# 1NC

### Ground Spec

#### Affirmative has to specify the grounds they rule on, they don’t-it is a voting issue:

#### 1) Ground and Education. Specification is key to DA’s and CP’s because literature about the courts focuses more on the process of a decision than the outcome. Any discussion minus the grounds is superficial. 2) No Solvency- Decisions without grounds have no legal weight

Post, UC-Berkeley law professor, 2001
(Robert, “ARTICLE: The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court”, May, 85 Minn. L. Rev. 1267, lexis)

So, for example, the editors of the American Law Review argued in 1886 that "the practice of writing dissenting opinions" ought not to be prohibited by legislation, because   it has always been recognized that **judicial decisions which merely announce conclusions of law, without either referring to authority for such conclusions or offering reasons in support of them, carry little weight**. If mere legislation is the office of the courts, they would carry the weight which an act of legislation carries. Experience, we take it, shows that **judicial decisions which are neither founded on authority nor on sound reasoning are never allowed to remain unquestioned** by the profession. **Cases are known where such decisions**, always unsatisfactory to the profession, **have been constantly assailed and finally overthrown** after the lapse of many years. **It is the office of the judge who writes a judicial decision to give the reasons upon which the court proceeds.** The proper administration of justice is not satisfied with anything else. **If these are omitted, the judgment becomes a mere arbitrary exercise of power. If it is the office of the judicial courts to furnish the reasons which the court gives for its decision, it cannot be affirmed with any show of logic that it is not equally their office to furnish the reasons which a portion of the court may give for the opposing view.**   Dissenting Opinions, 20 Am. L. Rev. 428, 429 (1886).

### CP

#### The Executive Branch of the United States federal government should:

#### Begin to transfer Guantanamo detainees that are already slated for release to their home or third party countries.

#### Provide assistance to these third party countries to ensure safe transfer and detention

#### Waive the requirement that receiving countries take certain steps to ensure detainees do not engage in terrorist activity

#### Lift its moratorium on releasing detainees to Yemen

#### Prosecute or release the remaining detainees

#### Appoint a high-level official to intensify transfer negotiations with third party receiving countries

#### Issue formal apologies and reparations to persons detained erroneously

#### Ensure these detainees receive civilian trials.

#### Obama can end indefinite detention

Pitter ’13, Laura Pitter is counterterrorism advisor at Human Rights Watch, MAY 1, 2013, Foreign Policy, How to Close Guantanamo, <http://www.foreignpolicy.com/articles/2013/05/01/how_to_close_guantanamo?page=full>, jj

In his remarks, made in response to questions at the White House press briefing, Obama pointed the finger at Congress saying it had been "determined" not to let him close the facility, and that he promised to "re-engage with Congress" on the issue. While it's true that Congress has certainly placed obstacles in the way of closing the facility, such as restricting the use of funds to transfer detainees to the United States for trial, there are still a number of steps the Obama administration could have taken -- and can still take now -- to begin closing the facility and ending indefinite detention without trial. ¶ For one, it can begin to transfer the 86 of the 166 detainees at Guantanamo already slated for release to their home or third countries. In 2011 and again in 2012, Congress enacted some restrictions on the transfer of detainees from the facility, but those restrictions are not insurmountable. They require receiving countries to take certain steps to ensure that those being transferred do not engage in terrorist activity and that the secretary of defense certify such steps have taken place. If, however, the secretary of defense cannot, for one reason or another, certify those steps have been taken, he can waive the certification requirement in lieu of "alternative actions" -- a term which has no clear legal or procedural definition. The only guidelines are that they "substantially mitigate" the risk that the detainee being transferred may engage in terrorism. Clearly then, the administration's ability to transfer detainees out of Guantanamo exists now, even with congressional restrictions. And with Obama again reiterating that keeping Guantanamo open harms U.S. security, the certification -- and even more so the waiver -- process seems to offer a clear path forward to emptying the facility of more than half its prisoners, if not closing it down.¶ Yes, there is some risk that detainees released from Guantanamo may engage in terrorism. The government has stated that some of the detainees released from Guantanamo have already been involved in terrorism, though the number is disputed and the government refuses to publicly release the information on which it is basing those claims. The director of national intelligence claims (though these claims have been discredited) that about 16 percent of the approximately 600 people released from the facility over the past 12 years are confirmed, and 11 percent are suspected, of having engaged in terrorism after their release. Independent, credible analyses of those figures by researchers at the New America Foundation indicate the number is more like 6 percent, or 1 in 17. Even if the Pentagon figures were true, clearly the vast majority of people released from Guantanamo have not engaged in terrorism; in fact, it's well below the estimated 60 percent U.S. recidivism rate for criminal convictions overall. There are many people in the world who may commit crimes in the future, but the United States has not locked them up indefinitely. The bottom line is that the administration needs to assume some risk that those released may become involved in terrorism -- even though that risk is objectively low. But even on a purely moral level, the fear that someone may engage in terrorist or criminal behavior in the future is not a legitimate basis for prolonged indefinite detention. Furthermore, the decision about whether to release a detainee should be made on an individual basis, not based on the behavior of other detainees.¶ The administration could also lift its self-imposed moratorium on returning Guantanamo detainees to Yemen; some 56 of the 86 detainees slated for release are from that country. The president imposed a moratorium on returns to Yemen after Umar Farouk Abdulmutallab, a Nigerian trained in Yemen, tried to blow up a Detroit-bound plane with explosives hidden in his underwear on Christmas Day 2009. Abdulmutallab was convicted in federal court and is now serving a life sentence. But the Yemeni government has requested the return of their citizens from Guantanamo and promised to build a rehabilitation center there to facilitate the process. Senator Dianne Feinstein (D-CA), an initial supporter of the moratorium, recently asked Obama's national security director to reevaluate the hold and consider whether, with appropriate assistance, Yemeni detainees can begin being transferred home.¶ Of the other 80 detainees at Guantanamo, the administration has designated 46 for indefinite detention. They were put in this category because an interagency task force deemed them too dangerous to release and yet the administration either did not have sufficient admissible evidence against them to prosecute or concluded that their acts did not amount to a chargeable crime.¶ Obama signed an executive order on March 7, 2011, providing these detainees the ability to challenge this designation. But the panel before which they would appear, called a Periodic Review Board (PRB), has yet to even be formed -- even though an executive order mandated that it begin reviews within the year. And while 31 prisoners have been slated for prosecution, only six of those -- including the five defendants accused in the attacks of September 11, 2001, face any formal charges. The remaining three men at Guantanamo are serving sentences following convictions in military commission proceedings.¶ The administration should either prosecute these 80 detainees against whom they have any credible evidence -- and in courts that comport with fair trial standards -- or release them. Though starting the PRB process would provide detainees in the indefinite detention category with at least some ability to challenge their designation, if these individuals cannot be prosecuted, they should be released.¶ Even though they have been revised three times since first formed in 2005, and improved under Obama's presidency, it's clear that military commissions at Guantanamo do not comport with fair trial standards. Among other things, they lack judicial independence, allow the admission of certain coerced testimony, and fail to protect privileged attorney-client communications. In February, defense attorneys in one of the only two cases currently being prosecuted at Guantanamo discovered listening devices disguised as smoke detectors in attorney-client meeting rooms. Additionally, proceedings were halted because a courtroom feed to the media and observers that supposedly only the judge was able to control was cut off by an unnamed U.S. agency. Then in mid-April, hearings were further delayed by two months because an enormous number of prosecution and defense files disappeared from the server that both legal teams are required to use to process the highly classified documents in the case. Furthermore, it's not entirely clear why even the court's supporters would be so in favor of continuing the status quo -- the only two military commission verdicts obtained by full trials were recently overturned on appeal. In those cases, the appellate court found that the charges of conspiracy and material support for terrorism, for which the defendants were accused, were not war crimes and hence not within the jurisdiction of the commissions.¶

### DA 1

#### Uniqueness --- Courts are deferring to the executive on matters of national security now

Jacob Gershman, 8-30-’13, The Wall Street Journal, Can Obama be Sued for Ordering Military Action in Syria?, <http://blogs.wsj.com/law/2013/08/30/can-obama-be-sued-for-ordering-military-action-in-syria/>, jj

Members of Congress also have run into another brick wall called the “political question” doctrine, which involves deference to the president’s discretionary authority.¶ “Courts will not decide cases that risk embarrassment to an equal branch of government or involve courts in policy decisions that aren’t appropriate for judicial resolution,” Michael J. Glennon, a professor of International Law at the Fletcher School of Law and Diplomacy at Tufts University, told Law Blog.

