# 1AC

## Detention 1AC

### Contention 1- Rule of Law

#### Afghanistan is adopting detention policies modeled off US law- this makes instability inevitable

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.

#### Detention policy has prevented rule of law restoration in Afghanistan- judicial modeling makes US action key

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- it will restore credibility in our system and allows us to improve the Afghani justice system

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.

#### Judicial action is key to international credibility and restoring the rule of law

Hecht, 05 (Daryl, Judge for the Iowa Court of Appeals, 50 S.D. L. REV. 78, lexis)
Americans proclaim with some justification that liberty and human rights are among the crown jewels of their national identity. Claiming the status of human rights watchdogs around the globe, representatives of the United States government commonly criticize human rights failures of other nations. If such criticism is to be taken seriously and carry force abroad when well-founded, the United States government must heed its own admonitions. It should accord due process not only to all persons detained within its borders but also to those it imprisons offshore at locations under the exclusive control of the United States. Affirmation by federal courts of the liberty interests of alien prisoners imprisoned on Guantanamo would give important symbolic assurance to citizens of the United States, foreign nationals, friends, and foes that liberty is a cherished universal human right that does not persist or perish according to technicalities such as geographic boundaries. As they clarify the nature and extent of process due the Guantanamo prisoners, federal courts will consider the Eisentrager Court's concerns about the prospect that thorough judicial review might disrupt war efforts. [288](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n288) The realities [\*111] of war may justify reasonable restriction of the process available to prisoners of war during times of armed conflict and justify some judicial deference allowing the executive to conduct military campaigns with a minimum of distraction. However, the risk that the war effort will be disrupted by judicial or administrative review of the grounds for detention are diminished in these cases because the prison is distant from the present theaters of war. Modern technology will facilitate the presentation of evidence at remote sites in ways not contemplated by the Court in the Eisentrager era and will render unpersuasive many of the Executive's war-powers arguments against meaningful judicial review. The recent commencement of administrative hearings conducted by the Combatant Status Review Tribunals and the discharge of some of the Guantanamo prisoners are positive developments. It remains to be seen whether federal courts will conclude these administrative tribunals within the Executive branch allow for meaningful review of the prisoners' status. Although passage of the Military Tribunals Act of 2003 would, especially with suggested amendments, alleviate many of the most egregious legal infirmities associated with the ongoing detention of uncharged prisoners, a timely legislative solution to the problem through the action of the political branches of government is unlikely. The best and perhaps only prospect for meaningful protection of the uncharged detainees' rights against indefinite imprisonment lies in the litigation pending in federal courts. The remaining uncharged prisoners have languished too long in prison without charge or access to counsel, and the courts must be vigilant to prevent the continuation of arbitrary detentions in violation of international humanitarian and human rights principles. Alien prisoners ought not be disqualified from fundamental constitutional protections solely as a consequence of the government's choice of an off-shore location for their confinement. If deprivation of aliens' property interests may legally be imposed within the United States only in conformity with due process principles, the liberty interests of aliens held on Guantanamo should receive no less protection against state action. It should be understood that arguments in favor of meaningful review of the status of the Guantanamo prisoners is not an argument for the immediate release of all aliens imprisoned on Guantanamo. The evidence presented in habeas proceedings or in fair administrative tribunal hearings may establish reasonable grounds to believe some petitioners are properly designated and detained as enemy combatants. Under international humanitarian law, they may be detained during the conflict, but it seems evident that the GPW did not contemplate perpetual imprisonment without charge during an interminable war. [289](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n289) The [\*112] evidence offered in a meaningful review process may support war crimes charges against some of the prisoners who will be tried before military commissions under the regulations adopted by the Department of Defense. If the evidence establishes that still other prisoners have, as they allege, been improvidently incarcerated, they should be promptly discharged. In Korematsu v. United States, [290](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n290) the Court deferred during a declared war to the Executive's decision to evacuate persons of Japanese ancestry from locations on the west coast and relocate them in internment camps without the benefit of charges or hearings. That decision has since been widely criticized, and at least one member of the Court later publicly regretted his vote to defer to the military's judgment of necessity. [291](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n291) In 1976, as part of the celebration of the Bicentennial of the Constitution, President Gerald Ford issued a proclamation acknowledging that the internment of the Japanese Americans, many of whom were citizens, during World War II was wrong and calling upon the United States to "resolve that this kind of action shall never again be repeated." [292](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n292) Federal courts now have the opportunity to revisit the appropriate balance between precious civil liberties and measures properly taken in furtherance of national security during times of crisis. As the proper balance is recalibrated to fit the circumstances presented in the Guantanamo litigation, the courts can interrupt the "all too easy slide from a case of genuine military necessity ... to one where the threat is not critical and the power [sought to be exercised is] either dubious or nonexistent." [293](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n293)If the Guantanamo litigation forces meaningful review of the prisoners' status, it will advance the rule of law and model a fundamental principle of international leadership. "If the UnitedStates represents values that others want to follow, it will cost us less to lead." [294](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n294) There is, of course, no doubt that the United States has the military power to ignore the prisoners' liberty interests and continue to hold them indefinitely without charge. But the raw power to maintain the status quo provides no legal justification consistent with reason, fundamental human rights, and principles of limited government for doing so.

#### Only restoring confidence in their judiciary system can make our post-drawdown COIN strategy successful

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.

#### Unsuccessful drawdown makes nuclear war inevitable

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.

#### Judicial reform and COIN are 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.

#### Instability results in multiple conflict scenarios specifically- Indo-Pak war

**Carafano ’10** (Con: Obama must win fast in Afghanistan or risk new wars across the globe By JAMES JAY CARAFANO   Saturday, Jan. 2, 2010 James Jay Carafano is a senior research fellow for national security at The Heritage Foundation and directs its Allison Center for Foreign Policy Studies)

There’s little chance Kabul will become Saigon 1968. If the war in Afghanistan starts going south for allied forces, President Obama will probably quit rather than risk getting bogged down. President Lyndon B. Johnson considered Vietnam more a distraction than a national mission, yet he ramped up the troop commitment all the same. In 1968, the North Vietnamese launched a major offensive during the Tet holiday. They lost that battle. Badly! But the fact that they were able to mount such a large-scale offensive gave many Americans—including Walter Cronkite—the impression that the war wasn’t winnable. As “the U.S. is bogged down” became the common view, Johnson’s presidency fell to ashes. Not much chance Obama will go that route. If the violence skyrockets next year and it looks as though the president’s ambitious objectives can’t be met, Afghanistan could look a lot more like Vietnam in 1973. U.S. forces withdrew. Our abandoned ally was soon overrun. South Vietnam became a gulag; Cambodia sprouted the killing fields; life in Laos was just plain lousy. By 1979, the Sino-Vietnamese war erupted. We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run. Most forget that throwing South Vietnam to the wolves made the world a far more dangerous place. The Soviets saw it as an unmistakable sign that America was in decline. They abetted military incursions in Africa, the Middle East, southern Asia and Latin America. They went on a conventional- and nuclear-arms spending spree. They stockpiled enough smallpox and anthrax to kill the world several times over. State-sponsorship of terrorism came into fashion. Osama bin Laden called America a “paper tiger.” If we live down to that moniker in Afghanistan, odds are the world will get a lot less safe. Al-Qaida would be back in the game. Regional terrorists would go after both Pakistan and India—potentially triggering a nuclear war between the two countries. Sensing a Washington in retreat, Iran and North Korea could shift their nuclear programs into overdrive, hoping to save their failing economies by selling their nuclear weapons and technologies to all comers. Their nervous neighbors would want nuclear arms of their own. The resulting nuclear arms race could be far more dangerous than the Cold War’s two-bloc standoff. With multiple, independent, nuclear powers cautiously eyeing one another, the world would look a lot more like Europe in 1914, when precarious shifting alliances snowballed into a very big, tragic war. The list goes on. There is no question that countries such as Russia, China and Venezuela would rethink their strategic calculus as well. That could produce all kinds of serious regional challenges for the United States. Our allies might rethink things as well. Australia has already hiked its defense spending because it can’t be sure the United States will remain a responsible security partner. NATO might well fall apart. Europe could be left with only a puny EU military force incapable of defending the interests of its nations.

#### Limited Indo-Pak war causes extinction

Toon et al 7 – Atmospheric and Oceanic Sciences @ University of Colorado – ‘7 [Owen B. Toon, Alan Robock (Professor of Environmental Sciences @ Rutgers University), Richard P. Turco (Professor of Atmospheric and Oceanic Sciences @ UCLA, Charles Bardeen (Professor of Atmospheric and Oceanic Sciences @ University of Colorado), Luke Oman (Professor of of Earth and Planetary Sciences @ Johns Hopkins University), Georgiy L. Stenchikov (Professor of Environmental Sciences @ Rutgers University), “NUCLEAR WAR: Consequences of Regional-Scale Nuclear Conflicts,” Science, 2 March 2007, Vol. 315. no. 5816, pp. 1224 – 1225]

