status-quo powers to defend their “historically established” rights harder, while revisionist countries have to respond to this aggression by building up their military capabilities. This results in a competition, which in the case of China and America may develop into an arms race. The development of defense technologies, especially in the field of conventional weapons, may create a feeling of impunity among some countries. Traditionally, it was possible damage from a retaliatory strike that deterred an outbreak of war. Now, after the United States has acquired the capability to destroy targets from a distance of hundreds, if not thousands, of kilometers, the temptation to use military force and, therefore, its value in most types of modern conflicts have increased dramatically. In fact, now it is only strategic relations between Russia and the U.S., which have equal nuclear arsenals, that are safeguarded from sliding into a military confrontation. Plus, for the time being, relations between these two countries and China, which has a smaller nuclear capability, yet sufficient enough for deterrence. Meanwhile, this factor somehow prompts many observers in Russia and the United States to conclude that military force cannot be used in principle. Concluding the discussion of the reasons for NATO’s existence in the 21st century, I should say that the contemporary world is no longer limited to Russia and America, involved in endless disputes in the shade of the nuclear umbrella. The guarantee of impossibility of war between the superpowers is not a guarantee of global peace. The developments of recent years have shown that an ability to quickly mobilize one’s allies (not only in the military but also in the political, economic and ideological sense) and to deliver a most resolute and prompt strike at one’s enemies or even undesirable countries is becoming an increasingly important requirement for a state’s survival and competitiveness. This is why the North Atlantic Treaty Organization, the last peacetime military alliance, has very promising prospects.

#### Last is Solvency

#### Applying a clear statement principle solves- significantly restricts detention authority

Sarah Erickson-Muschko (J.D., Georgetown University Law Center) June 2013 “Beyond Individual Status: The Clear Statement Rule and the Scope of the AUMF Detention Authority in the United States” 101 Geo. L.J. 1399, Lexis