#### Current detention jurisprudence has struck the perfect balance between judicial review and executive flexibility --- reasserting the judicial role undermines deference and hampers the military

Greg Jacob, a partner at O’Melveny & Myers in Washington, D.C, 10-1-12, ABA Journal, Detention Policies: What Role for Judicial Review?, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>, jj

In arguing that the Supreme Court’s decision in Boumediene v. Bush has not “precipitated a shift away from detention and toward targeted killings,” Professor Vladeck knocks down an easily-dispensed-with straw man, but fails to tackle the more interesting question of whether the D.C. Circuit’s post-Boumediene jurisprudence has struck the right balance in establishing parameters for judicial review of executive branch decisions concerning the detention of captured enemy combatants. This short article suggests that, in at least two significant respects, it has. First, the D.C. Circuit’s decision in Maqaleh v. Gates avoids disruptive litigation over the military detention of most aliens who are (1) captured abroad, (2) designated by the military as enemy combatants and (3) held in a theater of active military operations. Second, the evidentiary burdens and presumptions applied by the D.C. Circuit in reviewing the habeas petitions of Guantanamo detainees have, by and large, struck an appropriate balance between the “practical considerations and exigent circumstances” of needing to avoid “judicial interference with the military’s efforts to contain ‘enemy combatants [and] guerilla fighters,’ ” on the one hand, and the need to “protect against the arbitrary [and unlawful] exercise of governmental power” on the other.¶ Captured enemy combatants, whether lawful or unlawful, are not detained for the purpose of punishment, but rather to prevent them from rejoining enemy forces and engaging in further hostilities. Such detention authority is no less necessary in a guerilla war against covert terrorist elements than it is in large-scale conventional conflicts. If our military forces are competent—and they certainly are—circumstances will arise in which hard-pressed enemy forces will elect to lay down their arms and voluntarily surrender. And if we as a people are both moral and merciful—and we strive to be—rather than kill the surrendered enemy, we will instead offer to detain them.¶ But what then? The Supreme Court’s decisions in Ex parte Quirin and Johnson v. Eisentrager, together with long-standing historical practice, establish the government’s authority to hold captured enemy combatants until the end of an armed conflict to prevent them from rejoining the fray and attempting to kill our forces. But does this well-established rule apply without limitation in an armed conflict that had no natural end? On the one hand, releasing an avowed enemy of the United States, whose hatred of our country can only have been inflamed by years of detention, and without any firm assurance that he or she will not seek to engage in future hostilities against us, seems the sheerest of folly. On the other hand, if it will never be assuredly safe to release such individuals, can we really preventively detain them indefinitely, possibly for decades, and perhaps even until the end of their natural life? Historical and legal precedents have almost all described the government’s authority to detain enemy combatants in absolute terms, but those precedents have seemed to assume that the underlying conflicts would eventually end, and that the government’s detention authority would thus come to a natural close.¶ In the early cases related to the war on terror, the government subscribed to the absolute theory of detention authority that flowed from these precedents. And in the Supreme Court’s first examination of a war on terror case, Hamdi, it agreed, holding that “universal agreement and practice” support the military’s authority to capture and detain individuals who are “part of or supporting forces hostile to the United States … and engaged in armed conflict against the United States.” The Supreme Court expressly noted that the purpose of such detention is to prevent enemy combatants from “returning to the field of battle and taking up arms once again,” stating that combatants can accordingly be held “for the duration of the relevant conflict.”¶ More than a decade into the war on terror, no federal court has seriously called into question the government’s potentially unending authority to detain captured combatants until the conflict “ends.” Whether there are or should be any temporal limitations to that authority is a question that future judges and political leaders may well address. Boumediene, however, demonstrates the judiciary’s concern that as the war on terror drags on, and with it the length of ongoing detentions (at the time of the Boumediene decision, some of the detainees had been held for more than six years), we need to at least be increasingly sure that the individuals we are detaining are in fact enemy combatants. Boumediene expressly declined to state how greater certainty concerning the validity of military detentions should be achieved, noting that “our opinion does not address the content of the law that governs [enemy combatant] detention” and directing the lower courts to establish a framework capable of reconciling “liberty and security … within the framework of the law.” This is what the D.C. Circuit has attempted to do.¶ Probably the most important war on terror decision handed down by the D.C. Circuit since Boumediene was decided is Maqaleh, in which the court declined to extend the writ of habeas corpus to aliens captured abroad, designated enemy combatants and held at Bagram Air Force Base in Afghanistan. From the military’s perspective, the nightmare scenario has always been the prospect that the judiciary would assert the right to engage in a searching inquiry into the basis for every capture and detention of an alien abroad, even while active combat operations are ongoing. In World War II, such a rule could have required the government to litigate hundreds of thousands of habeas claims, costing the government significant expense and causing substantial disruption to military operations. Maqaleh puts such fears to rest.¶ In declining to exercise habeas jurisdiction over Bagram, the Maqaleh court did not apply a bright-line territorial sovereignty test, but rather engaged in a multi-factor analysis drawn from Boumediene that examines (1) the citizenship and status of the detainee and the adequacy of the process through which the status determination was made, (2) the nature of the site of apprehension and the site of detention, and (3) the practical obstacles inherent in resolving the prisoner’s entitlement to the writ. The essential holding of the case seems to be that where the government apprehends an alien abroad, and then detains that alien at a location not within the de jure or de facto sovereignty of the United States and within an active theater of war, the writ of habeas corpus does not apply. There may be exceptions to this rule where the government has not engaged in any formal process for determining whether detained individuals are legitimately classified as enemy combatants, or where the government has deliberately transferred prisoners to an active theater of war for the purpose of avoiding habeas jurisdiction. Otherwise, however, Maqaleh requires the judiciary to exercise some humility and defer to most military detention decisions in active theaters of war.¶ Does the Maqaleh rule create the possibility, and perhaps even the likelihood, of erroneous detentions? Certainly. Mankind has not yet devised a perfect system for correcting such errors. But the decision is founded on a principle long recognized by the courts: That absent extraordinary circumstances, the cost to security of judicial interference in active overseas military operations outweighs the liberty cost of potentially erroneous detentions pursuant to those operations. Thus, five years after World War II formally ended, the Supreme Court declined to extend the writ of habeas corpus to prisoners held in Germany, explaining that “such trials would hamper the war effort and bring aid and comfort to the enemy. … It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.” Through Maqaleh, these legitimate concerns continue to govern the enemy combatant jurisprudence of today.

#### Plan’s violation of deference to the executive spills over

Bloomberg ’13, 2-18, Why a ‘Drone Court’ Won’t Work, <http://www.bloomberg.com/news/2013-02-18/why-a-drone-court-won-t-work.html>, jj

As for the balance of powers, that is where we dive into constitutional hot water. Constitutional scholars agree that the president is sworn to use his “defensive power” to protect the U.S. and its citizens from any serious threat, and nothing in the Constitution gives Congress or the judiciary a right to stay his hand. It also presents a slippery slope: If a judge can call off a drone strike, can he also nix a raid such as the one that killed Osama bin Laden? If the other branches want to scrutinize the president’s national security decisions in this way, they can only do so retrospectively.

#### Deference good --- secrecy, speed, and flexibility

Posner & Vermeule ’07, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, “Terror in the Balance : Security, Liberty, and the Courts”.¶ Cary, NC, USA: Oxford University Press, 2007. p 4-6.¶ http://site.ebrary.com/lib/wayne/Doc?id=10180654&ppg=13¶ Copyright © 2007. Oxford University Press. All rights reserved. , jj

A different view, however, is that the history is largely one of political and constitutional success. The essential feature of the emergency is that national security is threatened; because the executive is the only organ of government with the resources, power, and flexibility to respond to threats to national security, it is natural, inevitable, and desirable for power to flow to this branch of government. Congress rationally acquiesces; courts rationally defer. Civil liberties are compromised because civil liberties interfere with effective response to the threat; but civil liberties are never eliminated because they remain important for the well-being of citizens and the effective operation of the government. People might panic, and the government must choose policies that enhance morale as well as respond to the threat, but there is nothing wrong with this. The executive implements bad policies as well as good ones, but error is inevitable, just as error is inevitable in humdrum policymaking during normal times. Policy during emergencies can never be mistake-free; it is enough if policymaking is not systematically biased in any direction, so that errors are essentially random and wash out over many decisions or over time. Both Congress and the judiciary realize that they do not have the expertise or the resources to correct the executive during an emergency. Only when the emergency wanes do these institutions reassert themselves, but this just shows that the basic constitutional structure remains unaffected by the emergency. In the United States, unlike in many other countries, the constitutional system has never collapsed during an emergency.¶ The two views of history have opposite normative implications. Those who hold the first view devote their energies to persuading Congress and judges to scrutinize executive actions during emergencies. The simplest view, which we label the civil libertarian view, holds that courts should be willing to strike down emergency measures that threaten civil liberties to the same extent that they strike down security measures during normal times; perhaps courts should be even less deferential during emergencies, given that emergencies create new opportunities for taking advantage of the public. Some scholars who are sympathetic to the civil libertarian view, but who do not go so far, think that courts should be more deferential during emergencies than during normal times; but these scholars also think that the judges should assert themselves more than they have historically and that the judges should wield constitutional doctrines that require the executive to work in tandem with Congress. Except when the context requires greater precision, we will refer to both types of scholars as civil libertarians. The second view of history suggests that the traditional practice of judicial and legislative deference has served Americans well, and there is no reason to change it. This view reflects the collective wisdom of the judges themselves, and although no one doubts that injustices occur during emergencies, the type of judicial scrutiny that would be needed to prevent the injustices that have occurred during American history would cause more harm than good by interfering with justified executive actions. Those who hold this view usually have little confidence in congressional leadership and argue that Congress should defer to the executive as well. This book argues for the latter view. We maintain that the civil libertarian view, in any version, rests on implausible premises and is too weak to overcome the presumptive validity of executive action during emergencies. Our argument has two components. First, the tradeoff thesis holds that governments should, and do, balance civil liberties and security at all times. During emergencies, when new threats appear, the balance shifts; government should and will reduce civil liberties in order to enhance security in those domains where the two must be traded off. Governments will err, but those errors will not be systematically skewed in any direction and will not be more likely during emergencies than during normal times, in which governments also make mistakes about quotidian matters of policy. Second, the deference thesis holds that the executive branch, not Congress or the judicial branch, should make the tradeoff between security and liberty. During emergencies, the institutional advantages of the executive are enhanced. Because of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times. The deference thesis does not hold that courts and legislators have no role at all. The view is that courts and legislators should be more deferential than they are during normal times; how much more deferential is always a hard question and depends on the scale and type of the emergency.¶ To that extent, we agree with the subset of civil libertarians who concede that courts and legislators should defer somewhat more during emergencies than during normal times. Nonetheless, even these civil libertarians criticize the courts and Congress for their excessive deference during emergencies. We agree with the descriptive premise, but not the normative one. Courts and legislators are far more deferential during emergencies than any civil libertarians would have them be, but we think this is good and, for the most part, inevitable. Accordingly, we will argue for a much higher degree of deference than any version of the civil libertarian view permits. In our view, the historical baseline of great deference during emergencies is also the right level of deference. To be clear, we do not argue that government always acts rationally, or with public-regarding motivations, nor that it always strikes the correct balance between security and liberty. Our two theses are just two halves of our central claim, which is about the comparison of institutional performance during normal times, on the one hand, and during emergencies, on the other. Our central claim is that government is better than courts or legislators at striking the correct balance between security and liberty during emergencies. Against the baseline of normal times, government does no worse during emergencies, or at least its performance suffers less than that of courts and legislators. By contrast, the institutional structures that work to the advantage of courts and Congress during normal times greatly hamper their effectiveness during emergencies; and the decline in their performance during emergencies is much greater than the decline in governmental performance. Therefore, deference to government should increase during emergencies.