The world may no longer face a serious threat of global nuclear warfare, but regional conflicts continue. Within this milieu, acquiring nuclear weapons has been considered a potent political, military, and social tool (1-3). National ownership of nuclear weapons offers perceived international status and insurance against aggression at a modest financial cost. Against this backdrop, we provide a quantitative assessment of the potential for casualties in a regional-scale nuclear conflict, or a terrorist attack, and the associated environmental impacts (4, 5). Eight nations are known to have nuclear weapons. In addition, North Korea may have a small, but growing, arsenal. Iran appears to be seeking nuclear weapons capability, but it probably needs several years to obtain enough fissionable material. Of great concern, 32 other nations--including Brazil, Argentina, Japan, South Korea, and Taiwan--have sufficient fissionable materials to produce weapons (1, 6). A de facto nuclear arms race has emerged in Asia between China, India, and Pakistan, which could expand to include North Korea, South Korea, Taiwan, and Japan (1). In the Middle East, a nuclear confrontation between Israel and Iran would be fearful. Saudi Arabia and Egypt could also seek nuclear weapons to balance Iran and Israel. Nuclear arms programs in South America, notably in Brazil and Argentina, were ended by several treaties in the 1990s (6). We can hope that these agreements will hold and will serve as a model for other regions, despite Brazil's new, large uranium enrichment facilities. Nuclear arsenals containing 50 or more weapons of low yield [15 kilotons (kt), equivalent to the Hiroshima bomb] are relatively easy to build (1, 6). India and Pakistan, the smallest nuclear powers, probably have such arsenals, although no nuclear state has ever disclosed its inventory of warheads (7). Modern weapons are compact and lightweight and are readily transported (by car, truck, missile, plane, or boat) (8). The basic concepts of weapons design can be found on of the Internet. The only serious obstacle to constructing a bomb is the limited availability of purified fissionable fuels.There are many political, economic, and social factors that could trigger a regional-scale nuclear conflict, plus many scenarios for the conduct of the ensuing war. We assumed (4) that the densest population centers in each country--usually in megacities--are attacked. We did not evaluate specific military targets and related casualties. We considered a nuclear exchange involving 100 weapons of 15-kt yield each, that is, ~0.3% of the total number of existing weapons (4). India and Pakistan, for instance, have previously tested nuclear weapons and are now thought to have between 109 and 172 weapons of unknown yield (9). Fatalities were estimated by means of a standard population database for a number of countries that might be targeted in a regional conflict (see figure, above). For instance, such an exchange between India and Pakistan (10) could produce about 21 million fatalities--about half as many as occurred globally during World War II. The direct effects of thermal radiation and nuclear blasts, as well as gamma-ray and neutron radiation within the first few minutes of the blast, would cause most casualties. Extensive damage to infrastructure, contamination by long-lived radionuclides, and psychological trauma would likely result in the indefinite abandonment of large areas leading to severe economic and social repercussions. Fires ignited by nuclear bursts would release copious amounts of light-absorbing smoke into the upper atmosphere. If 100 small nuclear weapons were detonated within cities, they could generate 1 to 5 million tons of carbonaceous smoke particles (4), darkening the sky and affecting the atmosphere more than major volcanic eruptions like Mt. Pinatubo (1991) or Tambora (1815) (5). Carbonaceous smoke particles are transported by winds throughout the atmosphere but also induce circulations in response to solar heating. Simulations (5) predict that such radiative-dynamical interactions would loft and stabilize the smoke aerosol, which would allow it to persist in the middle and upper atmosphere for a decade. Smoke emissions of 100 low-yield urban explosions in a regional nuclear conflict would generate substantial global-scale climate anomalies, although not as large as in previous "nuclear winter" scenarios for a full-scale war (11, 12). However, indirect effects on surface land temperatures, precipitation rates, and growing season lengths (see figure, below) would be likely to degrade agricultural productivity to an extent that historically has led to famines in Africa, India, and Japan after the 1783-1784 Laki eruption (13) or in the northeastern United States and Europe after the Tambora eruption of 1815 (5). Climatic anomalies could persist for a decade or more because of smoke stabilization, far longer than in previous nuclear winter calculations or after volcanic eruptions. Studies of the consequences of full-scale nuclear war show that indirect effects of the war could cause more casualties than direct ones, perhaps eliminating the majority of the world's population (11, 12). Indirect effects such as damage to transportation, energy, medical, political, and social infrastructure could be limited to the combatant nations in a regional war. However, climate anomalies would threaten the world outside the combat zone. The predicted smoke emissions and fatalities per kiloton of explosive yield are roughly 100 times those expected from estimates for full-scale nuclear attacks with high-yield weapons (4).

#### Deterrence doesn’t check escalation

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July 12, 2010, http://the-diplomat.com/2010/07/12/south-asia%e2%80%99s-nuclear-war-risk/4/?print=yes]

Yet even setting aside the question of nuclear weapons falling into terrorist hands, nuclear competition between India and Pakistan is especially dangerous. Active (and ongoing) political disputes between the two countries have resulted in three past wars as well as numerous proxy conflicts. Pakistani leaders in particular have concluded that their nuclear arsenal has deterred India from again using its conventional forces to attack Pakistani territory. As a result, Pakistan’s implicit nuclear doctrine presumes the possible first use of nuclear weapons. The risks of such tensions are compounded by the physical proximity of the two countries, as well as their reliance on ballistic missiles as delivery vehicles, which means that early warning times might be as little as five to ten minutes. Although it remains unclear whether India or Pakistan have combined its nuclear warheads with their assigned delivery systems, such a precarious stance would increase the risks of both accidental and catalytic war (a nuclear conflict between both governments precipitated by a third party, such as a terrorist group). Throw China into the mix, with Pakistan at risk of viewing its own nuclear programme as increasingly inadequate as India seeks to achieve mutual deterrence with China, and the picture becomes more complicated. And add in the risk of widespread political disorder in either India or Pakistan, which could see a dangerous political adventurism as political leaders look to rally domestic support, and the peculiar challenges posed by the region become clearer. The fact is South Asia is particularly prone to a destabilizing arms race. And perhaps nuclear war.

### Contention 2- Abstention

#### Failure of the Supreme Court to substantively rule on detention authority causes judicial abstention on national security issues

Vaughns 13 (B.A. (Political Science), J.D., University of California, Berkeley, School of Law. Professor of Law, University of Maryland Francis King Carey School of Law.Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11 ASIAN AMERICAN LAW JOURNAL [Volume 20:7])

After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert, and have effectively sanctioned, its highly deferential stance towards the Executive in cases involving national security. In particular, the D.C. Circuit concluded that an order mandating the Uighurs’ release into the continental United States would impermissibly interfere with the political branches’ exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier. As such, the Bush administration’s strategy in employing the “war” paradigm at all costs and without any judicial intervention, while unsuccessful in the Supreme Court, has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals, where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” can be exercised with little, if any, real check; arguably leading to judicial abstention in cases involving national security. The consequences of the Kiyemba decision potentially continue today, for example, with passage of the National Defense Authorization Act of 2012,246 which President Obama signed, with reservations, into law on December 31, 2011.247 This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.248 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.249 In signing the bill, President Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them.250 Of course, that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights. In the years after 9/11, the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a “somewhat novel role” for the Court.251 Unsurprisingly, in so doing, the Court’s intervention “strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power.”252 Also unsurprisingly, the Court’s decisions in this arena “prompted strong reactions from the other two branches.”253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began.254 However, since the twentieth century, wartime has been the “normal state of affairs.”255 If perpetual war is the new “normal,” the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage about protecting individual rights, even if these assertions of judicial authority come as a surprise to the political branches of government.256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country’s early wartime cases and “envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions.”257 This model, they state, “cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings.”258 Kiyemba is very much a return to the repressive wilderness. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that the Court tends to be reluctant to decide constitutional cases if it can avoid doing so, as it did in Kiyemba. Arguably, this doctrine of judicial abstention is tied to concerns of institutional viability, in the form of public perception, and to concerns about respecting the separation of powers.259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall’s admonition that “it is a constitution we are expounding.”260 Consequently, “[i]t is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government.”261 And while brave jurists have made such assertions throughout the Court’s history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies. For example, in Korematsu—one of the worst examples of judicial deference in times of crisis—Justice Jackson dissented, but he did so “with explicit resignation about judicial powerlessness,” and concern that it was widely believed that “civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime.”262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility.

#### SCOTUS can restrain the president under authority granted by the Suspension Clause- that ensures precedent setting

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 relationship between the Suspension Clause and the Due Process Clause has sweeping implications for the detention of suspected terrorists and military engagements in multiple countries after September 11, 2001. In Boumediene v. Bush, the Supreme Court for the first time clearly gave the Suspension Clause independent force as an affirmative source of judicial power to adjudicate habeas petitions and as a source of meaningful process to prisoners in custody.15 As a consequence of this decision, Congress now cannot enact jurisdictions tripping legislation to deny executive detainees access to judicial review of the type that it has twice tried and failed to do in the past decade.16 A noncitizen detained as a national security threat may now have procedural rights to contest the detention.17 Even as the Executive has crafted nuanced positions on power and procedure for detaining persons for national security reasons, and even as Congress has adopted new detention-authorizing legislation,18 the judiciary continues to play a central role, though sometimes unwillingly and deferentially, in detention review.19 Apart from these specific developments, I argue that the reinvigorated Suspension Clause jurisprudence will continue to have ripple effects across all areas regulated by habeas corpus. What process must the government use to ensure that it detains the correct people? The traditional assumption was that the Due Process Clause provided the answers. Judges and scholars described a functional relationship in which due process supplied the rights while habeas provided the procedural means to vindicate them. Justice Antonin Scalia expressed this view in its starkest form in his INS v. St. Cyr dissent, arguing that the Suspension Clause “does not guarantee any content to (or even the existence of) the writ of habeas corpus.”20 Judges and scholars have long assumed that due process offers more protections than habeas corpus, or that the substance of habeas is coextensive with the Due Process Clause.21 Others have suggested that the Suspension Clause has a “structural” role, entwined with other individual rights guarantees.22 The U.S. government, in the wake of the September 11, 2001 attacks, adopted the view that noncitizens captured and detained abroad had no due process rights and thus no habeas remedy, and the D.C. Circuit agreed.23 In two cases that reshaped habeas jurisprudence, Hamdi v. Rumsfeld, decided in 2004,24 and Boumediene, decided in 2008,25 the Court connected the Suspension Clause and the Due Process Clause in a new way. Hamdi seemed to indicate that the Due Process Clause approach had triumphed. The Hamdi plurality applied the cost-benefit due process test from Mathews v. Eldridge26 to outline the procedural rights of citizens who challenge their detention.27 Following Hamdi, the precise scope of what due process required seemed the “looming question” for the future of executive detention.28 In response, the government hastily implemented administrative screening procedures for detainees, ostensibly to comply with the bare minimum that due process appeared to require.29 In Boumediene, the Court chose a different constitutional path. The Court did not discuss whether Guant´anamo detainees had due process rights, but instead held that the Suspension Clause independently supplies process to ensure review of executive detention.30 The Court put to rest the notion that the Suspension Clause is an empty vessel and regulates only the conditions for congressional suspension of the writ. Instead, the Court held that the Suspension Clause itself extended “the fundamental procedural protections of habeas corpus.”31 The Court’s view complements recent scholarship examining the common law origins of habeas corpus.32 However, while an- swering the Suspension Clause question, the ruling created another puzzle. The Court held that a prisoner should have a “meaningful opportunity” to demonstrate unlawful confinement, but it did not specify what process the Suspension Clause ensures, nor to what degree due process concerns influence the analysis.33 Lower court rulings elaborating on the process for reviewing detainee petitions have displayed confusion as to which sources to rely on.34 This Article tries to untangle this important knot.