III. EXISTING SCHOLARSHIP ON THE CLEAR STATEMENT RULE: THE FOCUS ON INDIVIDUAL STATUS

Many scholars have advanced arguments regarding the application of a clear statement principle to the AUMF. 133 Two specific arguments have been made [\*1419] about the applicability of a clear statement principle in the context of U.S. territory, both of which focus on the status of the individual as the triggering factor. Professors Richard Fallon and Daniel Meltzer argue that a clear statement principle applies when U.S. citizens are detained on U.S. territory. 134 This argument is based on statutory grounds, namely the theory that the Non-Detention Act triggers the clear statement requirement. 135 This argument is perfectly sound in that respect. However, it is incomplete in that it does not address the constitutional grounds for imposing a clear statement rule: the Due Process Clause of the Fifth Amendment, which applies to all persons, including noncitizens. 136 Reading the AUMF and the NDAA 2012 together to allow for the indefinite military detention without trial of individuals arrested on U.S. territory would be inconsistent with the constitutional prohibition on depriving a person of liberty without due process of law. Professors Curtis Bradley and Jack Goldsmith offer the most comprehensive constitutionally based argument for when and how to apply a clear statement principle. Their position is that courts should apply a clear statement requirement "when the President takes actions under the AUMF that restrict the liberty of noncombatants in the United States," but not when such actions only restrict the liberty of combatants. 137 Looking to the three World-War-II-era decisions discussed in Part II, they conclude that Endo and Duncan stand for the proposition that liberty interests trump the President's commander-in-chief authority when the President's actions are unsupported by historical practice in other wars and affect the constitutional rights of U.S. citizens who are not combatants. 138 In this context, "the canon protecting constitutional liberties prevails." 139 In contrast, the authors point to Quirin to show that "the Court did not demand a clear statement before concluding that the U.S. citizen enemy combatant in that case could be subject to a military commission trial in the United States even though neither the authorization to use force nor the authorization for military commissions specifically mentioned U.S. citizens." 140 In such a case, the authors contend that a clear statement requirement protecting civil liberties is not required because "the presidential action involves a traditional wartime function exercised by the President against an acknowledged enemy combatant or enemy [\*1420] nation." 141 In this context, "the President's Article II powers are at their height, and the relevant liberty interests (and thus the need for a liberty-protecting clear statement requirement) are reduced (or nonexistent)." 142 Despite its level of detail, Bradley and Goldsmith's clear statement principle will likely never be of much help to courts construing the AUMF. By basing their clear statement requirement on the distinction between combatants and noncombatants, they fail to resolve the key interpretive question: namely, how to construe the AUMF to avoid grave constitutional concerns where an individual's status as an enemy combatant is in dispute. Their interpretation accommodates a broad reading of Quirin. However, in Quirin, nobody disputed that the detainees were in fact unlawful enemy combatants under long-standing law-of-war principles. In contrast, a court reviewing the classification of an individual as an "enemy combatant" under the AUMF and NDAA 2012 must determine what it means to be "part of" or provide "substantial[] support[]" to al-Qaeda or an "associated force[]" or otherwise to commit a "belligerent act." 143 The question of how to construe these terms lies at the core of detainee litigation, 144 and the provisions in the NDAA 2012 failed to clarify their meaning. Bradley and Goldsmith acknowledge that the AUMF is silent on the point of "what institutions or procedures are appropriate for determining whether a person captured and detained on U.S. soil is in fact an enemy combatant." 145 However, they fail to address how this ambiguity impacts the application of their clear statement principle. Their framework is therefore of no real help to courts that must first determine whether an individual was properly deemed to be an "enemy combatant" before determining whether the clear statement rule applies to thee AUMF. The clear statement rule thus fails to fulfill its core purpose of resolving statutory ambiguity in a manner that avoids serious constitutional questions. In addition to failing to resolve the due process questions surrounding the [\*1421] "enemy combatant" determination, Bradley and Goldsmith's argument does not resolve the core separation of powers concern: namely, whether, and if so under what conditions, it is constitutionally permissible for the President to apply martial law in place of the criminal justice system on U.S. territory despite the absence of any compelling need to do so. In short, their argument assumes that such an application of law-of-war principles on U.S. territory, outside of the battlefield context, would be a legitimate exercise of the President's war powers in the context of counterterrorism. This is hard to square with the Milligan Court's powerful statements to the contrary. 146 IV. MOVING BEYOND INDIVIDUAL STATUS: THE CONSTITUTION APPLIES IN THE UNITED STATES This Note argues that the clear statement principle applies to the AUMF detention authority whenever it is invoked to detain individuals arrested within the United States--at least where the enemy combatant question is in dispute. The principal trigger for application of the clear statement principle should not be an individual's status but rather the presumption that constitutional rights and restraints apply on U.S. territory. Courts therefore should dispense with the enemy combatant inquiry under these circumstances. This Note posits that such a construction is required to preserve the constitutionality of the AUMF. This constitutional default rule presumes that Congress has not delegated power to the executive branch to circumvent due process protections wholesale, and that it has not altered the traditional boundaries between military and civilian power on U.S. territory. Any departure from this baseline at least requires a clear manifestation of congressional intent. As evinced by the divisions in Congress over passage of the detention provisions in the NDAA 2012, there is no consensus as to the breadth of the detention power afforded to the executive branch under the AUMF. Courts should therefore not presume that the statute authorizes application of martial law to circumvent otherwise applicable constitutional restraints and due process rights. By making the jurisdictional question--civilian versus military--the trigger for the clear statement principle, the judiciary would properly place the impetus on Congress to clearly define and narrowly circumscribe the conditions under which the executive may use military jurisdiction to detain individuals on U.S. territory. This is the only way to ensure that our nation's political representatives have adequately deliberated and reached a consensus with respect to delegating powers to the executive branch where such delegation would have the consequence of displacing, in a wholesale fashion, constitutional protections. For all its controversy, § 412 of the USA PATRIOT Act of 2001 provides an example of where Congress has provided for executive detention under circumstances that are arguably sufficiently detailed to satisfy a clear statement [\*1422] requirement. 