#### Executive flexibility solves nuclear war

Yoo 12

(John Yoo, American attorney, law professor, and author. He served as a political appointee, the Deputy Assistant US Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration. “War Powers Belong to the President”¶ Posted Feb 1, 2012,¶ <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>)

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.¶ The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

### Pltx

***GOP will capitulate to demands for a clean debt ceiling bill and it will pass – Obamacare and other issues will not appear in the final bill.***

Greg **Giroux 9/19, 2013**, I See No Deals on Debt Ceiling, Republicans Will Capitulate – Senator Murray, Wall Stree Pit, <http://wallstreetpit.com/101182-i-see-no-deals-on-debt-ceiling-republicans-will-capitulate-senator-murray/>, KEL

**Republicans seeking to curb** President Barack **Obama’s health-care law** probably **will capitulate to demands from Democrats to enact a “clean” bill** raising the nation’s debt ceiling, the Senate’s top Democratic budget writer said. “I see no deals on the debt ceiling,” Senator Patty Murray of Washington state, who leads the Budget Committee, said in an interview on Bloomberg Television’s “Political Capital with Al Hunt” airing this weekend. “The downside of not paying our bills is our credit-rating tanks,” Murray said. “That affects every family, every business, every community. It affects Main Street. It affects Wall Street.” **Murray** said she also **expects Republicans to relent on their demands for stripping spending from Obama’s health plan** as part of action on a spending bill needed to keep the government running after Sept. 30. Republicans led by House Speaker John Boehner of Ohio have clashed with Obama over the debt ceiling, with the lawmakers demanding changes to spending programs as a condition of raising the $16.7 trillion federal borrowing limit. **Republicans “will come together with some mishmash policy of everything in the bag they’ve ever promised” to anti-tax Tea Party activists, though “they haven’t been able to get the votes for anything yet,**” said Murray, 62, fourth-ranking Democrat in the Senate’s leadership.

***Restrictions on authority are a loss that spills over to the debt ceiling***

Parsons, 9/12/13(Christi, Los Angeles Times, “Obama's team calls a timeout”

[http://www.latimes.com/nation/la-na-obama-congress-20130913,0,2959396.story](http://www.latimes.com/nation/la-na-obama-congress-20130913%2C0%2C2959396.story))

After a week in which President Obama ***narrowly averted a bruising defeat*** on Capitol Hill over a military strike on Syria, the decision had the feeling of a much-needed timeout. The messy debate over a resolution to authorize military force put a harsh light on the president's already rocky relationship with Congress. Despite a charm offensive earlier this year, complete with intimate dinners and phone calls, Obama faced contrary lawmakers in both parties, a climate that is certain to persist through the next round of legislative fights, if not to the end of his second term. In deciding to seek approval for military action, Obama banked on the long-standing deference to the commander in chief on matters of national defense. But by the time he pressed "pause" on the intense White House lobbying effort, he was finding as much defiance as deference. Although the White House cast the issue as a matter of national security and a crucial test of U.S. power, dozens of lawmakers from both parties were set to deliver a rare rebuke to a president on foreign policy. Even Democratic loyalists seemed unswayed by appeals to preserve the prestige of the presidency — and this president. Hawkish Republicans offering to reach across the aisle to support the president said they found the White House distant and uninterested. The canceled picnic punctuated a week of aggravated feelings. "We obviously have divided government. We have sometimes contentious, sometimes very effective relations with Congress. But we keep at it," said White House spokesman Jay Carney, who denied the picnic cancellation had anything to do with the state of relations between the two branches of government. On Capitol Hill, the week's episode strained Obama's traditional alliance with his fellow Democrats, many of whom were wary of another military involvement, unclear about the president's plans for a missile strike and surprised by his decision to ask them to vote on it. "Not only was it a hard ask, but it was not a well-prepared ask," said Sen. Sheldon Whitehouse (D-R.I.). "His willingness to back away from the ultimatum and pursue the disarmament proposal was extremely welcome, and I think that helped all of us in our relationship with him." Obama's relationship with his Republican critics was not helped. As lawmakers look ahead to the rest of the fall agenda, including the coming budget battles, the administration's performance this week will not be easy to forget, some said. "It's just more lack of confidence that they know what they're doing," said Sen. Tom Coburn (R-Okla.). "***There's only so much political capital***," said Sen. Rob Portman (R-Ohio). Democrats defended the president, blaming Republicans for a "knee-jerk" opposition to any initiative tied to this White House, a phenomenon that Obama aides regularly cite but that the president appears to have disregarded in his decision to put a use-of-force resolution before Congress. "Historically, when it comes to military force, Republicans and conservatives have led that. Now they're opposed to it," said Sen. Richard J. Durbin (D-Ill.). In a private meeting this week, Durbin said, Obama himself joked that "a lot of Republicans on Capitol Hill are discovering their inner doves on Syria." The next set of negotiations will be far more predictable and on familiar territory. By the end of the month, the president and Congress must agree on a plan to continue funding the government, or it will shut down. And by mid-October, they will have to agree to raise the debt limit, or risk a default. The White House has said it won't negotiate on the debt limit, as it did twice before, counting on the public and business groups to pressure Republicans. Democrats were hopeful the budget issues would put the White House back on more solid political footing. "I think the public has a heck of a lot more confidence in the president on economics and budget than [in] the House Republicans," said Sen. Carl Levin (D-Mich.). That may be wishful thinking, said Ross Baker, a political science professor at Rutgers University, who studies the Senate. "These things carry over. ***There's no firewall between issues***," he said. "***Failure in one area leads to problems in other areas***." The debate over the war in Syria may be on an extended pause, although prospects of Obama returning to Congress to ask for a use-of-force authorization seem slim. A bipartisan group of senators is drafting an amended authorization, but the group is not expected to fully air its proposal until diplomatic talks conclude. There were some signs that the debate may have ***won the president some empathy***, if not support. At a private lunch with Republican senators this week, Obama asked them ***not to undermine him*** on the world stage. Sen. Ron Johnson of Wisconsin, who is part of a group of GOP senators working with the White House on fiscal issues, said the appeal resonated.

***Loss of PC forces Obama to negotiate over debt ceiling preconditions – causes extended battle***

**Chait, 13**

Jonathan Chait, commentator and writer for New York magazine. He was previously a senior editor at The New Republic and a former assistant editor of The American Prospect. He also writes a periodic column in the Los Angeles Times, New York Magazine, 4/26/13, <http://nymag.com/daily/intelligencer/2013/04/democrats-lost-sequestration-two-years-ago.html>

**"Obama's mistake** wasn't the design of sequestration. It **was *finding himself in that negotiation to begin with*. Earlier this year, Obama refused to negotiate over the debt ceiling, and Republicans *caved* and raised it. If he had done that in 2011, they would probably have done the same thing. Instead, Obama took their demand to reduce the deficit at face value and thought**, Hey, I want to reduce the deficit, too — **why don't we use this opportunity to strike a deal?** As it happened, Republicans care way, way, way more about low taxes for the rich than low deficits, which made a morally acceptable deal, or even something within hailing distance of a morally acceptable deal, completely impossible. "By the point at which Obama figured this out in 2011, the debt ceiling loomed and it was too late to credibly insist he wouldn't negotiate over it. Sequestration was a pretty good way to escape fiscal calamity**. The mistake was *getting jacked up* over the debt ceiling in the first place."** http://nymag.com/daily/intelligencer/2013/04/democrats-lost-sequestration-two-years-ago.html[17] **In 2011 though, the GOP had a little *more political capital and the President considerably less so he may have had to negotiate*. Overall, though the point is well taken: Obama was right not to negotiate this year and it's hard to argue that he-or the Democrats- should have agreed to this**. However, time will tell and I'd like to be proved wrong. And even if they made a mistake, as Chait points out maybe they'll realize their blunder and do better next time.