#### Judicial abstention props up military adventurism and illegal arms sales

Scales and Spitz 12 (Ann Scales, prof at U Denver law school. Laura Spitz, prof at U Colorado Law School. The Jurisprudence of the Military-Industrial ComplexSeattle Journal for Social Justice Volume 1 | Issue 3 Article 51 10-11-2012)

First, our nation’s history and legitimacy rest upon a separation of military power from democratic governance. For that reason, the armed forces are subject to constitutional constraint. Second, however, as an aspect of separation of powers, courts try not to interfere in areas of foreign policy and military affairs. Often this is referred to as the “political question” doctrine, a determination that a matter is beyond the capabilities of judges. The strongest argument for this deference is that the political branches—or the military itself—have superior expertise in military matters. That may be true in some situations. I am not sure, for example, the Supreme Court would have been the best crowd to organize the invasion of Normandy. But what we now have is an increasingly irrational deference.7 Consider three cases: a. In Korematsu v. United States,8 the Supreme Court said the internment of Japanese-Americans at the beginning of 1942 was constitutional, based upon a military assessment of the possibility of espionage in preparation for a Japanese invasion of the United States. It turns out that the information provided by the military to the Supreme Court was falsified.9 But note two things: (1) the nation was in the midst of a declared world war, and (2) in subsequent less urgent circumstances, Korematsu would seem to argue strongly for military justifications to have to be based upon better, more reliable information than was offered there. b. In the 1981 case of Rostker v. Goldberg,10 the Supreme Court decided that it was constitutional for Congress to exclude women from the peacetime registration of potential draftees, even though both the Department of Defense and the Army Chief of Staff had testified that including women would increase military readiness. But Congress got the benefit of the military deference doctrine as a cover for what I think was a sinister political purpose—to protect the manliness of war—and the Supreme Court felt perfectly free to ignore what those with the real expertise had to say. c. Most recently, in Hamdi v. Rumsfeld,11 the Fourth Circuit held that a U.S. citizen who had been designated an “enemy combatant”12 could be detained indefinitely without access to counsel. In this case, however, not only is there no declared war,13 but also, the only evidence regarding Mr. Hamdi was a two-page affidavit by a Defense Department underling, Mr. Mobbs. Mobbs stated that Mr. Hamdi was captured in Afghanistan, and had been affiliated with a Taliban military unit. The government would not disclose the criteria for the “enemy combatant” designation, the statements of Mr. Hamdi that allegedly satisfied those criteria, nor any other bases for the conclusion of Taliban “affiliation.”14 And that is as good as the evidence for life imprisonment without trial has to be. Deference to the military has become abdication. In other words, what we presently have is not civilian government under military control, but something potentially worse, a civilian government ignoring military advice,15 but using the legal doctrine of military deference for its own imperialist ends. Third, the gigantic military establishment and permanent arms industry are now in the business of justifying their continued existences. This justification is done primarily, as you know, by retooling for post-Cold War enemies—the so-called “rogue states”—while at the same time creating new ones, for example by arming corrupt regimes in Southeast Asia.16 I was reminded of this recently when we went to see comedian Kate Clinton. She thought Secretary Powell had taken too much trouble in his presentation attempting to convince the Security Council that Iraq had weapons of mass destruction.17 Why not, she asked, “just show them the receipts?” Fourth, we have seen the exercise of extraordinary influence by arms makers on both domestic and foreign policy. For domestic pork barrel and campaign finance reasons, obsolete or unproven weapons systems continue to be funded even when the military does not want them!18 And, just when we thought we had survived the nuclear arms race nightmare, the United States has undertaken to design new kinds of nuclear weapons,19 even when those designs have little military value.20 Overseas, limitations on arms sales are being repealed, and arms markets that should not exist are being constantly expanded21 for the sake of dumping inventory, even if those weapons are eventually used for “rogue” purposes by rogue states. This system skews security considerations, and militarizes foreign policy. Force has to be the preferred option because other conduits of policy are not sufficiently well-funded. Plus, those stockpiled weapons have got to be used or sold so that we can build more. Fifth, enlarging upon this in a document entitled The National Security Policy of the United States, we were treated last September to “the Bush doctrine,” which for the first time in U.S. history declares a preemptive strike policy. This document states, “America will act against emerging threats before they are fully formed.”22 If they are only emerging and not fully formed, you may wonder, how will we know they are “threats”? Because someone in Washington has that perception, and when the hunch hits, it is the official policy of this country to deploy the military.23 All options—including the use of nuclear weapons—are always on the table.

#### Presidential adventurism causes nuclear war

Symonds 13 [Peter, leading staff writer for the World Socialist Web Site and a member of its International Editorial Board. He has written extensively on Middle Eastern and Asian politics, contributing articles on developments in a wide range of countries, 4-5, “Obama’s “playbook” and the threat of nuclear war in Asia,” <http://www.wsws.org/en/articles/2013/04/05/pers-a05.html>]

The Obama administration has engaged in reckless provocations against North Korea over the past month, inflaming tensions in North East Asia and heightening the risks of war. Its campaign has been accompanied by the relentless demonising of the North Korean regime and claims that the US military build-up was purely “defensive”. However, the Wall Street Journal and CNN revealed yesterday that the Pentagon was following a step-by-step plan, dubbed “the playbook”, drawn up months in advance and approved by the Obama administration earlier in the year. The flights to South Korea by nuclear capable B-52 bombers on March 8 and March 26, by B-2 bombers on March 28, and by advanced F-22 Raptor fighters on March 31 were all part of the script.¶ There is of course nothing “defensive” about B-52 and B-2 nuclear strategic bombers. The flights were designed to demonstrate, to North Korea in the first instance, the ability of the US military to conduct nuclear strikes at will anywhere in North East Asia. The Pentagon also exploited the opportunity to announce the boosting of anti-ballistic missile systems in the Asia Pacific and to station two US anti-missile destroyers off the Korean coast.¶ According to CNN, the “playbook” was drawn up by former defence secretary Leon Panetta and “supported strongly” by his replacement, Chuck Hagel. The plan was based on US intelligence assessments that “there was a low probability of a North Korean military response”—in other words, that Pyongyang posed no serious threat. Unnamed American officials claimed that Washington was now stepping back, amid concerns that the US provocations “could lead to miscalculations” by North Korea.¶ However, having deliberately ignited one of the most dangerous flashpoints in Asia, there are no signs that the Obama administration is backing off. Indeed, on Wednesday, Defence Secretary Hagel emphasised the military threat posed by North Korea, declaring that it presented “a real and clear danger”. The choice of words was deliberate and menacing—an echo of the phrase “a clear and present danger” used to justify past US wars of aggression.¶ The unstable and divided North Korean regime has played directly into the hands of Washington. Its bellicose statements and empty military threats have nothing to do with a genuine struggle against imperialism and are inimical to the interests of the international working class. Far from opposing imperialism, its Stalinist leaders are looking for a deal with the US and its allies to end their decades-long economic blockade and open up the country as a new cheap labour platform for global corporations.¶ As the present standoff shows, Pyongyang’s acquisition of a few crude nuclear weapons has in no way enhanced its defence against an American attack. The two B-2 stealth bombers that flew to South Korea could unleash enough nuclear weapons to destroy the country’s entire industrial and military capacity and murder even more than the estimated 2 million North Korean civilians killed by the three years of US war in Korea in the 1950s.¶ North Korea’s wild threats to attack American, Japanese and South Korean cities only compound the climate of fear used by the ruling classes to divide the international working class—the only social force capable of preventing war.¶ Commentators in the international media speculate endlessly on the reasons for the North Korean regime’s behaviour. But the real question, which is never asked, should be: why is the Obama administration engaged in the dangerous escalation of tensions in North East Asia? The latest US military moves go well beyond the steps taken in December 2010, when the US and South Korean navies held provocative joint exercises in water adjacent to both North Korea and China.¶ Obama’s North Korea “playbook” is just one aspect of his so-called “pivot to Asia”—a comprehensive diplomatic, economic and military strategy aimed at ensuring the continued US domination of Asia. The US has stirred up flashpoints throughout the region and created new ones, such as the conflict between Japan and China over the disputed Senkaku/Diaoyu islands in the East China Sea. Obama’s chief target is not economically bankrupt North Korea, but its ally China, which Washington regards as a dangerous potential rival. Driven by the deepening global economic crisis, US imperialism is using its military might to assert its hegemony over Asia and the entire planet.¶ The US has declared that its military moves against North Korea are designed to “reassure” its allies, Japan and South Korea, that it will protect them. Prominent figures in both countries have called for the development of their own nuclear weapons. US “reassurances” are aimed at heading off a nuclear arms race in North East Asia—not to secure peace, but to reinforce the American nuclear monopoly.¶ The ratcheting-up of tensions over North Korea places enormous pressures on China and the newly-selected leadership of the Chinese Communist Party. An unprecedented public debate has opened up in Beijing over whether or not to continue to support Pyongyang. The Chinese leadership has always regarded the North Korean regime as an important buffer on its northeastern borders, but now fears that the constant tension on the Korean peninsula will be exploited by the US and its allies to launch a huge military build-up.¶ Indeed, all of the Pentagon’s steps over the past month—the boosting of anti-missile systems and practice runs of nuclear capable bombers—have enhanced the ability of the US to fight a nuclear war against China. Moreover, the US may not want to provoke a war, but its provocations always run the risk of escalating dangerously out of control. Undoubtedly, Obama’s “playbook” for war in Asia contains many more steps beyond the handful leaked to the media. The Pentagon plans for all eventualities, including the possibility that a Korean crisis could bring the US and China head to head in a catastrophic nuclear conflict.

#### Arms sales increase the probability of regional conflict and leads to US-Russia-China escalation

Klare 13 (Michael Klare is a professor of peace and world security studies at Hampshire College The Booming Global Arms Trade Is Creating a New Cold War http://www.motherjones.com/politics/2013/05/global-arms-trade-new-cold-war)

These are just some examples of recent arms deals (or ones under discussion) that suggest a fresh willingness on the part of the major powers to use weapons transfers as instruments of geopolitical intrusion and competition. The reappearance of such behavior suggests a troubling resurgence of Cold War-like rivalries. Even if senior leaders in Washington, Moscow, and Beijing are not talking about resurrecting some twenty-first-century version of the Cold War, anyone with a sense of history can see that they are headed down a grim, well-trodden path toward crisis and confrontation. What gives this an added touch of irony is that leading arms suppliers and recipients, including the United States, recently [voted](http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html) in the U.N. General Assembly to approve the [Arms Trade Treaty](http://www.un.org/disarmament/ATT/) that was meant to impose significant constraints on the global trade in conventional weapons. Although the treaty has many loopholes, lacks an enforcement mechanism, and will require years to achieve full implementation, it represents the first genuine attempt by the international community to place real restraints on weapons sales. "This treaty won't solve the problems of Syria overnight, no treaty could do that, but it will help to prevent future Syrias," [said](http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html) Anna MacDonald, the head of arms control for [Oxfam International](http://www.oxfam.org/) and an ardent treaty supporter. "It will help to reduce armed violence. It will help to reduce conflict." This may be the hope, but such expectations will quickly be crushed if the major weapons suppliers, led by the US and Russia, once again come to see arms sales as the tool of choice to gain geopolitical advantage in areas of strategic importance. Far from bringing peace and stability—as the proponents of such transactions invariably claim—each new arms deal now holds the possibility of taking us another step closer to a new Cold War with all the heightened risks of regional friction and conflict that entails. Are we, in fact, seeing a mindless new example of the old saw: that those who don't learn from history are destined to repeat it?