147 Absent this level of clarity, where the President purports to use the AUMF to detain militarily on U.S. territory, courts must presume that constitutional rights and restraints apply and are not displaced by martial law. A. DUE PROCESS CONCERNS One of the most basic rights accorded by the Constitution is the fundamental right to be free from deprivations of liberty absent due process of law. The AUMF must be read with the gravity of this fundamental right in mind. As the Court made clear in Endo, where fundamental due process rights are at stake, ambiguous wartime statutes are to be construed to allow for "the greatest possible accommodation of the liberties of the citizen." 148 Courts "must assume, when asked to find implied powers in a grant of legislative or executive authority, that the law makers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used." 149 This includes statutes that would otherwise "exceed the boundaries between military and civilian power, in which our people have always believed, which responsible military and executive officers had heeded, and which had become part of our political philosophy and institutions . . . ." 150 B. THE SUSPENSION CLAUSE The Suspension Clause lends further constitutional support to applying a clear statement requirement to the AUMF detention authority on U.S. territory. The Suspension Clause gives Congress the emergency power to suspend the writ of habeas corpus "when in Cases of Rebellion or Invasion the public Safety may require it." 151 As Fallon and Meltzer observe, this Clause--and the limited circumstances in which it may be invoked--suggest, or even explicitly affirm, "the presumptive rule that when the civilian courts remain capable of dealing with threats posed by citizens, those courts must be permitted to function." 152 To interpret the AUMF as congressional authorization to displace the civilian system and apply military jurisdiction on U.S. territory would "render that [\*1423] emergency power essentially redundant." 153 The Suspension Clause also underscores that the right to be free from the arbitrary deprivation of physical liberty is one of the most central rights that the Constitution was intended to protect. C. THE LACK OF MILITARY NECESSITY The lack of military necessity for applying law-of-war principles on U.S. territory further supports the construction of the AUMF to avoid displacing civilian law with law of war in the domestic context. The Supreme Court long ago declared that martial law may not be applied on U.S. territory when civilian law is functioning and "the courts are open and their process unobstructed." 154 Instead, "[t]he necessity [for martial law] must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration." 155 In the absence of such necessity, "[w]hen peace prevails, and the authority of the government is undisputed, there is no difficulty of preserving the safeguards of liberty . . . ." 156 The past ten years have shown that there is no need to stretch law-of-war principles in the AUMF to reach U.S. territory. The exigencies associated with an active battlefield, which were critical to the Hamdi plurality's interpretation of the AUMF, 157 are simply not present in the United States. Instead, "American law enforcement agencies . . . continue to operate within the United States. These agencies have a powerful set of legal tools, adapted to the criminal process, to deploy within the United States against . . . suspected [terrorists], and the civilian courts remain open to impose criminal punishment." 158 Indeed, for more than a decade since the 9/11 attacks, domestic law enforcement agencies have carried the responsibility for domestic counterterrorism and have successfully thwarted several terrorism plots. 159 Civilian courts have adjudicated the prosecution of suspected terrorists captured on U.S. territory under [\*1424] federal laws. 160 The experience of the past decade shows that the civilian system is up to the task, and there is no military exigency that justifies curtailing constitutional protections and applying military authority in the domestic context. 161 Accordingly, the circumstances that the Supreme Court found to justify the use of the military authority under the AUMF to capture and indefinitely detain Hamdi, who was found armed on the active battlefield in Afghanistan, do not extend to persons captured on U.S. territory. The manner in which the government handled the Padilla and al-Marri cases further demonstrates the lack of military necessity. In both cases, the government abandoned its position that national security imperatives demanded that they continue to be held in military custody; both were transferred to federal custody and ultimately convicted of federal crimes carrying lengthy prison terms. 162 The Supreme Court's precedent in Quirin neither requires, nor can it be fairly read to justify, a different conclusion. First, the issue of indefinite military detention without trial was not before the Court in that case. Second, the status of the Nazis in Quirin as enemy combatants was undisputed, in contrast to that of individuals who are "part of" or "substantially support" al-Qaeda or "associated forces." 163 Third, the Court in Quirin went "out of its way to say that the Court's holding was extremely limited," encompassing only the precise factual circumstances before it. 164 Finally, Quirin itself is shaky precedent, as evidenced by the Court's own subsequent statements and as elaborated in numerous scholarly commentaries on the case. 165 As Katyal and Tribe observe: Quirin plainly fits the criteria typically offered for judicial confinement or reconsideration: It was a decision rendered under extreme time pressure, with respect to which there are virtually no reliance interests at stake, and where the statute itself has constitutional dimensions suggesting that its construction should be guided by relevant developments in constitutional law. 166 [\*1425] This case therefore should not be read as foreclosing the application of a clear statement principle to the AUMF as applied on U.S. territory where an individual's status as an enemy combatant is in dispute. CONCLUSION The AUMF is ambiguous: it does not specify whether it reaches individuals captured on U.S. territory, and Congress declined to resolve this question when it enacted § 1021 of the NDAA 2012. If a future administration invokes the AUMF as authority to capture and hold persons on U.S. territory in indefinite military detention, it will be left to the courts to determine whether this is constitutional. Courts should resolve this question by applying a clear statement requirement. This Note has argued that the trigger for this clear statement requirement is not the individual's status but rather the presumption that constitutional rights and restraints apply on U.S territory. Courts should apply this default presumption regardless of an individual's citizenship status, and it should apply even where the government claims that the individual is an "enemy combatant," at least where that determination is subject to dispute. This Note has argued that this method of statutory interpretation is constitutionally required. "[B]y extending to all 'persons' within the Constitution's reach such guarantees as . . . due process of law, the Constitution constrains how our government may conduct itself in bringing terrorists to justice." 167 If these constraints are to remain meaningful, these guarantees require, at the very least, that courts presume that constitutional guarantees prevail where congressional intent is unclear. The past ten years have shown that our criminal justice system is capable of thwarting terrorist attacks and bringing terrorists to justice while still preserving the safeguards of liberty that are fundamental to our system of justice. "[T]hese safeguards need, and should receive, the watchful care of those [e]ntrusted with the guardianship of the Constitution and laws." 168