***Even if a deal is eventually reached to prevent hitting the ceiling a protracted fight is economic sabotage – collapse growth, markets and confidence.***

Dave **Johnson**, Campaign for America's Future | Op-Ed Fresh Hell When Congress Returns

**September 4** 2013 11:25

<http://truth-out.org/opinion/item/18597-fresh-hell-when-congress-returns>

**There are two different levels of economic damage from a debt-ceiling fight. First there is the cost of the fight itself, as the world worries over whether Republicans would actually pull the trigger. The fact that they would talk about this at all causes considerable damage to growth and confidence.**¶ But **the other level of damage** – far more serious – **comes if they actually do it. If the U.S. defaulted, the consequences to the country’s and world’s economic system are literally unimaginable**.¶ In January, The Washington Post looked at reports of **the economic damage caused by the last debt-ceiling fight** – the one that led to the economic damage of the “sequester.” The Post report summarized:¶ The protracted, unsettling nature of the negotiations between the White House and Republicans dramatically **slowed the recovery**, economists conclude, looking back at the episode**. Consumer confidence collapsed, reaching its worst level since the depths of the financial crisis**. Hiring stalled, with the private sector creating jobs at its slowest pace since the economy exited the recession. The stock market plunged, sending the Standard & Poor’s 500-stock index down more than 10 percent.¶ **In the last debt-ceiling hostage battle, the government spent an extra $1.3 billion to borrow because of lender uncertainty over whether they would be paid back**, according to the Government Accounting Office (GAO). Following the battle the Standard & Poor’s credit agency “downgraded” the U.S. credit rating, saying that any country that would even discuss default does not deserve the top rating.¶ On top of that, the 10-year cost of higher interest rates from that fight is $18.9 billion. The unemployment rate increased as job growth was cut in half by the fight. Consumer confidence plunged “more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008.”¶ **The consequences of actually letting the country default would begin with a panic in the stock market. And there would likely be a “run” on money markets**, because the safety of the U.S. dollar is the foundation of the entire financial system.¶ Next, many of the things the U.S. government must pay for would not be paid for. Because raising the debt ceiling is about allowing the government to get the money to pay for the things Congress has already spent money on, existing invoices would not be paid. So the government would default on paying for contracts, hospitals and doctors who had already performed services, fuel purchases, everything right up to payments to Social Security recipients and people trying to redeem their government bonds. The government would have to prioritize who to pay based on what is coming in from tax receipts, fees and market transactions, which would all drop dramatically as the world’s economy exploded. In any event, the government doesn’t have the computer systems in place to prioritize payments, and wouldn’t have the time or funds to get those running.¶ **There would be a dramatic rise in interest rates for borrowing. The United States would no longer be a “safe” borrower, so the price of loans** – the interest rate – **would go up. That would ripple out to the price of a loan to a business, a mortgage, a car loan and everything else that Americans finance**.¶ **No matter how fast a default of the country was resolved, the shock to the confidence of the entire economic system would not go away**. If the United States was no longer a “safe haven,” then a restructuring of the world’s core understanding of debt and repayment would follow.¶ With the effect of the last fight now understood, **any new fight has to be seen for what it is: “economic sabotage.”**

***Nuclear war***

**Khalilzad ’11** Zalmay was the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992, “ The Economy and National Security”, 2-8-11, <http://www.nationalreview.com/articles/print/259024>, MCR

Today, **economic** and fiscal **trends pose the *most severe*** long-term ***threat* to the U**nited **S**tates’ **position as global leader**. While the United States suffers from fiscal imbalances and low economic growth, the economies of rival powers are developing rapidly. The **continuation of** these two **trends could lead to a shift from American primacy toward a multi-polar global system, leading in turn to increased *geopolitical rivalry* and** even ***war* *among*** the ***great powers***. The current recession is the result of a deep financial crisis, not a mere fluctuation in the business cycle. Recovery is likely to be protracted. The crisis was preceded by the buildup over two decades of enormous amounts of debt throughout the U.S. economy — ultimately totaling almost 350 percent of GDP — and the development of credit-fueled asset bubbles, particularly in the housing sector. When the bubbles burst, huge amounts of wealth were destroyed, and unemployment rose to over 10 percent. The decline of tax revenues and massive countercyclical spending put the U.S. government on an unsustainable fiscal path. Publicly held national debt rose from 38 to over 60 percent of GDP in three years. Without faster economic growth and actions to reduce deficits, publicly held national debt is projected to reach dangerous proportions. If interest rates were to rise significantly, annual interest payments — which already are larger than the defense budget — would crowd out other spending or require substantial tax increases that would undercut economic growth. Even worse, if unanticipated events trigger what economists call a “sudden stop” in credit markets for U.S. debt, **the U**nited **S**tates **would be unable to roll over its outstanding obligations, precipitating a sovereign-debt crisis that would *almost certainly* compel a *radical retrenchment* of the U**nited **S**tates **internationally**. **Such scenarios would *reshape the international order***. It was the **economic devastation** of Britain and France **during World War II**, as well as the rise of other powers, that **led** both **countries to relinquish their empires**. In the late 1960s, British leaders concluded that they lacked the economic capacity to maintain a presence “east of Suez.” Soviet economic weakness, which crystallized under Gorbachev, contributed to their decisions to withdraw from Afghanistan, abandon Communist regimes in Eastern Europe, and allow the Soviet Union to fragment. If the U.S. debt problem goes critical, **the U**nited **S**tates **would be compelled to retrench, reducing its military spending and shed**ding **international commitments**. We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though **countries** such as China, India, and Brazil have profound political, social, demographic, and economic problems, their **economies are growing faster than ours, and this could alter the global distribution of power.** **These trends could** in the long term **produce a multi-polar world**. ***If U.S. policymakers fail to act*** and other powers continue to grow, ***it is not a question of whether but when* a new international order will emerge**. **The closing of the gap** between the United States and its rivals **could *intensify geopolitical competition among major powers*, increase incentives for local powers to play major powers against one another, and undercut our will to *preclude* or respond to *international crises* because of the *higher risk of escalation*.** **The stakes are high**. In modern history, ***the longest period of peace among the great powers has been the era of U.S. leadership***. By contrast**, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers**. **Failures of multi-polar international systems produced *both world wars***. **American retrenchment could have *devastating consequences*.** **Without an American security blanket, regional powers could *rearm* in an attempt to balance against emerging threats**. Under this scenario, **there would be a heightened possibility of *arms races*, *miscalc***ulation, **or *other crises spiraling into all-out conflict*.** Alternatively, **in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the U**nited **S**tates. Either way, **hostile states would be emboldened to make *aggressive moves* in their regions**.

### Legit

#### Court legitimacy is stable now—the Roberts court has ruled moderately and narrowly on key cases

The Economist 6-27-’13, Moderately legitimate, <http://www.economist.com/blogs/democracyinamerica/2013/06/supreme-courts-term-review>, jj

THE SUPREME COURT struck down an unusually large number of statutes this term. Just this week, the court nullified Section 3 of the Defense of Marriage Act (DOMA) and Section 4 of the Voting Rights Act (VRA), both federal laws. Last week, it struck down another federal statute requiring organizations fighting AIDS abroad to explicitly denounce prostitution as a condition for federal funding. It also rejected Arizona’s law requiring voters to prove their citizenship as inconsistent with federal law and reinterpreted a federal statute protecting Native American children from estrangement from their tribe.

In striking down or altering the meaning of all these legislative provisions, the court acted in line with public opinion at times and counter to it at others. But in a conceptual sense every episode of judicial review is a “counter-majoritarian” act, as Alexander Bickel explained in his 1962 book, The Least Dangerous Branch. The power of judicial review has defined the Supreme Court since Chief Justice John Marshall first asserted it in his brilliant Marbury v. Madison opinion, but its use is never unproblematic. In our day, accusations of judicial activism arise whenever the court overturns the will of elected representatives in Congress or a state legislature. Here is how Bickel put the dilemma:

The root difficulty is that judicial review is a countermajoritarian force in our system....[W]hen the Supreme Court declares unconstitutional a legislative act or the act of an elected official it thwarts the will of the actual people of the here and now; it exercises control, not in behalf of the prevailing majority, but against it. That, without mystic overtones, is what actually happens...[I]t is the reason the charge can be made that judicial review is undemocratic.

In recent years, the charge of judicial activism has been heard from the left in complaints about the Citizens United decision. It was a trope a year ago from the right when the court upheld the constitutionality of Obamacare on grounds some thought were judicially invented. This season, liberals are unhappy with the court’s decision to ignore the huge margin by which Congress voted to reauthorise the VRA in 2006. Adam B at the Daily Kos writes that the “conservative activist Supreme Court” erred by brushing off the 15,000 pages of evidence establishing discriminatory practices in jurisdictions covered by Section 4. (Matt Berreto shares more evidence of voting discrimination that Chief Justice Roberts willfully ignored.) At the same time, conservatives callthe DOMA ruling a “judicial activist opinion which will create disorder and confusion.” Justice Scalia is being mocked on Comedy Central for overturning a law he doesn’t like (the VRA) and upholding one he does (DOMA). But liberals could just as easily be called to account for their inverted views: had the court issued a more sweeping ruling in Hollingsworth and recognised a fundamental, nationwide right to marriage equality, few on the left would have complained about activist intrusions on the rights of Alabamans to define marriage more traditionally.

It would be very hard to find someone who is happy with every decision the court has issued this term. This fact alone lends legitimacy to the Supreme Court as an institution and eases the “counter-majoritarian difficulty” diagnosed by Mr Bickel. Several patterns in the court’s 78 opinions this year give it an air of moderation. First, while there were many 5-4 splits (23% of the total), a surprising proportion of decisions—43 percent—were unanimous. So the Roberts court is often cohesive, but it is not ideologically monolithic the way, say, the Warren court was. While it leans conservative and is undoubtedly pro-business (witness the two cases sharply limiting the rights of employees to sue their employers for sexual harassment or retaliation), the Roberts court splits differences and tends to rule on narrow grounds in hot-button cases. Second, this year's court has splintered in unpredictable ways over some sensitive issues: in the Native American adoption case, liberal stalwart Justice Breyer joined the conservatives in the majority and Justice Scalia sided with the liberals in dissent. Justice Scalia is a favorite whipping boy of the left, but he received kudos from the editorial board of the New York Times for opposing Arizona's proof of citizenship law in Arizona v. Inter Tribal Council of Arizona.