#### Risk of accidental exchange between the US and Russia over external crises is still high and risks extinction

**Barrett et al. 13** (Anthony M. Barrett- Global Catastrophic Risk Institute, Seth D. Baum- Center for Research on Environmental Decisions, Columbia University, Kelly R. Hostetler- Department of Geography, Pennsylvania State University, 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia”, http://sethbaum.com/ac/fc\_NuclearWar.pdf)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1,2,3,4,5,6 potentially leading to collapse of modern civilization worldwide and even the extinction of humanity. 7,8,9,10 Nuclear war between the US and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 11,12 (Brinkmanship strategies incorporate elements of all of the above, in that they involve deliberate manipulation of the risk of otherwise unauthorized or inadvertent attack as part of coercive threats that “leave something to chance,” i.e., “taking steps that raise the risk that the crisis will go out of control and end in a general nuclear exchange.” 13,14 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, though numerous measures were also taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. 15,16,17 For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side’s forces and command-and-control capabilities led to both sides’development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 18,19,20 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 21,22 However, it has also been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 23,24,25,26,27,28,29,30,31,32,33 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 34,35,36,37,38 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 39 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 40,41,42 especially if such an event occurs during a crisis between the United States and Russia. 43 A variety of nuclear terrorism scenarios are possible. 44 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 45,46,47 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 48,49 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.-Russian crisis conditions, 50,51,52,53 with the Cuban Missile Crisis being a prime historical example of such a crisis. 54,55,56,57,58 It is possible that U.S.-Russian relations will significantly deteriorate in the future, increasing nuclear tensions. 59 There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 60,61,62,63

#### China war causes extinction- even with a swift victory

Wittner 11 (11/30/11 Dr. Lawrence, Prof of History Emeritus at SUNY Albany, “Is a Nuclear War with China Possible?”)

But what would that "victory" entail? An attack with these Chinese nuclear weapons would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a "nuclear winter" around the globe -- destroying agriculture, creating worldwide famine, and generating chaos and destruction. Moreover, in another decade the extent of this catastrophe would be far worse. The Chinese government is currently expanding its nuclear arsenal, and by the year 2020 it is [expected](http://www.nukestrat.com/china/Book-35-125.pdf) to more than double its number of nuclear weapons that can hit the United States. The U.S. government, in turn, has [plans](http://www.guardian.co.uk/world/2011/oct/30/nuclear-powers-weapons-spending-report) to spend hundreds of billions of dollars "modernizing" its nuclear weapons and nuclear production facilities over the next decade.

### Contention 3- Geneva Credibility

#### US human rights promotion inevitable- but the double standard created by Guantanamo prevents that promotion from being credible

Hidayat 8/21 (Syarif- editor of the Mi’raj News Agency, 2013, “GITMO PRISON SHOWS THE US HYPOCRISY AND DOUBLE STANDARDS ON HUMAN RIGHTS”, http://mirajnews.com/en/article/opinion/7121-gitmo-prison-shows-the-us-hypocrisy-and-double-standards-on-human-rights.html)

The double standards of the renowned world preacher of human rights and the hypocrisy of US imperialism’s pretense of promoting human rights on the world arena is demonstrated in Washington’s decision to maintain Guantanamo prison and torture camps. President Barack Obama had decided to give $50 million to keep Guantanamo open indefinitely in a gross violation of his election promise. President Obama promised to close Guantanamo as part of his election campaign in 2008. Islamic community leaders in the UK and the US urge Obama to stop force-feeding Gitmo detainees during Ramadan.¶ “Anywhere that human rights are under threat, the United States will proudly stand up, unabashedly, and continue to promote greater freedom, greater openness, and greater opportunity for all people. And that means speaking up when those rights are imperiled. It means providing support and training to those who are risking their lives every day so that their children can enjoy more freedom. It means engaging governments at the highest levels and pushing them to live up to their obligations to do right by their people.” - Secretary of State John Kerry, April 2013.¶ Every year, the U.S. State Department releases a report on the status of human rights in countries around the world. Every year, one country is notably missing from this report — the United States.¶ “Our world is complex and increasingly influenced by non-state actors – brave civil society activists and advocates, but also violent extremists, transnational criminals, and other malevolent actors. In those places where human rights and fundamental freedoms are denied, it is far easier for these negative destabilizing influences to take hold, threatening international stability and our own national security.”¶ “It is in our interest to promote the universal rights of all persons. Governments that respect human rights are more peaceful and more prosperous. They are better neighbors, stronger allies, and better economic partners. Governments that enforce safe workplaces, prohibit exploitative child and forced labor, and educate their citizens create a more level playing field and broader customer base for the global marketplace. Conversely, governments that threaten regional and global peace, from Iran to North Korea, are also egregious human rights abusers, with citizens trapped in the grip of domestic repression, economic deprivation, and international isolation.” ¶ “The United States stands with people and governments that aspire to freedom and democracy, mindful from our own experience that the work of building a more perfect union – a sustainable and durable democracy – will never be complete. As part of this commitment, we advocate around the world for governments to adopt policies and practices that respect human rights regardless of ethnicity, religion, gender, race, sexual orientation, or disability; that allow for and honor the results of free and fair elections; that ensure safe and healthy workplaces; and that respect peaceful protests and other forms of dissent. The United States continues to speak out unequivocally on behalf of the fundamental dignity and equality of all persons.” - Secretary of State John F. Kerry's Preface on the Department of State’s Country Reports on Human Rights Practices for 2012.¶ The international organization Human Rights Watch has said that the US is “hypocritical” when it criticizes other countries for violating human rights, because the situation in the US itself is far from perfect. Deputy Director of the Europe and Central Asia Division of Human Rights Watch Rachel Denber criticized Obama’s administration for not investigating into cases of torture in prisons under Bush the junior and in Guantanamo prison. America’s human rights hypocrisy: The human rights record of the United States was put under an international microscope, as the UN Human Rights Council issued 228 recommendations on how Washington can address violations. America has long been the self appointed global leader on human rights, pointing out the shortcomings of others. But now the tables have turned. According to the United Nations Human Rights Council, incidents of injustice are taking place on US soil.¶ The point was made in Geneva, Switzerland at the Human Rights Council’s first comprehensive review of Washington’s record. The council released a Universal Periodic Review Tuesday, listing 228 recommendations on how the US can do better. “Close Guantanamo and secret detention centers throughout the world, punish those people who torture, disappear and execute detainees arbitrarily,” said Venezuelan delegate German Mundarain Hernan. The US has dismissed many recommendations calling them political provocations by hostile countries.¶ Yet even America’s allies are highlighting grave flaws. France and Ireland are demanding Obama follow through on the promise to close Guantanamo Bay. Britain, Belgium and dozens of others have called on the US to abolish the death penalty. For many, it’s the ultimate hypocrisy. How can a state with roughly 3,000 people on death row lecture the world about humanity? Many say the prime example is Mumia abu Jamal, viewed by some as America’s very own political prisoner.¶ “The United States, the perpetrator of gross human right violations is using human rights as a political football against its enemies. Its enemies are not enemies because they violate human rights necessarily, but because the US wants to change the government in their country,” said Brian Becker, Director of A.N.S.W.E.R Coalition in Washington, DC. The country often criticizing adversaries like Syria, Iran and North Korea for oppressing its citizens, is now faced with defending domestic practices like indefinite detention, poor prison conditions, and racial profiling.¶

#### Applying the conventions to detention policy is key to human rights credibility

Gruber 11(Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As President Obama inches ever closer to embracing the “twilight zone” model of terrorism law, it would be wise to keep in mind the reputational harm the Bush administration’s war on terror caused the United States. One human rights advocate warned the Obama administration, “The results of the cases [tried in military commissions] will be suspect around the world. It is a tragic mistake to continue them.”200 More than just a source of embarrassment, there are real consequences to America’s sullied international reputation. Our experiments with “alternative” military justice not only affect our high court’s world influence, they operatively prevent the United States from assuming a leadership role in defining and defending international human rights. For example, in 2007, the Chinese government responded to the U.S. State Department’s annual human rights report by stating that America had no standing to comment on others’ human rights violations given its conduct of the war on terror. Specifically, the Chinese characterized the United States as “pointing the finger” at other nations while ignoring its “flagrant record of violating the Geneva Convention.”201 Supreme Court validation of treaty law would no doubt help repair the international reputation of the United States.202 The lesson here is about fear and missed opportunity. Guantánamo stands as a stark reminder of the great importance of international humanitarian law during times of crisis. The Geneva Conventions were the very barrier between terrorism detainees and a government regime singularly committed to national security through any means possible. Unfortunately, when international law mattered most, even the liberal Supreme Court justices avoided cementing its legal status. By contrast, Medellín, a convicted murderer, was apparently afforded the full panoply of constitutional protections, and in all likelihood, his inability to confer with consular officials did not prejudice his case. Much less was at stake, and those on the Supreme Court critical of humanitarian law impediments to waging the war on terror could fashion anti-internationalist rules with little public fanfare or liberal resistance. Consequently, although Hamdan will likely go down in history as evidence of the Court’s willingness to protect individual rights in the face of massive public fear and executive pressure, it also represents a failure to truly support the comprehensive international regime governing war-time detention, a regime in which the United States long ago vowed to participate. But all may not be lost. The Supreme Court might have another chance to rule on the status of the Geneva Conventions, and Medellín leaves some wiggle room on self-execution. If the Supreme Court is once again to be a beacon of judicial light, it must move beyond the xenophobic exceptionalism of the Bricker past and embrace the straightforward and fair principle that signed and ratified treaties are the law of the land.

#### Credible human rights frameworks solve conflict escalation

Burke-White 4 (William W., Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University The Harvard Environmental Law Review Spring, 2004 LN,[https://www.law.upenn.edu/cf/faculty/wburkewh/workingpapers/17HarvHumRtsJ249(2004).pdf](https://www.law.upenn.edu/cf/faculty/wburkewh/workingpapers/17HarvHumRtsJ249%282004%29.pdf))

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

#### Independently- restoring US human rights credibility over detention policy is key to increase cooperation necessary to solve terror, human trafficking, and environmental degradation

Wexler 8 (Lesley, Assistant Professor, Florida State University College of Law, “HUMAN RIGHTS IMPACT STATEMENTS: AN IMMIGRATION CASE STUDY,” 22 Geo. Immigr. L.J. 285, Lexis)

Enhancing our reputation for human rights compliance is especially important given current political realities. Many countries hold a declining opinion of the United States.53 The international community would welcome America’s affirmation of the continuing importance of human rights in the wake of many post-September 11th actions such as torture, extraordinary rendition, increased domestic surveillance, and harsher and more frequent detention of immigrants. Moreover, the international community would benefit from the assurance that the concept of “human rights” means more than a justification for regime change.54 American exceptionalism to human rights law angers our allies and complicates efforts to secure their cooperation.55 Not surprisingly, many countries view the United States’ silence about its own human rights failings as hypocritical.56 In particular, the international community strongly criticizes the State Department’s annual human rights reports for omitting an assessment of domestic performance as well as omitting “actions by governments taken at the request of the United States or with the expressed support of the United States . . . .”57 Human rights advocates suggest that U.S. leadership on human rights faces a severe credibility gap - for instance, other countries perceive the United States as a laggard on human rights treaty compliance in regards to migrants58 - but that repudiation of past abuses and momentum for policy changes could restore its leadership.59¶ As many have suggested, good international relations are vital to winning the War on Terror.60 Moreover, international cooperation is essential to address immigration related issues such as human trafficking. A visible commitment to migrants’ human rights might bolster the United States’ credibility when it seeks better treatment for the approximately 2 million American émigrés.61 Other international problems, such as climate change and related environmental issues, also require cooperation and leadership. An increased willingness to participate in global human rights discourse and demonstrate adherence to human rights treaties might enhance our ability to lead and participate in other arenas.