#### Detention policy is incomprehensible in the status quo- only Supreme Court rulings send a clear judicial review test for lower court judges and spills over to effective Congressional policy

Garrett 12 (Brandon, Roy L. and Rosamund Woodruff Morgan Professor of Law, University of Virginia School of Law. HABEAS CORPUS AND DUE PROCESSCORNELL LAW REVIEW [Vol. 98:47] page lexis)

The Suspension Clause casts a broad shadow over the regulation of all forms of detention. It has exerted direct and indirect influence even in contexts where statutes largely supplant habeas corpus as the primary vehicle for judicial review. The Executive, courts, and Congress have long been concerned with avoiding Suspension Clause problems, and the Supreme Court’s own sometimes-carried-out warnings that it will narrowly interpret efforts to restrict judicial review to avoid potential Suspension Clause problems have, many years before Boumediene, helped to structure judicial review of detention. I have argued that the Suspension Clause explains why, as the Court put it in INS v. St. Cyr, “[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”451 Post- Boumediene, judges may rely on the Suspension Clause more directly, and not just as a principle of constitutional avoidance. Understanding the Suspension Clause as affirmatively guaranteeing a right to habeas process to independently examine the authorization for a detention helps to explain habeas and constitutional doctrine across a range of areas. Why does habeas corpus sometimes provide access to process unavailable under the Due Process Clause, while sometimes due process provides more process than habeas would? At its core, habeas corpus provides judges with process in situations where the need for review of legal and factual questions surrounding detention is most pressing. This view of habeas process can be seen as related to the Court’s long line of decisions that guarantee a “right of access” to courts without clarifying the source of that “[s]ubstantive [r]ight.”452 In Boumediene, the Court grounded that right in the Suspension Clause. This basis for the right makes some sense of the varied nature of habeas review in which statutes and case law differ depending on the type of detention. Judicial review does not vary categorically; for example, immigration does not receive less review than postconviction or military detention habeas. Instead, judicial review varies within each category. This is the product of evolving executive detention policies, varying postconviction practice, and changes over time in federal statutes, some poorly conceived and some sensible. No one actor provides coherence to habeas practice at any time, and some of the statutes are notoriously Byzantine, poorly drafted, and illogical. Judges have long played, however, an important role in interpreting the writ (and the underlying constitutional rights). Indeed, for some time, the Supreme Court’s interventions have reinforced the role habeas plays, particularly in the executive detention context. In response to the Court’s habeas rulings, which generally avoid defining the precise reach of the Suspension Clause, Congress has drafted statutes to preserve judicial review of detentions in an effort to steer clear of Suspension Clause problems, with mixed results.

Failing to articulate habeas standards for lower court judges makes indefinite detention inevitable and triggers your disads

Sparrow 11 (Indefinite Detention After Boumediene: Judicial Trailblazing in Uncharted and Unfamiliar Territory SUFFOLK UNIVERSITY LAW REVIEW [Vol. XLIV:261 p lexis Tyler Sparrow is an associate in the Securities Department, and a member of the Litigation and Enforcement Practice Group]