Approval ratings for the Supreme Court are about five times higher than they are for Congress, and there seems to be good reason for this: both the left and the right have reason to cheer certain rulings and to jeer others. Love them, hate them, or (more likely), love them and hate them, there is little reason to worry that the institution's legitimacy in the eyes of the public is in much trouble as the gavel comes down for the last time this summer.

#### Judicial intervention into war powers crushes legitimacy

Nzelibe ’06, Jide Nzelibe, Assistant Professor of Law, Northwestern University Law School. B.A. 1993, St. John's College; M.P.A. 1995, Princeton; J.D. 1998, Yale, Iowa Law Review¶ March, 2006¶ 91 Iowa L. Rev. 993, ARTICLE: A Positive Theory of the War-Powers Constitution, Lexis, jj

Furthermore, the risk of non-compliance with judicial decisions also implicates the institutional legitimacy of the courts to adjudicate on war-powers claims. As some commentators have observed, courts seem to be especially wary about intervening in separation-of-powers issues in foreign affairs, because the popular legitimacy that underlies judicial resolution of domestic constitutional disputes does not tend to extend to foreign-affairs [\*1061] disputes. n298 In other words, when issues involve the adjudication of individual-rights claims or domestic separation-of-powers disputes, courts can often tap into the popular acceptance of their role in resolving such disputes. n299 In disputes regarding the allocation of war powers, however, it is unlikely that the judicial branch will be able to draw on the popular underpinnings of its legitimacy to secure political-branch compliance with its decisions. This is because there does not seem to be much of a public appetite for increased judicial involvement in foreign-affairs disputes. n300 Moreover, unlike in the domestic realm where the courts play a key legitimating function in separation-of-powers disputes, the political branches have very little incentive to embrace a more active judicial role in disputes over the allocation of war powers. n301¶ In any event, even if greater judicial intervention in war-powers disputes were politically feasible, it is not clear that such intervention would compel Congress to play a more active role on war-powers issues. In other words, members of Congress are not likely to embrace a war-powers role that has significant electoral risks simply because such a role has been judicially sanctioned. Indeed, not only will members of Congress lack an incentive to comply with such judicial decisions, but judicial monitoring of legislative compliance will often prove very difficult to carry out. At most, if compelled to take on a more active role by a judicial decision when it is not in their political interest to do so, members of Congress will likely substitute legislative rubberstamping for silent acquiescence as the preferred response to the President's use-of-force initiatives. In sum, if greater political accountability for use-of-force decisions is the end goal, there is little evidence that judicially prompted congressional intervention will change the current war-powers landscape.

#### Legitimacy key to the rule of law

Schapiro 8-5-’13, Robert A. Schapiro, dean and Asa Griggs Candler professor of law at Emory University School of Law., Op-ed contributor, Christian Science Monitor, Objection! Americans' opinion of Supreme Court can't keep dropping, Lexis, jj

Public confidence in the judiciary provides a critical foundation for a society committed to the rule of law. As America's unelected justices confront controversial questions, the legitimacy of their decisions depends on public support for the institution. The court must rely on other government officials, including elected leaders and law enforcement officers, to implement its rulings. Examples around the world suggest that obedience to judicial decisions may well depend on the level of respect that the courts enjoy.

#### Rule of law’s crucial to uphold unipolarity and maintain hegemony --- outweighs the aff

Knowles ’09 Robert Knowles, Acting Assistant Professor, New York University School of Law, Spring, 2009, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87, American Hegemony and the Foreign Affairs Constitution, LEXIS, jj

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424

### Terror

#### US detention policies are effective and reducing terrorism now --- plan reverses

Thiessen & Pompeo 7-9-’13, MODERATOR:¶ MARC A. THIESSEN, AEI¶ SPEAKER:¶ MIKE POMPEO, U.S. HOUSE ¶ OF REPRESENTATIVES (R-KS)¶ AMERICAN ENTERPRISE INSTITUTE, CLOSING GITMO? ¶ A CONVERSATION WITH REP. MIKE POMPEO, <http://www.aei.org/files/2013/07/15/-closing-gitmo-transcript_140008739936.pdf>, jj

Either you stare at the analysis and say, look, after 9/11, we engaged in a set of ¶ conduct as American national security team that’s been effective. And as a result of that ¶ effectiveness, we’ve had less risk here. Still had attacks and we’ll probably continue to ¶ have some attacks, but we’ve been pretty effective. Do you look at that set of facts on the ¶ ground and say, yeah, and it’s time to declare victory and pull back from that set of ¶ activities? Or do you say, no, those were effective actions, we ought to continue those ¶ until the enemy puts down their arms?¶ And that seems to me to be the central conceit of this administration, which is that ¶ they have this vision that if we back off, if we take the pressure off, al Qaeda and its ¶ affiliates, and all the terrorists, if we take that pressure off, they’ll come to love America.¶ They’ll come to not present a threat to this nation that is the one that took 3,000 lives.¶ I was in New York City just yesterday. I spoke with Commissioner Kelly about ¶ the threats that are existing today in New York City. They’re real and they’re continuous.¶ And so our activities to engage them and keep pressure on these bad folks must continue ¶ apace as well. And so I hope the president will reconsider the zero option. It has ¶ implications that are very broad and enormously important to everyone in this room. And ¶ their security and their safety.

#### Indefinite detention checks terror – incapacitation, deterrence, disruption, and intel

Waxman ’09, Matthew C. Waxman\*, \* Associate Professor, Columbia Law School; Adjunct Senior Fellow, Council on Foreign Relations; Member of the Hoover Institution Task Force on National Security and Law, 2009¶ Journal of National Security Law & Policy¶ 3 J. Nat'l Security L. & Pol'y 1, Article: Administrative Detention of Terrorists: Why Detain, and Detain Whom?, Lexis, jj

*\*gender modified*

 [\*14] This notion of prevention, however, needs to be further unpacked. There are at least four major ways in which detention contributes to terrorism prevention:¶ . incapacitation¶ . deterrence¶ . disruption¶ . information-gathering¶ Each of these sub-elements of prevention has implications for how administrative detention laws should be crafted and how institutions for adjudicating cases should be designed.¶ The most natural inclination of a government facing threats of terrorism is to incapacitate suspected terrorists: If someone has the will and capability to commit terrorism, keep [them] ~~him~~ off the streets. The purpose of such detention is not punitive or retributive (though such desires might lurk in the background); it is protective and preemptive, to put poten-tial threats out of action. Secretary of Defense Rumsfeld described the Guantanamo detainees in 2002, for example, as "among the most dangerous, best-trained, vicious killers on the face of the earth," n66 justifying the camp as necessary to stop them from carrying out their violent objectives. This preventive purpose underlies the law of war's detention rules, in that those rules aim to block captured soldiers from returning to an ongoing fight. n67 As former Attorney General Mukasey explained:¶ ¶ The United States has every right to capture and detain enemy combatants in this conflict, and we need not simply release them to return to the battlefield... . We have every right to prevent them from returning to kill our troops or those fighting with us, and to target innocent civilians. n68¶ ¶ Beyond incapacitating existing threats, a government might wield the threat of detention to deter future terrorist re-cruits from joining the cause or participating in terrorist activities. In other words, the possibility of getting caught and held by the government may dissuade terrorists or future terrorists from joining terrorist groups or perpetrating terrorist acts. n69 The [\*15] more credible the threat of capture and detention, and the more severe the consequences (say, the longer the threatened period of detention, or the more severe its conditions), so the theory goes, the greater the deterrent pressure.¶ These notions of incapacitating or deterring terrorists or future terrorists may potentially point at large groups of in-dividuals and their dangerous activities: If we can discern who has the intent and capability - or potential to develop that intent and capability - to commit or support terrorist acts, we will try to block or dissuade them. But a narrower way to formulate a preventive purpose of administrative detention is to disrupt terrorist plots: A group of individuals is preparing to carry out a terrorist attack or campaign of attacks, so use the detention of certain persons to foil that plot. n70 Whereas incapacitation focuses heavily on the characteristics of categories of individuals, disruption focuses on their joint or individual activities. It is not so much about neutralizing very dangerous people as neutralizing their impending schemes.¶ Each of these preventive strategies contains some key assumptions about the government's knowledge of the ter-rorist threat. An incapacitation strategy assumes the state's ability to assess accurately who is likely to pose a future danger and to therefore devote resources to stemming their future dangerous activities. A prevention strategy emphasizing deterrence assumes the state's ability to manipulate sufficiently the fears of future terrorists at large. And a disruption strategy assumes the state's ability to identify plots in advance and their key individual enablers. n71¶ A fourth preventive reason to detain is therefore to gather information. Thwarting terrorist plots requires getting in-side the heads of network members, to understand their intentions, capabilities, and modes of operation. Detention can facilitate such intelligence collection through, most obviously, interrogation, but also through monitoring conversations among prisoners or even "turning" terrorist agents and sending them back out as government informants. Governments usually justify publicly counterterrorism detentions on incapacitation or disruption grounds, but no doubt infor-mation-gathering was at the forefront of the Bush administration's detention policies, n72 as demonstrated by the lengths to [\*16] which that Administration went to defend permissive interrogation standards and CIA detention programs. n73 "These are dangerous men with unparalleled knowledge about terrorist networks and their plans for new attacks," explained President Bush in September 2006, in disclosing publicly the CIA secret detention program. "The security of our nation and the lives of our citizens depend on our ability to learn what these terrorists know." n74¶ This last point about facilitating information-gathering shows that there are often synergies among the preventive approaches. Incapacitating individuals suspected of posing serious dangers may deter individuals from engaging in or supporting dangerous activities. Disrupting major plots and interrogating the plotters may reveal a lot about how future schemes will be hatched and who among the many dangerous individuals remaining at large are most likely to play critical roles in those schemes. Any sound counterterrorism strategy will combine all of these elements to some degree. n75