#### Terrorism leads to extinction

Hellman, 08 [Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf]

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option

#### Human trafficking destabilizes the Balkans

Kaldor 08 Mary Kaldor is Professor of Global Governance and Director of the Civil Society and Human Security Research Unit at the London School of Economics. The Balkans-Caucasus tangle: states and citizens MARY KALDOR , 9 January 2008 http://www.opendemocracy.net/article/democracy\_power/balkans\_caucasus\_tangle

There is a real risk of spreading destabilisation in the Balkans and the Caucasus. The criminal/nationalist entrepreneurs who profited from the wars in the 1990s were never properly dealt with. On the contrary, they have been nurtured by the combination of nationalist governments, high unemployment and lawlessness. Governments in the region - in Bosnia-Herzegovina, Serbia, Macedonia, Albania or Georgia, for example - are not simply (as the jargon has it) "weak states"; their weakness is sustained by what some have described as shadow networks of transnational crime and extremist ideologies. There has been an expansion of human-trafficking, money-laundering, and the smuggling of cigarettes, alcohol, drugs, and weapons over the last decade - **much of it to satisfy** European and **American markets** - and all in the face of international agreements, aid programmes and the presence of foreign troops and agencies.

#### Great power war

Paris ‘2 [Roland Paris, Assistant Professor of Political Science and International Affairs at University of Colorado, Political Science Quarterly, Volume 117, Issue 3, Fall, Proquest]

Nevertheless, the phrase "powderkeg in the Balkans" would have carried historical significance for listeners who possessed even a casual knowledge of European history. Since the early part of the twentieth century, when instability in the Balkans drew in the great powers and provided the spark that ignited World War I, the region has been **widely known as a powderkeg**. In 1947, for instance, members of the International Court of Justice noted that the Balkans had been "so often described as the `powder-keg' of Europe."51 Today, the term continues to be attached to the region's politics, conjuring up memories of the origins of World War I.  The meaning of the powderkeg metaphor is straightforward: the Balkans **can explode at any time**, and the **resulting conflagration** can **spread to the rest of Europe;** preventing such an explosion is vital to the continent's, and perhaps even to American, security. When Clinton described Kosovo as a powderkeg, he warned that the Kosovo conflict might spill over not only to surrounding Balkan states, but **to Europe as a whole**; and he insinuated that the United States could be compelled to fight in such a pan-European conflict, just as it did in World Wars I and II. "

#### Environmental degradation 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)

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.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain without the Third Geneva Conventions Article Five rights.

### Contention 4- Solvency

#### Supreme Court action and application of the convention is key- solves congressional circumvention

Feldman 13 (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

To deepen the argument beyond executive power, the president is also in charge of foreign affairs. Keeping the detainees at Guantanamo is very costly to international relations, since most nations see the prison there as a reminder of the era of waterboarding and abuses at the Abu Ghraib prison in Iraq. Surely the president should be able to salvage the U.S.’s reputation without being held hostage by Congress?¶ The answer from Congress would have several elements. First, Congress has the power to enact a law defining who can come into the U.S., and the American public doesn’t want the detainees in the country either for trial or in a new Supermax facility. Second, Congress has the power to declare war and could conceivably assert that this should include the right to tell the president how to treat prisoners. Then there’s the power of the purse: Congress could make things difficult by declining to authorize funds for a sui table new stateside detention facility.¶ Faced with a standoff between two branches, the system allows an orderly answer: turning to the third branch, the courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials. Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners.¶ How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style.¶ Geneva Conventions¶ The reasoning could look like this: The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.¶ Congress doesn’t have the authority to force the president to violate the laws of war.

 Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations.

#### No executive circumvention

Bradley and Morrison 13 (Curtis, Professor of Law, Duke Law School, and Trevor, Professor of Law, Columbia Law School , “Presidential Power, Historical Practice, And

Legal Constraint” Duke Law Scholarship Repository) http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5451&context=faculty\_scholarship

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention—that Presidents follow judicial decisions.118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court’s determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it.119 But the reason why Presidents abide by court decisions has a connection to the broader issue of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review).120

**Lower Court rulings inevitable - they lack cohesion and clarity but trigger the link to the courts DA- ONLY a ruling by the Supreme Court creates necessary clarity**

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

# 2AC

## Case

### 2AC Intel Link

#### Guantanamo doesn’t provide intel to stop terror but it does increase the chances of it

Greenberg 7 (Karen- Director of the Center on National Security and permanent member of the Council on Foreign Relations while Research for this article was contributed by Center on Law and Security Research Fellow Francesca Laguardia, February, “8 Reasons to Close GUANTANAMO NOW”, lexis)

#5 It undermines intelligence efforts¶ Despite the tens of thousands of hours of interrogation that have taken place at Guantanamo, very little worthwhile intelligence has been extracted. What information is left is now five years old, and it is doubtful that any Guantanamo prisoner has knowledge of a ticking bomb or a current plot.¶ And while the government maintains that detainees can provide a primer on jihad networks and al-Qaeda's strategic goals, at this point, the information is likely out of date. Besides, what can be extracted from individuals who, for the most part, were the wrong people to imprison in the first place.¶ According to a report by Seton Hall School of Law, 86 percent of detainees were arrested by Pakistan or the Northern Alliance and "handed over to the United States at a time when the United States offered large bounties for capture of suspected enemies."¶ Moreover, Guantanamo's very existence has alienated potential inside sources of information. Two years ago, at a Center on Law and Security conference in Florence, Italy, two of Europe's leading terrorism magistrates pointed out that attempts to infiltrate terrorist cells had become much more difficult in the wake of rising public anger over Guantanamo.¶ ¶ #6 It creates new enemies¶ Guantanamo has fomented that which it was created to combat -- anti-American extremism and jihad. Guantanamo is just the public face of a global network of "ghost prisons." According to Human Rights First (formerly the Lawyers' Committee for Human Rights), the United States has acknowledged 20 detention centers in Afghanistan, in addition to the bases at Bagram and Kandahar; as a prison near the Afghan borde

ases 2, 8, 12, 19, 23, 30, 42), all were nothing more than **wild fantasies,** far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shr in Kohat, Pakistan; and the al Jafr prison in Jordan. This suggests that Guantanamo may have been a smokescreen for more inhumane, less legal incarceration and interrogation practices elsewhere.¶ According to Armando Spataro, a senior Italian prosecutor known for his work on global terrorism, Guantanamo and the U.S. renditions policy "is extremely damaging to all our efforts to integrate our Muslim communities." Muslims around the world are asking why there is so little international opposition to the U.S. policy of imprisonment without due process. The collateral damage of Guantanamo -- the incarceration of nearly 800 individuals who are denied legal rights, who regularly report being abused and who face a lifetime of imprisonment -- is incalculable. It breeds new angers and resentments, and thus new enemies.

### 2AC Drone Shift DA

#### The DA doesn’t turn the aff

**Aaronson and Johnson** **‘13** [Sir Michael Aaronson is a Professorial Research Fellow and Executive Director ¶ of cii – the Centre for International Intervention – at the University of Surrey. ¶ His previous career was in the UK Diplomatic Service and subsequently ¶ at Save the Children, where he was chief executive from 1995–2005. He ¶ is also Chairman of Frimley Park Hospital and a Director of Oxford Policy ¶ Management, and Adrian Johnson is Director of Publications at RUSI, the book reviews editor ¶ for the RUSI Journal, and chair of the RUSI Editorial Board. His research ¶ focuses on intervention, post-conflict security and British defence policy, “Hitting the Target? How New Capabilities are Shaping International Intervention,” <http://www.rusi.org/downloads/assets/WHR_2-13_Hitting_the_Target.pdf#page=89>]

Unintended detrimental consequences of intervention – ‘blowback’– are by no means a new phenomenon, nor an inherent feature of drone versus ¶ other kinds of strikes. A widespread view holds that drones are fuelling a ¶ political and societal backlash against the US.15 Worse, unintended civilian ¶ deaths may be creating new grievances, driving new recruits to join terrorist ¶ groups, and undermining the legitimacy of the very governments the US is ¶ trying to bolster.16 In other words, the covert drone programme is radical ¶ Islamism’s latest recruiting sergeant.17 This is contested, as is inevitable when relying on anecdotal evidence. ¶ Some data suggest that the effect is overblown – one analyst conducting fieldwork in Yemen found very little causation between drone strikes and ¶ radicalisation.18 The lack of information is a major problem for both policymakers and the public in attempting to definitively determine the strategic ¶ impact of any intervention, not just drone strikes. Here, again, the secrecy ¶ of the CIA programme is an obstacle – what data we do have on it comes ¶ from leaks, rather than systematic analysis.19 Neither is the US alone guilty of ¶ secrecy; in the aftermath of the UN Special Rapporteur’s report on the legality ¶ of drone strikes in Pakistan, one might note that the Pakistani government’s ¶ complaints to the Special Rapporteur seem to be contradictory given what is ¶ known from WikiLeaks documents about private approval.20¶ A lack of data may mean that talk of blowback is misguided,

or it might not; ¶ Hastings Dunn and Wolff offer some clarity on the relationship between ¶ targeting policy and public anger in this regard. A bigger issue is that media reports tend to be unreliable from regions like the FATA, particularly when ¶ weapons forensics experts – who would be able to determine, for instance, ¶ what kind of weapon system has caused what kind of damage – cannot reach these areas.21 Ultimately, the information problem may mean that we cannot ¶ conclude whether anti-Americanism or fragile support for local regimes is ¶ caused by or coincident with drone strikes. This highlights the importance of ¶ casualty-recording and damage assessment, outlined in this report, to the ¶ strategic conduct of intervention.