This section will argue that the current guidance on detainee habeas corpus actions offered by the Supreme Court as well as the Executive and Legislative branches is vague and inadequate.100 Because of this inadequacy, federal district court judges cannot proceed with any confidence that their judgments will stand, nor can the litigants form any reasonable predictions from the case law.101 This section will then examine how more definitive Supreme Court precedent would help to unify the case law dealing with detainee habeas corpus actions.102 Finally, this section will argue that adoption of legislation clearly addressing the substantive scope of the government’s detention authority would clarify the law for the public, the federal courts, and most importantly those detained without charge.103 The Supreme Court’s holding in Boumediene was limited to the constitutional issues regarding Guantanamo detainees’ access to the writ of habeas corpus, leaving all questions of procedure and substantive scope-ofdetention authority to the lower federal courts.104 This lack of guidance has drawn criticism from legal scholars and federal judges alike.105 A group of noted legal scholars observed that, in holding Guantanamo detainees were entitled to seek the writ of habeas corpus, the Supreme Court “gave only the barest sketch of what such proceedings should look like, leaving a raft of questions open for the district and appellate court judges.”106 Furthermore, the Obama Administration has stated that it will not seek further legislation from Congress to justify or clarify its detention authority.107 This lack of guidance has led to disparate results in detainee habeas corpus actions with similar facts, based not on the merits of the cases, but rather on which particular judge hears the petition.108 B. Need for Supreme Court Precedent Addressing Standards and Procedure for Detainee Habeas Corpus Actions The Supreme Court’s refusal to address the substantive scope of the government’s detention authority in Boumediene has left the task to federal district court judges, who are free to apply whichever standard they see fit, regardless of its disparity from the standard being applied down the hall of the very same courthouse.109 For instance, it is up to the district judges whether to analyze detention authority under the rubric of “substantial support” for the Taliban and/or Al Qaeda, or the rubric pertaining to being a “part of” either of these groups.110 There are also differing opinions as to when, and how long, a detainee’s relationship with the Taliban and/or Al Qaeda must have existed to justify detention, under either the “part of” or “substantial support” rationales.111 Differing judicial approaches can also be seen in the weight of evidence required to justify detention, as well as how to treat hearsay and evidence obtained in the face of coercion.112 This creates a situation where neither the government nor the detainee “can be sure of the rules of the road in the ongoing litigation, and the prospect that allocation of a case to a particular judge may prove dispositive on the merits can cut in either direction.”113 The Supreme Court has the opportunity to unify these divergent paths by finally ruling on questions such as the substantive scope of the government’s detention authority, the standard and weight of evidence required for continued detention, whether a relationship with the Taliban and/or Al Qaeda can be sufficiently vitiated, and the reliability of hearsay evidence and statements made under coercion.114

#### No disads- Congress removed transfer restrictions for detainees- Obama signing it proves he won’t circumvent

ACLU 10/20 (Senate Eases Transfer Restrictions for Guantánamo Detainees <https://www.aclu.org/national-security/senate-eases-transfer-restrictions-guantanamo-detainees>)

WASHINGTON – The Senate late last night passed the National Defense Authorization Act for fiscal year 2014, which will ease transfer restrictions for detainees currently held at the military detention camp at Guantánamo Bay, Cuba, most of whom have been held without charge or trial for over a decade. The bill, which passed the House of Representatives last week, cleared the Senate by a vote of 84-15. The improved transfer provisions were sponsored by Senate Armed Services Committee Chairman Carl Levin and were strongly supported by the White House and the Defense Department. "This is a big step forward for meeting the goal of closing Guantánamo and ending indefinite detention. For the first time ever, Congress is making it easier, rather than harder, for the Defense Department to close Guantánamo – and this win only happened because the White House and Defense Secretary worked hand in hand with the leadership of the congressional committees," said Christopher Anders, senior legislative counsel at the ACLU’s Washington Legislative Office. "After years of a blame-game between Congress and the White House, both worked together to clear away obstacles to transferring out of Guantánamo the vast majority of detainees who have never been charged with a crime." The current population at Guantánamo stands at 158 detainees, approximately half of whom were cleared for transfer to their home or third-party countries by U.S. national security officials four years ago. Also, periodic review boards have recently started reviews of detainees who have not been charged with a crime and had not been cleared in the earlier reviews. While the legislation eases the transfer restrictions for sending detainees to countries abroad, it continues to prohibit the transfer of detainees to the United States for any reason, including for trial or medical emergencies. "There has been a sea change on the Guantánamo issue, both in Congress and at the White House. With the president’s renewed commitment to closing it, and the support of Congress, there now is reason to hope that the job of closing Guantánamo and ending indefinite detention can get done before the president leaves office," said Anders. "As big as this win is, there is more work left to be done. The Defense Department has to use the new transfer provisions to step up transfers out of Guantánamo, and Congress needs to remove the remaining ban on using federal criminal courts to try detainees."