#### Civilian prosecution will destroy foreign cooperation in the war on terror

McCarthy and Velshi 9 August, 20 Andrew C. McCarthy is Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. Alykhan Velshi is a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force. “We Need a National Security” Court<http://www.defenddemocracy.org/stuff/uploads/documents/national_security_court.pdf>

5. The discovery requirements endanger national security by discouraging cooperation from our allies. As illustrated by the recent investigations conducted by Congress, the Silberman/Robb Commission, and the 9/11 Commission regarding pre 9/11 intelligence failures, the United States relies heavily on cooperation from foreign intelligence services, particularly in areas of the world from which threats to American interests are known to stem and where our own human intelligence resources have been inadequate. It is vital that we keep that pipeline flowing. Clearly, however, foreign intelligence services (understandably, much like our own CIA) will necessarily be reluctant to share information with our country if they have good reason to believe that information will be revealed under the generous discovery laws that apply in U.S. criminal proceedings.

#### Resentment and recruitment inevitable

Krauthammer ’10, Charles Krauthammer, Pulitzer Prize winner & Columnist for Time Magazine, 1-8-10, The Washington Post, Obama's Guantanamo obsession, <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/07/AR2010010703245.html>, jj

Imagine that Guantanamo were to disappear tomorrow, swallowed in a giant tsunami. Do you think there'd be any less recruiting for al-Qaeda in Yemen, Saudi Arabia, Pakistan, London?¶ Jihadism's list of grievances against the West is not only self-replenishing but endlessly creative. Osama bin Laden's 1998 fatwa commanding universal jihad against America cited as its two top grievances our stationing of troops in Saudi Arabia and Iraqi suffering under anti-Saddam sanctions.¶ Today, there are virtually no U.S. troops in Saudi Arabia. And the sanctions regime against Iraq was abolished years ago. Has al-Qaeda stopped recruiting? Ayman al-Zawahiri, al-Qaeda's No. 2, often invokes Andalusia in his speeches. For those not steeped in the multivolume lexicon of Islamist grievances, Andalusia refers to Iberia, lost by Islam to Christendom -- in 1492.¶ This is a fanatical religious sect dedicated to establishing the most oppressive medieval theocracy and therefore committed to unending war with America not just because it is infidel but because it represents modernity with its individual liberty, social equality (especially for women) and profound tolerance (religious, sexual, philosophical). You going to change that by evacuating Guantanamo?¶ Nevertheless, Obama will not change his determination to close Guantanamo. He is too politically committed. The only hope is that perhaps now he is offering his "recruiting" rationale out of political expediency rather than real belief. With suicide bombers in the air, cynicism is far less dangerous to the country than naivete.

#### Plan boosts recruitment.

Gaffney 7-24-’13, FRANK J. GAFFNEY, JR, President, Center for Security Policy, 24 July 2013, Submitted Testimony of¶ FRANK J. GAFFNEY, JR.¶ President, Center for Security Policy¶ Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights ¶ and Human Rights¶ On the Need to Continue Operation of the¶ Unlawful Enemy Combatant Incarceration Facility ¶ at Guantanamo Bay, Cuba, <http://www.judiciary.senate.gov/pdf/7-24-13GaffneyTestimony.pdf>, jj

Finally, it has been asserted that the existence of Guantanamo Bay has served as a ¶ “recruitment tool” for terrorists and that the facility should be shut down for that reason. ¶ In fact, shutting down Guantanamo Bay detention operations would rightly be seen by the ¶ jihadist movement worldwide as evidence of our submission, and a greatly emboldening ¶ victory. It would likely have the effect of increasing recruitment, while at the same time ¶ denying us a vital tool for incarcerating and interrogating those we capture rather than kill. ¶ What is more, such a victory would embolden not only the violent jihadists, but also the previolent jihadists (most prominently the Muslim Brotherhood), here and abroad. The latter seek ¶ the same outcome as the former – the imposition globally of shariah under the rule of a new ¶ caliphate. The only difference is one of tactics driven by the Brotherhood’s perception that, for ¶ the moment, the correlation of forces is not conducive to success via direct and violent forms of ¶ jihad. ¶ Conclusion¶ For all of these reasons, it is, in my professional judgment, not only desirable but necessary to ¶ continue to incarcerate detainees at Guantanamo Bay. We should, moreover, be free to add to ¶ their number at Gitmo, if that will help us gather vital intelligence and keep dangerous jihadist ¶ enemy combatants off the battlefield.

#### Detention restrictions cause a shift to proxy detention and drone strikes

Wittes ’11, Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School - Brookings Project on Law and Security. Detention and Denial [electronic resource] : The Case for Candor after Guantanamo. Washington : Brookings Institution Press, 2011., ebook, accessed via Wayne State online library, pg 28-29, jj

That is the equilibrium toward which we have drifted, and it ¶ should surprise nobody, for it is an entirely foreseeable consequence of the incentive structure that we have created. Imagine ¶ for a moment that you had described the direction of our legal ¶ policy choices to a devotee of the law and economics movement—¶ a field based on the central insight that legal rules create behavioral incentives. Imagine telling, say, Richard Posner that we ¶ would suddenly make detention difficult and refuse for years to ¶ create a stable regime of known, clear rules. Imagine also that you ¶ had then asked this platonic Posner to identify the consequences. ¶ He probably would have replied that detention would grow less ¶ visible. We would release some people precipitously. We would ¶ rely on proxies more. We probably would kill some people that ¶ we might have captured before. Rarely does life comport with ¶ theory as well as detention policy has conformed to the predictions that law and economics would suggest. As the real Richard ¶ Posner wrote of the original decision to judicialize Guantánamo ¶ proceedings, it “seems like a sensible, ‘practical’ decision, but may ¶ not be. . . . [T]he decision may just encourage the government to ¶ hold more detainees abroad, say, in Afghanistan or Iraq, . . . and ¶ what would be gained by that?”8¶ None of what has happened was hard to predict. Water finds a ¶ path to the sea. Dam a river and it will flow around the dam. This ¶ metaphor, something of a cliché in discussing campaign finance ¶ law and attempts to regulate money in politics, applies with equal ¶ force in counterterrorism operations. The reason is simple, and ¶ we ignore it at considerable risk of intellectual blindness: The call ¶ to prevent terrorist events is so compelling politically that just as ¶ gravity operates on water, it will operate on politicians and other ¶ officials responsible for security. It will operate so strongly that ¶ new restrictions in one area will merely shift government energies ¶ to other areas. Encumber the use of one power, and authorities ¶ will just use another; throw a wrench in that one, and they’ll ¶ move on to something else. If prosecutions in federal court are ¶ too hard, you create incentives to use military commissions. If the ¶ commissions are too generous to the accused, detention without ¶ trial will see greater use. Make it too tough to use a particular ¶ form of detention and the government will shift to others. Make ¶ detention broadly problematic and you promote the use of proxies less fastidious than we are and the use of drones.¶ The government interests at stake are so powerful that the ¶ executive will deploy every lawful option available and will show ¶ enormous creativity in expanding the field of options—both by ¶ making novel legal arguments and by developing tactical innovations. The attempt to force counterterrorism operations to ¶ take place through conventional means of law enforcement will ¶ impede it and channel it to some degree. For the most part, however, it will redirect it to less visible, less attractive, and more ¶ violent exercises of government power.

#### Turns the aff

Dowd 6-7-’13, Alan W. Dowd is an award-winning writer with experience in opinion journalism, public-policy research and communications consultancy. He is nationally recognized for his commentaries on issues ranging from faith to foreign policy. Front Page Magazine, Obama’s Renewed War on Guantanamo, <http://frontpagemag.com/2013/alan-w-dowd/obamas-renewed-war-on-guantanamo/>, jj

Bush’s successor is learning that motives don’t matter to critics of the drone war, either, which means Nobel Peace Prize holder Barack Obama finds himself on the wrong side of global opinion—exactly where Bush spent his presidency. According to a Pew survey, the drone war feeds “a widespread perception that the U.S. acts unilaterally and does not consider the interests of other countries.” Indeed, what looks like a successful counterterrorism campaign to Americans, looks very different to international observers. “In 17 of 20 countries,” Pew found, “more than half disapprove of U.S. drone attacks targeting extremist leaders and groups in nations such as Pakistan, Yemen and Somalia.” Moreover, the UN has formed “an investigation unit” within the Human Rights Council to “inquire into individual drone attacks…in which it has been alleged that civilian casualties have been inflicted.”¶ “Reliance on drone strikes allows our opponents to cast our country as a distant, high-tech, amoral purveyor of death,” argues Kurt Volker, former U.S. ambassador to NATO. “It builds resentment, facilitates terrorist recruitment and alienates those we should seek to inspire.”¶ To borrow a phrase, it seems the drone war hurts our international standing.