#### No link uniqueness- we use drones when capturing is impossible now- and there wouldn’t be a shift

Chesney 11 (Robert- Charles I. Francis Professor in Law at the UT School of Law as well as a non-resident Senior Fellow at Brookings, "Examining the Evidence of a Detention-Drone Strike Tradeoff", October 17, www.lawfareblog.com/2011/10/examining-the-evidence-of-a-detention-drone-strike-tradeoff/)

Yesterday Jack linked to this piece by Noah Feldman, which among other things advances the argument that the Obama administration has resorted to drone strikes at least in part in order to avoid having to grapple with the legal and political problems associated with military detention:¶ Guantanamo is still open, in part because Congress put obstacles in the way. Instead of detaining new terror suspects there, however, Obama vastly expanded the tactic of targeting them, with eight times more drone strikes in his first year than in all of Bush’s time in office.¶ Is there truly a detention-drone strike tradeoff, such that the Obama administration favors killing rather than capturing? As an initial matter, the numbers quoted above aren’t correct according to the New America Foundation database of drone strikes in Pakistan, 2008 saw a total of 33 strikes, while in 2009 there were 53 (51 subsequent to President Obama’s inauguration). Of course, you can recapture something close to the same point conveyed in the quote by looking instead to the full number of strikes conducted under Bush and Obama, respectively. There were relatively few drone strikes prior to 2008, after all, while the numbers jump to 118 for 2010 and at least 60 this year (plus an emerging Yemen drone strike campaign). But what does all this really prove?¶ Not much, I think. Most if not all of the difference in drone strike rates can be accounted for by specific policy decisions relating to the quantity of drones available for these missions, the locations in Pakistan where drones have been permitted to operate, and most notably whether drone strikes were conditioned on obtaining Pakistani permission. Here is how I summarize the matter in my forthcoming article on the legal consequences of the convergence of military and intelligence activities:¶ According to an analysis published by the New America Foundation, two more drone strikes in Pakistan’s FATA region followed in 2005, with at least two more in 2006, four more in 2007, and four more in the first half of 2008.[1] The pattern was halting at best. Yet that soon changed. U.S. policy up to that point had been to obtain Pakistan’s consent for strikes,[2] and toward that end to provide the Pakistani government with advance notification of them.[3] But intelligence suggested that on some occasions “the Pakistanis would delay planned strikes in order to warn al Qaeda and the Afghan Taliban, whose fighters would then disperse.”[4] A former official explained that in this environment, it was rare to get permission and not have the target slip away: “If you had to ask for permission, you got one of three answers: either ‘No,’ or ‘We’re thinking about it,’ or ‘Oops, where did the target go?”[5]¶ Declaring that he’d “had enough,” Bush in the summer of 2008 “ordered stepped-up Predator drone strikes on al Qaeda leaders and specific camps,” and specified that Pakistani officials going forward should receive only “‘concurrent notification’…meaning they learned of a strike as it was underway or, just to be sure, a few minutes after.”[6] Pakistani permission no longer was required.[7] ¶ The results were dramatic. The CIA conducted dozens of strikes in Pakistan over the remainder of 2008, vastly exceeding the number of strikes over the prior four years combined.[8] That pace continued in 2009, which eventually saw a total of 53 strikes.[9] And then, in 2010, the rate more than doubled, with 188 attacks (followed by 56 more as of late August 2011).[10] The further acceleration in 2010 appears to stem at least in part from a meeting in October 2009 during which President Obama granted a CIA request both for more drones and for permission to extend drone operations into areas of Pakistan’s FATA that previously had been off limits or at least discouraged.[11] ¶ There is an additional reason to doubt that the number of drone strikes tells us much about a potential detention/targeting tradeoff: most of these strikes involved circumstances in which there was no feasible option for capturing the target. These strikes are concentrated in the FATA region, after all. ¶ Having said all that: it does not follow that there is no detention-targeting tradeoff at work. I’m just saying that drone strikes in the FATA typically should not be understood in that way (though there might be limited exceptions where a capture raid could have been feasible). Where else to look, then, for evidence of a detention/targeting tradeoff?¶ Bear in mind that it is not as if we can simply assume that the same number of targets emerge in the same locations and circumstances each year, enabling an apples-to-apples comparison. But set that aside.¶ First, consider locations that (i) are outside Afghanistan (since we obviously still do conduct detention ops for new captures there) and (ii) entail host-state government control over the relevant territory plus a willingness either to enable us to conduct our own ops on their territory or to simply effectuate captures themselves and then turn the person(s) over to us. This is how most GTMO detainees captured outside Afghanistan ended up at GTMO. Think Bosnia with respect to the Boumediene petitioners, Pakistan’s non-FATA regions, and a variety of African and Asian states where such conditions obtained in years past. In such locations, we seem to be using neither drones nor detention. Rather, we either are relying on host-state intervention or we are limiting ourselves to surveillance. Very hard to know how much of each might be going on, of course. If it is occurring often, moreover, it might reflect a decline in host-state willingness to cooperate with us (in light of increased domestic and diplomatic pressure from being seen to be responsible for funneling someone into our hands, and the backdrop understanding that, in the age of wikileaks, we simply can’t promise credibly that such cooperation will be kept secret). In any event, this tradeoff is not about detention versus targeting, but something much more complex and difficult to measure.

### 2AC AT: Executive Circumvention

#### There ev is nothing more than presidential posturing- Obama would comply with the aff

Green 11 (Craig, Prof of Law at Temple Unviersity , Northwestern University Law Review, Vol 105, No 3"Ending the Korematsu Era: An Early View From the War on Terror Cases")

Jackson’s hard-nosed analysis may seem intellectually bracing, but it understates the real-world power of judicial precedent to shape what is po- litically possible.306 Although presidential speeches occasionally declare a willingness to disobey Supreme Court rulings, actual disobedience of this sort is rare and would carry grave political consequences.307 Even President Bush’s losses in the GWOT cases did not spur serious consideration of noncompliance despite broad support from a Republican Congress.308 Likewise, from the perspective of strengthening presidential power, Kore- matsu-era decisions emboldened President Bush in his twenty-first-century choices about Guantánamo and military commissions.309 Thus, the modern historical record shows that judicial precedent can both expand and restrict the political sphere of presidential action.¶ The operative influence of judicial precedent is even stronger than a court-focused record might suggest, as the past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive gov- ernment.310 From the White House Counsel, to the Pentagon, to other enti- ties addressing intelligence and national security issues, lawyers now occupy such high-level governmental posts that almost no significant policy is determined without multiple layers of legal review.311 And these execu- tive lawyers are predominantly trained to think—whatever else they may believe—that Supreme Court precedent is authoritative and binding.312

## T

#### Means holding without trial

US LEGAL 13 (<http://definitions.uslegal.com/i/indefinite-detention/>, “Indefinite Detention”)

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seema to violate many national and international laws. It also violates human rights laws.

## CP

### 2AC Self-Restraint CP

#### SCOTUS would have to review the CP- either the CP links to the net-benefit, or the CP is struck down and doesn’t solve- durable fiat only applies to the agency taking action

Howell 5 (William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief¶ Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### CP doesn’t solve- legal certainty is key

Guiora 12 (Professor of Law, S.J. Quinney College of Law, University of Utah; author of Freedom from Religion: Rights and National Security (2009). DUE PROCESS AND COUNTERTERRORISM EMORY INTERNATIONAL LAW REVIEW [Vol. 26 pg Lexis Nexis]

While President Obama signed an Executive Order ordering the closure of the Guantanamo Bay detention center26 for the purpose of discontinuing trials before Military Commissions, in April 2010 the Obama Administration reinstituted the Military Commissions.27 It is unclear whether this represents reversal of a policy previously articulated but not implemented, or a stopgap measure. Whatever the explanation, the Obama Administration has largely failed to satisfactorily address the rule-of-law questions essential to creating and implementing counterterrorism policy that ensures implementation of due process guarantees and obligations. For example, the Administration has failed to resolve whether Article III courts are the proper judicial forums for suspected terrorists.28 Perhaps this continuing failure is reflective of political infighting, as demonstrated in the backtracking with respect to Khalid Sheikh Mohammed’s trial.29 The result is a disturbing failure to ensure due process for individuals suspected of involvement in terrorism. More fundamentally, the status of individuals detained post-9/11 has not been uniformly or consistently articulated or applied. That is, varying definitions have been articulated at different times, reflecting legal and policy uncertainty directly affecting the ability to establish and consistently apply a legal regime based on due process.30 For thousands of individuals whose initial detention was based on questionable intelligence and subsequent, inadequate habeas protections, the current regime is inherently devoid of due process.31 I propose that detainees are neither prisoners of war nor criminals in the traditional sense; rather, they are a hybrid of both. To that end, I propose that the appropriate term for post-9/11 detainees is a combination—a convergence of the criminal law and law of war paradigms—best described as a hybrid paradigm.

#### Only SCOTUS action revitalizes the rule of law

Pearlstein 3 (Deborah N.- Deputy Director of the U.S. Law and Security Program at the Lawyers Committee for Human Rights, and a Visiting Fellow at the Stanford University Center for Democracy, Development and the Rule of Law, , “The Role of the Courts in Protecting Civil Liberties and Human Rights for the Post-9/11 United States”, 2nd Pugwash Workshop on Terrorism: External and Domestic Consequences of the War on Terrorism, <http://www.pugwash.org/reports/nw/terrorism2003-pearlstein.htm>)

In each of the historical examples just given, the judiciary ultimately played a critical role in evaluating the legality of executive action. In the Civil War case, Lambdin Milligan, who had led armed uprisings against Union forces in Indiana, appealed his military tribunal prosecution to the U.S. Supreme Court. In Ex Parte Milligan (1865), the U.S. Supreme Court held Milligan's military prosecution unconstitutional, holding that as long as the civilian "courts are open and their process unobstructed, . . . they can never be applied to civilians in states which have upheld the authority of the government." In Ex Parte Quirin (1942), the Supreme Court reviewed the military prosecution of the German army spies for violations of the laws of war and concluded that it was within the executive's power. Unlike the civilian subject to military justice in Ex Parte Milligan, the Quirin defendants were members of the army of a nation with which the United States was in declared war. And critically, Congress had expressly authorized military commission trials for the offenses for which they were accused. The Supreme Court likewise upheld the exclusion of Japanese-Americans from their homes in Korematsu v. United States (1944), explaining: "Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, and finally, because Congress, reposing its confidence in this time of war in our military leaders - as inevitably it must - determined that they should have the power to do just this."¶ As these examples demonstrate, the U.S. Supreme Court has not always acted to enforce positive legal protections in favor of the individual against the government's exercise of 'wartime' power. Nonetheless, the Court's structural involvement conveyed a critical political message that executive power remained subject to the rule of law. In addition, the Court's published majority opinions clarified the nature of the executive action taken in response to perceived wartime threats, providing a basis for comparative analysis of subsequent executive conduct. In vigorous and public dissenting opinions accompanying each decision, minority justices gave expression to the strong opposing arguments on the resolution of the legal questions presented. Perhaps most important, the judicial decisions provided Congress, legal scholars, and the American public a means for understanding and, in the relative calm of post-war decision-making, for reevaluating the political wisdom of the challenged actions. Thus, for example, a federal court eventually granted a writ of coram nobis in Mr. Korematsu's case as a result of executive misrepresentations. (Korematsu v. United States (N.D. Cal. 1984)). In 1971, to rein in what was by then broadly recognized as executive excesses, Congress passed 18 U.S.C. § 4001(a), providing: "No citizen shall be . . . detained by the United States except pursuant to an Act of Congress." And in 1988, Congress awarded reparations to the remaining survivors and descendants of those interned during World War II as a result of the military exclusion order.