#### Status quo solves --- Al Qaeda is weak and doesn’t threaten the U.S.

Roth 8-2-’13, Kenneth Roth is executive director of Human Rights Watch, 8-2-’13, Washington Post, The war against al-Qaeda is over, <http://www.washingtonpost.com/opinions/the-war-against-al-qaeda-is-over/2013/08/02/3887af74-f975-11e2-b018-5b8251f0c56e_story.html>, jj

The al-Qaeda threat to the United States, while still real, no longer meets those standards. At most, al-Qaeda these days can mount sporadic, isolated attacks, carried out by autonomous or loosely affiliated cells. Some attacks may cause considerable loss of life, but they are nothing like the military operations that define an armed conflict under international law.¶ Obama himself has said that the core of al-Qaeda — the original enterprise now based, if anywhere, in the tribal areas of northwestern Pakistan — has been “decimated.” Its affiliates, such as al-Qaeda in the Arabian Peninsula and al-Qaeda in the Islamic Maghreb, are more robust armed groups but have limited capacity to pro­ject their violence beyond their regions.¶ These affiliates are significant actors in Yemen and northern Africa, but it is far from clear that they pose a threat to the United States greater than, for example, Mexican drug cartels or international ­organized-crime networks — organizations for which few would characterize U.S. containment efforts as “war.” That the United States continues to deploy military force against al-Qaeda is not enough to qualify that effort as an armed conflict, because if it were, a government could justify the summary killing of “combatants” simply by using its armed forces to do so.

#### No risk of nuclear or WMD terror

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

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. Brian Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002.47

By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48

Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000.49

In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders.50

If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs.51 Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

And as explicitly rendered into U.S. law, the term was extended even further to include bombs of any kind, grenades, and mines; rockets having a propellant charge of more than four ounces; missiles having an explosive or incendiary charge of more than onequarter ounce; and projectile-spewing weapons that have a barrel with a bore more than a half inch in diameter.53

It turns out then that the “shot heard round the world” by revolutionary war muskets was the firing of a WMD, that Francis Scott Key was exultantly, if innocently, witnessing a WMD attack in

1814; and that Iraq was full of WMD when the United States invaded in 2003—and still is, just like virtually every other country in the world.

After September 11, the delusional—or at least preposterous—expanded definition of WMD has been routinely applied in the United States. Many of those arrested for terrorism have been charged with planning to use “weapons of mass destruction” even though they were working, at most, on small explosives or contemplating planting a hand grenade in a trash bin.

#### No nuclear retaliation

Neely 3/21/13 Meggaen Neely is a research intern for the Project on Nuclear Issues, Center for Strategic & International Studies, 3/21/13, Doubting Deterrence of Nuclear Terrorism, <http://csis.org/blog/doubting-deterrence-nuclear-terrorism>, jj

Because of the difficulty of deterring transnational actors, many deterrence advocates shift the focus to deterring state sponsors of nuclear terrorism. The argument applies whether or not the state intended to assist nuclear terrorists. If terrorists obtain a nuclear weapon or fissile materials from a state, the theory goes, then the United States will track the weapon’s country of origin using nuclear forensics, and retaliate against that country. If this is U.S. policy, advocates predict that states will be deterred from assisting terrorists with their nuclear ambitions.¶ ¶ Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely.¶ ¶ Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons.¶ ¶ Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public.¶ ¶ This is not an argument against those technologies associated with nuclear forensics. The United States and International Atomic Energy Agency (IAEA) should continue their development and distribution.¶ ¶ Instead, I question the presumed American response that is promulgated by deterrence advocates. By looking at possibilities for a U.S. response to nuclear terrorism, a situation in which we assume that deterrence has failed, we cast doubt on the likelihood of a U.S. retaliatory nuclear strike and hence cast doubt on the credibility of a U.S. retaliatory nuclear strike as a deterrent. Would the United States launch a nuclear weapon now unless it was sure of another state’s intentional sponsorship of nuclear terrorism? Any reasonable doubt of sponsorship might stay the United States’ nuclear hand. Given the opaqueness of countries’ intentions, reasonable doubt over sponsorship is inevitable to some degree. Other countries are probably aware of U.S. hesitance in response to terrorists’ use of nuclear weapons. If this thought experiment is true, then the communication required for credible retaliatory strikes under deterrence of nuclear terrorism is missing.

## Deference

### No Solvency

#### Deference is inevitable – the best they can achieve is inconsistent application of precedent.

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.

Legality and Legitimacy

At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal, or of dubious legality, they may nonetheless be politically legitimate, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns.

When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

#### They can’t solve but the interference still undermines executive decision-making

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 30-31)

As a matter of fact, this baseline picture is almost certainly incorrect. Government does not always act rationally; sometimes government officials enjoy agency slack and use it to engage in self-dealing, opportunism, or other welfare-reducing actions; sometimes government officials act as tightly constrained agents for the majority and enact policies that oppress minorities. But the baseline picture helps us to clarify the position we will defend: government is not more likely to do these things during emergencies than during normal times, whereas courts are less able to police such behavior during emergencies than during normal times. This is an empirical and institutional claim, which we shall support in every succeeding chapter, not a conceptual claim. If courts were perfectly informed and well motivated, then they might weed out bad emergency policies chosen by irrational or ill-motivated governments. But we just do not have courts of that sort. In particular cases, judges may do better than government at assessing the relative likelihood of threats to security and liberty or the overall costs of particular policies. But this will be wholly fortuitous, and judges who think they have guessed better than government may guess worse instead. Judges are generalists, and the political insulation that protects them from current politics also deprives them of information,33 especially information about novel security threats and necessary responses to those threats. If government can make mistakes and adopt unjustified security measures, then judges can make mistakes as well, sometimes invalidating justified security measures.

On this comparative institutional view, there is no general reason to think that judges can do better than government at balancing security and liberty during emergencies. Constitutional rules do no good, and some harm, if they block government’s attempts to adjust the balance as threats wax and wane. When judges or academic commentators say that government has wrongly assessed the net benefits or costs of some security policy or other, they are amateurs playing at security policy, and there is no reason to expect that courts can improve upon government’s emergency policies in any systematic way.

#### No modeling

**Pedersen 8** – Lecturer in Law at Newcastle Law School (Ole W., “Fading influence of the US Supreme Court”, 9/18/08, http://internationallawobserver.eu/2008/09/18/fading-influence-of-the-us-supreme-court/)

It appears that it is not only the EU whose authority is fading. Today’s NY Times has a very interesting story on the influence of the US Supreme Court, which is well worth a read. The article states that the number of citations of US Supreme Court cases in other jurisdictions is in decline compared to just ten years ago. There are many reasons for this, according to, inter alia, Thomas Ginsburg of University of Chicago and Aharon Barak, former president of the Israeli Supreme Court. One reason is the rise in the numbers of constitutional courts elsewhere, which has, through time, created a rich jurisprudence on constitutional law rendering the need to cite US cases less essential. Additionally, US foreign policy may play a part in the diminishing influence of the oldest constitutional court in world. Finally, the reluctance of the US Supreme Court itself to cite foreign law when adjudicating may play a role. This final point is perhaps the most interesting. Whereas European (including the ECJ and the ECtHR), Australian and Canadian courts do not shy away from referring to foreign law, it has always been a sensitive topic in the US where many scholars favour leaving aside foreign law. This approach has its clear democratic justification but as Justice Ruth Bader Ginsberg said in 2006 in an address to the South African Constitutional Court: “[F]oreign opinions are not authoritative; they set no binding precedent for the U.S. judge. But they can add to the store of knowledge relevant to the solution of trying questions. Yes, we should approach foreign legal materials with sensitivity to our differences, deficiencies, and imperfect understanding, but imperfection, I believe, should not lead us to abandon the effort to learn what we can from the experience and good thinking foreign sources may convey.”

#### --Judicial independence tanks democracy – turns case.

Frank Cross in 2003(Herbert D. Kelleher Centennial Professor of Business Law, “Thoughts on Goldilocks and Judicial Independence,” <http://moritzlaw.osu.edu/lawjournal/issues/volume64/number1/cross.pdf>

**One potential problem with judicial independence is that judges may have their own self-interests and ideological fervor. An independent, unchecked judiciary may simply decide cases according to its own whims and predilections, rather than according to the rule of law**.[10] For example, because of the great independence of the federal life-tenured judiciary, many political scientists believe **that they are more ideological in their decisions than elected legislators or executives**.[11] **Judges may allow corruption and bribery to influence their decisions**.[12] **They may even be lazy and decide poorly,** given the lack of oversight. In these circumstances, the means (**independent judiciary) does not advance** the end (**rule of law**). We cannot rely entirely upon judicial self-discipline and restraint to avoid these circumstances. **There is nothing intrinsic in judges that causes them to favor, say, rule-of-law impartiality and the freedoms recognized in the Bill of Rights**. Saintliness is not a historic precondition to becoming a judge, nor does the process of doffing judicial robes magically make one saintly. There are surely temptations not to apply the neutral rule of law. Given the absence of any threat of removal, “we should expect to see the decisions of judges heavily influenced by the intellectual orientation and political inclinations that they brought with them to the bench in the first place.”[13] **In addition to internal political desires, there may even be external pressures to this effect**. Paul Carrington observed that those calling for judicial self-restraint “would have Justices eschew fame, the adoration of the media and the academy, and even ‘greatness’ to settle for the modest facelessness of drones.”[14] **There is little reason to expect that a wholly independent, unaccountable judiciary would appropriately restrain itself and sincerely seek to apply neutral legal principles to the cases they decide. If independent judges have more freedom to exercise their own preferences, plus an incentive to do so, we must recognize that those preferences may not involve the protection of individual rights or the rule of law, which is our desired end**. **The judicial preferences may be arbitrary and antidemocratic. We must worry about checking the judiciary, just as it checks the other branches. These checks, rather than absolute independence, are more likely to enhance the rule of law.**[15] **Because the federal judiciary need not run for reelection, we must particularly worry about the extent of its independence.**