#### **Strong rule of law prevents war- judicial restoration is key**

Ken Kersch ‘6(8/8/2006 The Supreme Court And International Relations Theory, Kersch\* Assistant Professor of Politics, Princeton University)

Liberal theories of international relations hold that international peace and prosperity are advanced to the degree that the world’s sovereign states converge on the model of government anchored in the twin commitment to democracy and the rule of law.52 Liberal “democratic peace” theorists hold that liberal democratic states anchored in rule of law commitments are less aggressive and more transparent than other types of states.53 When compared with nonliberal states, they are thus **much better at cooperating** with one another in the international arena.54 Because they share a marketoriented economic model, moreover, international relations liberals believe that liberal states hewing to the rule of law will become increasingly interdependent economically.55 As they do so, they will come to share a common set of interests and ideas, which also **enhances the likelihood of cooperation**.56 Many foreign policy liberals—sometimes referred to as “liberal internationalists”— emphasize the role that effective multilateral institutions, designed by a club or community of liberal-democratic states, play in facilitating that cooperation and in anchoring a peaceful and prosperous liberal world order.57 The liberal foreign policy outlook is moralized, evolutionary, and progressive. Unlike realists, who make no real distinctions between democratic and non-democratic states in their analysis of international affairs, liberals take a clear normative position in favor of democracy and the rule of law.58 Liberals envisage the spread of liberal democracy around the world, and they seek to advance the world down that path.59 Part of advancing the cause of liberal peace and prosperity involves encouraging the spread of liberal democratic institutions within nations where they are currently absent or weak.60 Furthermore, although not all liberals are institutionalists, most liberals believe that effective multilateral institutions play an important role in encouraging those developments.61 To be sure, problems of inequities in power between stronger and weaker states will exist, inevitably, within a liberal framework.62 “But international institutions can nonetheless help coordinate outcomes that are in the long-term mutual interest of both the hegemon and the weaker states.”63 Many foreign policy liberals have emphasized the **importance of the judiciary** in helping to bring about an **increasingly** **liberal world order**. To be sure, the importance of an independent judiciary to the establishment of the rule of law within sovereign states has long been at the core of liberal theory.64 Foreign policy liberalism, however, commonly emphasizes the role that judicial globalization can play in promoting democratic rule of law values throughout the world.65 Post-communist and post-colonial developing states commonly have weak commitments to and little experience with liberal democracy, and with living according to the rule of law, as enforced by a (relatively) apolitical, independent judiciary.66 In these emerging liberal democracies, judges are often subjected to intense political pressures.67 International and transnational support can be a life-line for these judges**.** It can encourage their professionalization, enhance their prestige and reputations, and draw unfavorable attention to efforts to challenge their independence.68 In some cases, support from foreign and international sources may represent the most important hope that these judges can maintain any sort of institutional power—a power essential to the establishment within the developing sovereign state of a liberal democratic regime, the establishment of which liberal theorists assume to be in the best interests of both that state and the wider world community.69 Looked at from this liberal international relations perspective, judicial globalization seems an unalloyed good. To many, it will appear to be an imperative.70 When judges from well-established, advanced western democracies enter into conversations with their counterparts in emerging liberal democracies, they help enhance the status and prestige of judges from these countries. This is not, from the perspective of either side, an affront to the sovereignty of the developing nation, or to the independence of its judiciary. It is a win-win situation which actually strengthens the authority of the judiciary in the developing state.71 In doing so, it works to strengthen the authority of the liberal constitutional state itself. Viewed in this way, judicial globalization is a way of strengthening national sovereignty, not limiting it: it is part of a state-building initiative in a broader, liberal international order A liberal foreign policy outlook will look favorably on travel by domestic judges to conferences abroad (and here in the United States) where judges from around the world can meet and talk.73 It will not view these conferences as “junkets” or pointless “hobnobbing.” These meetings may very well encourage judges from around the world to increasingly cite foreign precedent in arriving at their decisions. **Judges in emerging democracies will use these foreign precedents to help shore up their domestic status and independence**. They will also avail themselves of these precedents to lend authority to basic, liberal rule-of-law values for which, given their relative youth, there is little useful history to appeal to within their domestic constitutional systems. Judges in established democracies, on the other hand, can do their part to enhance the status and authority of independent judiciaries in these emerging liberal democratic states by showing, in their own rulings, that they read and respect the rulings of these fledgling foreign judges and their courts (even if they do not follow those rulings as binding precedent).74 They can do so by according these judges and courts some form of co-equal status in transnational “court to court” conversations.75 It is worth noting that mainstream liberal international relations scholars are increasingly referring to the liberal democratic international order (both as it is moving today, and indeed, as read backward to the post-War order embodied in the international institutions and arrangements of NATO, Bretton Woods, the International Monetary Fund, the World Bank, and others) as a “constitutional order,” and, in some cases, as a “world constitution.”76 No less a figure than Justice Breyer—in a classic articulation of a liberal foreign policy vision—has suggested that one of the primary questions for American judges in the future will involve precisely the question of how to integrate the domestic constitutional order with the emerging international one.77

## CIL DA

### 2AC Economy Impact

#### Decline doesn’t cause war

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

### proper

#### Demore evidence says judicial activism is what triggers the link- Judges activist now

Keck 10 - graduated cum laude with a BA from the George Washington University and received his MBA with high honors from the University of Chicago Booth School of Business ( The most activist supreme court in history the road to modern judicial conservatism / Thomas M. Keck. book)

The nation’s ever-firmer commitment to rights-based activism, in turn, has undermined the continued conservative calls for judicial restraint in contexts such as abortion and gay rights. Put another way, the conservatives’ abandonment of restraint has enabled them to influence the law in a number of areas, but has unintentionally constrained their influence in others. By turning away from the path of Felix Frankfurter’s, conservatives were able to revive the federalism-based limits on congressional power, but had they continued along that path, their long-standing demands for judicial deference in the abortion and gay rights contexts might have proven more successful. Instead, the dramatic rise of conservative activism has weakened the rhetorical force of judicial restraint arguments throughout constitutional discourse, thus facilitating the Court’s liberal decisions in such cases as Planned Parenthood v. Casey, Romer v. Evans, and Lawrence v. Texas. The current Court is the most activist in American history, and the justices with the swing votes have been willing to engage in this activism to serve a variety of constitutional ends. O’Connor’s and Kennedy’s decisions to extend meaningful scrutiny to laws that restrict reproductive rights or discriminate against gays and lesbians would have proven much more difficult had judicial restraint survived as the principal ideal of constitutional conservatism.

#### Activism inevitable- no check on judicial power

Lipkin 8 (Lipkin, Distinguished Professor of Law, Widener University School of Law (Delaware), J.D., UCLA School of Law, 1984, Ph.D., Princeton University, 1974, 2008

(Robert Justin Lipkin, WE ARE ALL JUDICIAL ACTIVISTS NOW, University of Cincinnati Law Review, 77:181, Fall 2008, JWS)

While there must be checks on the elected branches, no significant [\*193] institutional device exists to protect the other branches of government and the people from judicial excess. Of course, defenders of judicial supremacy invariably argue that the appointments process is a sufficient check on the judiciary, but this a limited check at best. For one thing, it overlooks the fact that consent requires accountability and that once the elected branches nominate and confirm a federal judge, that judge is virtually free from any further serious accountability. It is the combination of judicial supremacy and the absence of judicial accountability that created the fertile conditions under which the seed of judicial activism first began to germinate. Once the seed has been planted, justices - even some who warn against the dangers and illegitimacy of judicial activism - will be unable to prevent themselves or their colleagues from ultra vires judicial decision-making. When judges do transgress, there is enough judicial rhetoric available to hide their transgressions even from themselves. We must remember that federal judges are unelected, life-tenured officials, who cannot be removed from office except by impeachment. Yet, in a republican democracy, consent and accountability are the chief criteria for guaranteeing the government's legitimacy. This raises one of the most suppressed questions buried deep in the recesses of the entrenched understanding, namely, the question of judicial accountability. Which constitutional actor checks the judiciary's excess? Although judicial decisions can be reversed through constitutional amendment or transformative judicial appointments, these practices are extraordinarily difficult to execute, especially as a reliable means of reversing more-than-ordinary but less-than-seminal judicial decisions. Consequently, this defective institutional design guarantees that the ill effects of constitutionally erroneous judicial decisions may last for decades.

## Executive Power

### Heg

#### Plan key to US international legitimacy- that’s Gruber- that outweighs their internal link to hegemony

Finnemore 9 (Martha- professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1)

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

#### U.S. primacy isn’t key to peace—their data is flawed

**Preble, 10** – Director of Foreign Policy Studies at CATO (Christopher, 8/3/10, “U.S. Military Power: Preeminence for What Purpose?”, <http://www.cato-at-liberty.org/u-s-military-power-preeminence-for-what-purpose/>)

Most in Washington still embraces the notion that America is, and forever will be, the world’s indispensable nation. Some scholars, however, questioned the logic of hegemonic stability theory from the very beginning. A number continue to do so today. They advance arguments diametrically at odds with the primacist consensus. Trade routes need not be policed by a single dominant power; the international economy is complex and resilient. Supply disruptions are likely to be temporary, and the costs of mitigating their effects should be borne by those who stand to lose — or gain — the most. Islamic extremists are scary, but hardly comparable to the threat posed by a globe-straddling Soviet Union armed with thousands of nuclear weapons. It is frankly absurd that we spend more today to fight Osama bin Laden and his tiny band of murderous thugs than we spent to face down Joseph Stalin and Chairman Mao. Many factors have contributed to the dramatic decline in the number of wars between nation-states; it is unrealistic to expect that a new spasm of global conflict would erupt if the United States were to modestly refocus its efforts, draw down its military power, and call on other countries to play a larger role in their own defense, and in the security of their respective regions. But while there are credible alternatives to the United States serving in its current dual role as world policeman / armed social worker, the foreign policy establishment in Washington has no interest in exploring them. The people here have grown accustomed to living at the center of the earth, and indeed, of the universe. The tangible benefits of all this military spending flow disproportionately to this tiny corner of the United States while the schlubs in fly-over country pick up the tab.

#### No risk of a bioterror attack, and there won’t be retaliation - your evidence is hype

Matishak ‘10 (Martin, Global Security Newswire, “U.S. Unlikely to Respond to Biological Threat With Nuclear Strike, Experts Say,”, <http://www.globalsecuritynewswire.org/gsn/nw_20100429_7133.php>, April 29, 2010)

WASHINGTON -- The United States is not likely to use nuclear force to respond to a biological weapons threat, even though the Obama administration left open that option in its recent update to the nation's nuclear weapons policy, experts say (See GSN, April 22). "The notion that we are in imminent danger of confronting a scenario in which hundreds of thousands of people are dying in the streets of New York as a consequence of a biological weapons attack is fanciful," said Michael Moodie, a consultant who served as assistant director for multilateral affairs in the U.S. Arms Control and Disarmament Agency during the George H.W. Bush administration. Scenarios in which the United States suffers mass casualties as a result of such an event seem "to be taking the discussion out of the realm of reality and into one that is hypothetical and that has no meaning in the real world where this kind of exchange is just not going to happen," Moodie said this week in a telephone interview. "There are a lot of threat mongers who talk about devastating biological attacks that could kill tens of thousands, if not millions of Americans," according to Jonathan Tucker, a senior fellow with the James Martin Center for Nonproliferation Studies. "But in fact, no country out there today has anything close to what the Soviet Union had in terms of mass-casualty biological warfare capability. Advances in biotechnology are unlikely to change that situation, at least for the foreseeable future." No terrorist group would be capable of pulling off a massive biological attack, nor would it be deterred by the threat of nuclear retaliation, he added. The biological threat provision was addressed in the Defense Department-led Nuclear Posture Review, a restructuring of U.S. nuclear strategy, forces and readiness. The Obama administration pledged in the review that the United States would not conduct nuclear strikes on non-nuclear states that are in compliance with global nonproliferation regimes. However, the 72-page document contains a caveat that would allow Washington to set aside that policy, dubbed "negative security assurance," if it appeared that biological weapons had been made dangerous enough to cause major harm to the United States. "Given the catastrophic potential of biological weapons and the rapid pace of biotechnology development, the United States reserves the right to make any adjustment in the assurance that may be warranted by the evolution and proliferation of the biological weapons threat and U.S. capacities to counter that threat," the posture review report says. The caveat was included in the document because "in theory, biological weapons could kill millions of people," Gary Samore, senior White House coordinator for WMD counterterrorism and arms control, said last week after an event at the Carnegie Endowment for International Peace. Asked if the White House had identified a particular technological threshold that could provoke a nuclear strike, Samore replied: "No, and if we did we obviously would not be willing to put it out because countries would say, 'Oh, we can go right up to this level and it won't change policy.'" "It's deliberately ambiguous," he told Global Security Newswire. The document's key qualifications have become a lightning rod for criticism by Republican lawmakers who argue they eliminate the country's previous policy of "calculated ambiguity," in which U.S. leaders left open the possibility of executing a nuclear strike in response to virtually any hostile action against the United States or its allies (see GSN, April 15). Yet experts say there are a number of reasons why the United States is not likely to use a nuclear weapon to eliminate a non-nuclear threat. It could prove difficult for U.S. leaders to come up with a list of appropriate targets to strike with a nuclear warhead following a biological or chemical event, former Defense Undersecretary for Policy Walter Slocombe said during a recent panel discussion at the Hudson Institute. "I don't think nuclear weapons are necessary to deter these kinds of attacks given U.S. dominance in conventional military force," according to Gregory Koblentz, deputy director of the Biodefense Graduate Program at George Mason University in Northern Virginia. "There's a bigger downside to the nuclear nonproliferation side of the ledger for threatening to use nuclear weapons in those circumstances than there is the benefit of actually deterring a chemical or biological attack," Koblentz said during a recent panel discussion at the James Martin Center. The nonproliferation benefits for restricting the role of strategic weapons to deterring nuclear attacks outweigh the "marginal" reduction in the country's ability to stem the use of biological weapons, he said. In addition, the United States has efforts in place to defend against chemical and biological attacks such as vaccines and other medical countermeasures, he argued. "We have ways to mitigate the consequences of these attacks," Koblentz told the audience. "There's no way to mitigate the effects of a nuclear weapon." Regardless of the declaratory policy, the U.S. nuclear arsenal will always provide a "residual deterrent" against mass-casualty biological or chemical attacks, according to Tucker. "If a biological or chemical attack against the United States was of such a magnitude as to potentially warrant a nuclear response, no attacker could be confident that the U.S. -- in the heat of the moment -- would not retaliate with nuclear weapons, even if its declaratory policy is not to do so," he told GSN this week during a telephone interview. Political Benefits Experts are unsure what, if any, political benefit the country or President Barack Obama's sweeping nuclear nonproliferation agenda will gain from the posture review's biological weapons caveat. The report's reservation "was an unnecessary dilution of the strengthened negative security and a counterproductive elevation of biological weapons to the same strategic domain as nuclear weapons," Koblentz told GSN by e-mail this week. "The United States has nothing to gain by promoting the concept of the biological weapons as 'the poor man's atomic bomb,'" he added.

### 2AC Exec Power DA

#### Congress already has taken away Obama’s control of detention

Janet Cooper Alexander 13, professor of law at Stanford University, March 21st, 2013, "The Law-Free Zone and Back Again," Illinois Law Review, [illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf](http://illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf)

Congressalsopassed legislation requiringsuspectedmembers of al- Qaeda or “associated forces” to be held in military custody,again making it difficult to prosecute them in federal court.The bill as passed contained some moderating elements, including the possibility of presidential waiver of the military custody requirement, 7 recognition of the FBI’s ability to interrogate suspects, 8 and a disclaimer stating that the statute was not intended to change existing law regarding the authority of the President, the scope of the Authorization for Use of Military Force, 9 or the detention of U.S. citizens, lawful residents, or persons captured in the United States. 10 All the while, Republican presidential hopefuls were vying to see who could be the most vigorous proponent of indefinite detention, barring trials in civilian courts, and reinstating a national policy of interrogation by torture.¶11¶During the same period, the D.C. Circuit issued a series of decisions that effectively reversed the Supreme Court’s habeas decisions of 2004 and 2008. 12The Supreme Court’s failure to review these decisions has left detainees with essentially no meaningful opportunity to challenge their custody.¶Thus,a decade that began with the executive branch’s assertion of sole and exclusive power to act unconstrained by law or the other branches ended, ironically, with Congress asserting its power to countermand the executive branch’s decisions, regardless of detainee claims of legal rights, in order to maintain those law-free policies. And although the Supreme Court had blocked the Bush administration’s law-free zone strategy by upholding detainees’ habeas rights, the D.C. Circuit has since rendered those protections toothless

#### Checks on the Presidents power solves deterrence better- makes our threats credible

**Waxman 13** (Matthew C- Professor of Law at Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 8/25/2013, PDF)

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

# 1AR

## Case

### Yes Loose Nukes

**Yes Pakistan will collapse**

Shams 13 (Shamil, staff writer, 4-9-13, “Why Pakistan's nuclear bombs are a threat” DW, International German Broadcasting) http://www.dw.de/why-pakistans-nuclear-bombs-are-a-threat/a-16730597

Although the nuclear controversy involving Pakistan and Khan has subsided, the Islamic Republic's nuclear arsenal is a constant source of worry for the international community. Though Pakistan's civilian and military establishments claim that their nuclear weapons are under strict state control, many defense experts fear that they can fall into the hands of terrorists in the event of an Islamist takeover of Islamabad or if things get out of control for the government and the military. Pakistan, which conducted its nuclear tests in 1998, is battling with a protracted Islamist insurgency which threatens to paralyze the state. In the past decade, Islamists not only attacked civilians but targeted military installations and bases as well. Some international experts say that the Taliban and al Qaeda have their eyes on Pakistan's nuclear warheads. "Nuclear programs are never safe. On the one hand there is perhaps a hype about Pakistani bombs in the Western media, on the other there is genuine concern," Pakistani journalist and researcher Farooq Sulehria told DW. "The Talibanization of the Pakistan military is something we can't overlook. What if there is an internal Taliban take over of the nuclear assets?" Sulehria speculated.

## Disad

### Econ Impact

**Royal agrees with us—economic declines dis-incentivize costly saber-rattling—this is from the page after your card**

**Royal, your author, 10**—director of Cooperative Threat Reduction at the U.S. Department of Defense (Jedediah, “Economic Integration, Economic Signaling and the Problem of Economic Crises”, published in *Economics of War and Peace*: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 217, google books, AL)

There is, however, another trend at play. Economic crises tend to fragment regimes and divide polities. A decrease in cohesion at the political leadership level and at the electorate level **reduces the ability** of the state to coalesce a sufficiently strong political base **required to undertake costly balancing measures** such as economic costly signals. Schweller (2006) builds on earlier studies (sec, e.g., Christensen, 1996; Snyder, 2000) that link political fragmentation with decisions **not to balance** against rising threats or to balance only in minimal and ineffective ways to demonstrate a tendency for states to 'underbalance'. Where political and social cohesion is strong, states are more likely to balance against rising threats in effective and costly ways. However, 'unstable and fragmented regimes that rule over divided polities will be significantly constrained in their ability to adapt to systemic incentives; they will be least likely to enact bold and costly policies **even when their nation's survival is at stake** and they are needed most' (Schweller, 2006, p. 130).

**Empirics and studies are conclusive – resource wars don’t happen**

**Salehyan 07** Idean Salehyan Professor of Political Science at the University of North Texas. “The New Myth About Climate Change Corrupt, tyrannical governments—not changes in the Earth’s climate—will be to blame for the coming resource wars.” By Idean Salehyan | August 14, 2007 http://www.foreignpolicy.com/articles/2007/08/13/the\_new\_myth\_about\_climate\_change

First, aside from a few anecdotes, there is little systematic empirical evidence that resource scarcity and changing environmental conditions lead to conflict. In fact, several studies have shown that an abundance of natural resources is more likely to contribute to conflict. Moreover, even as the planet has warmed, the number of civil wars and insurgencies has decreased dramatically. Data collected by researchers at Uppsala University and the International Peace Research Institute, Oslo shows a steep decline in the number of armed conflicts around the world. Between 1989 and 2002, some 100 armed conflicts came to an end, including the wars in Mozambique, Nicaragua, and Cambodia. If global warming causes conflict, we should not be witnessing this downward trend. Furthermore, if famine and drought led to the crisis in Darfur, why have scores of environmental catastrophes failed to set off armed conflict elsewhere? For instance, the U.N. World Food Programme warns that 5 million people in Malawi have been experiencing chronic food shortages for several years. But famine-wracked Malawi has yet to experience a major civil war. Similarly, the Asian tsunami in 2004 killed hundreds of thousands of people, generated millions of environmental refugees, and led to severe shortages of shelter, food, clean water, and electricity. Yet the tsunami, one of the most extreme catastrophes in recent history, did not lead to an outbreak of resource wars. Clearly then, there is much more to armed conflict than resource scarcity and natural disasters.