### Venezuela

#### Tons of alt causes to Venezuela stability – they don’t’ solve the leadership vacuum

#### **Status quo solves- Venezuela drilling will further increase**

Harvest Natural Resources, 11 [HNR Inc is a petroleum exploration and production company that explores geological basins with proved petroleum reserves, “Venezuela: Petrodelta”, no date, but cites up until 2011, <http://www.harvestnr.com/operations/venezuela.html>]

The nature of the high quality assets in Venezuela supports rapid conversion of unproved resource into proved reserves. At year-end 2010, combined proved and probable (2P) reserves net to Harvest from Petrodelta were 103.6 MMBOE, a 24% increase over year-end 2009. That increase could not have occurred without a prolific asset in which to drill.¶ ¶ Petrodelta?s self-funded 2011 capital budget of $224 million will be allocated to drilling and infrastructure development. Petrodelta?s current operations plan calls for running a two-rig drilling program to drill 28 new oil wells, two water injector wells, one gas injector well and to build pipelines and related facilities.¶ ¶ So far in 2011, the company has drilled four development wells, one each in Uracoa, Temblador and El Salto field, plus the first well in Isle?o field drilled since 1957. The Isle?o ISM-8 well is currently producing 1,800 BOPD of 15.5 API crude. With 220.6 MMBOE of proved, probable and possible reserves, Petrodelta has a well-defined and visible long-term growth path in sight.

#### Chavez death causes foreign investment now

White, Rowley ‘13(Garry White and Emma Rowley, Garry White is the Telegraph’s share tipster and editor of the Questor column, as well as its mining correspondent and Emma Rowley writes business news and features for the Telegraph, 3/11, the Telegraph, http://www.telegraph.co.uk/finance/commodities/9920725/Death-of-Hugo-Chavez-propels-Venezuelan-oil-production-into-the-spotlight.html)

The move by the late firebrand Venezuelan leader also erased from his country the skills required for exploiting the country’s vast oil reserves. He should have let them stay – and taxed the companies heavily. However, oil executives should pause for thought before they book a flight to Caracas following Mr Chavez’s death last week.

Venezuela has the largest known oil reserves in the world, but oil output has slumped by almost a third because of Mr Chavez’s nationalisation of the industry.

At the end of 2011, the country held 17.9pc of the world’s known oil reserves, compared with 16.1pc in Saudi Arabia and 11pc in Canada, according to BP’s statistical review of world energy. However, it only represented 3.5pc of global production compared with 13.2pc in Saudi Arabia.

It is likely that oil output could rise, should there be an easing of the country’s antagonism to foreign investors. Some believe this could lead to a fall in the oil price and a consequent boost to the global economy.

“The death of Hugo Chavez may see oil prices fall as they did during the 2002 coup,” Gerard Lane, an oil analyst at Shore Capital, said. “With greater foreign investment it is foreseeable that the 30pc fall in Venezuelan oil production could be reversed.

#### 1. Instability inevitable

**Chipman ’09** (Dr John, 3-5, International Institute for Strategic Studies, “Strategic Challenges in Latin America” <http://www.iiss.org/conferences/strategic-perspectives-on-latin-america/speeches/strategic-challenges-in-latin-america-dr-john-chipman/>, jj)

**The need for Latin America to cater for its own security derives simply from the fact that there are genuinely more and increasingly complex threats to it. Democratic decay, prospective state failure, transnational organised crime, terrorism and/or insurgency, the trafficking of illegal narcotics and people, resource competition, environmental degradation and the consequential disruptions to social cohesion all pose serial challenges to Latin American stability** and constitute impediments to both political and economic development. **All these domestic and non-state problems directly impinge on regional relationships. Military expenditure is increasing** while the strategic purpose to which strengthened militaries might be put remains in many cases opaque**. The nervousness with which some states in the region observe evidence of strategic ambition or desires for military modernisation in other states, the virulence with which some states in the region comment on the domestic politics of their neighbours, and the regularity with which they intervene corruptly in the electoral affairs of others, saps regional confidence and encourages further belligerent** or at least undiplomatic **rhetoric.**

#### Plan fails --- the OAS doesn’t want American influence

Bonface, 13 Does the OAS Have a Future? http://demlab.wordpress.com/2010/03/09/does-the-oas-have-a-future/

Latin Americans have long criticized the OAS for being a U.S.-dominated institution and sought mechanisms to counter-balance the influence of the United States in shaping the regional agenda. Over the last decade the search for such mechanisms has only intensified. There are a number of reasons for this new multilateralism in Latin America, including the declining influence (and attention) of the United States in the region; long-standing dissatisfaction with American policies; the  rise of extra-regional trade and investment partners such as the European Union, China and India; and the new spirit of [independence](http://www.guardian.co.uk/commentisfree/cifamerica/2010/feb/25/latin-america-independence) among Latin American leaders, particularly those on the left.

**Arctic Leadership 1NC**

***No Arctic War***

**Bartsch 12** (Golo, Associate at Ecologic Institute, “Arctic Security”, 7/30, http://arcticsummercollege.org/sites/default/files/Security%20Policy%20Brief\_Arctic%20Summer%20College\_July%2030%202012\_0.pdf)

**As the Russian flag was planted underneath the North Pole in 2007, media predicted** an uncontrolled “gold rush” or even **a “new Cold War” in the region. This interpretation of military presence in the North**, in combination with diminishing sea ice and territorial and resource claims of the riparian nations, **created the image of imminent conflict.** In fact, **the probability of armed conflict in the North was not significantly higher during the last years than it was from 1990 to 2007. The nations involved**, especially the Arctic Five, **are affiliated with several overlapping international institutions, such as the United Nations or the Arctic Council, which provide arenas for peaceful conflict management.** Furthermore, **all those nations are aware that any armed escalation is counterproductive to their future interests and to exploitation of Arctic resources.** In the official Northern strategies or White Papers of the Arctic Five, **the commitment to peaceful cooperation and compliance with international law is a common and fundamental element. The current deployment, modernization, and reorganisation of the military in the Arctic takes place mostly to support the constabulary functions of those forces: Due to the harsh conditions of weather and terrain, it is foremost the military which has the equipment and personnel capacities to operate in the North at all.** This includes not only the sovereign rights of border patrolling, coast guarding, and air policing, but also the provision of Search-and-Rescue (SAR) capabilities. Since an SAR agreement has been negotiated through the Arctic Council during the Conference of Nuuk in 2011, this task is of particular importance.

***Arctic war unlikely, and even if it happens the US submarine force ensures swift victory***

**Axe, January 11th, 2011** (David, military correspondent, Wired, “How the U.S. Wins the Coming Arctic War” <http://www.wired.com/dangerroom/2011/01/how-the-u-s-wins-the-coming-arctic-war/>, jj)

**But these tales**, [my versions included](http://www.wired.com/dangerroom/2008/08/runners-on-your/), usually **omit two vital points: that Arctic conflict is unlikely to occur at all; and even if it does, the U.S. will have an overwhelming advantage over any rival**. The Washington Post was the latest to repeat the Arctic-war theme, in a story [published yesterday](http://www.washingtonpost.com/wp-dyn/content/article/2011/01/09/AR2011010904358_2.html). “The Arctic is believed to hold nearly a quarter of the world’s untapped natural resources and a new passage could shave as much as 40 percent of the time it takes for commercial shippers to travel from the Atlantic to the Pacific,” Jacquelyn Ryan wrote. But, she added, “government and military officials are concerned the United States is not moving quickly enough to protect American interests in this vulnerable and fast-changing region.” Specifically, the U.S. does not have [enough icebreakers](http://www.warisboring.com/2007/09/19/chill-out/) or permanent bases on the Alaskan north slope. [Canada](http://www.wired.com/dangerroom/2007/08/arctic-warfare/) and [Russia](http://www.wired.com/dangerroom/2009/03/russias-new/), by contrast, are buying ice-hardened Arctic ships and building new facilities to enforce their Arctic claims, Ryan pointed out. The thing is, it’s not icebreakers and patches of wind-blasted tarmac that would really matter in some future North Pole showdown. **In the Arctic, as in any sea battle, American nuclear attack submarines — quiet, versatile and lethal — would make all the difference**. U.S. subs have been [sneaking around](http://www.navytimes.com/news/2009/03/navy_icex_030309/) [under the Arctic ice](http://www.wired.com/dangerroom/2008/03/secret-sub-char/), and occasionally surfacing, for decades. Today, they [even carry geologists](http://www.prlog.org/11200736-knight-investments-llc-review-us-navys-submarine-arctic-science-program.html) and other scientists in order to help map Arctic mineral deposits. “**In addition to being more heavily armed than most foreign boats, U.S. submarines generally have superior quieting and combat systems, better-trained crewmen, and much more rigorous maintenance standards,**” Bob Work [wrote in 2008](http://www.csbaonline.org/4Publications/PubLibrary/R.20090217.The_US_Navy_Charti/R.20090217.The_US_Navy_Charti.pdf), before becoming Navy undersecretary. “As a result, **the U.S. submarine force** has generally been confident that it **could defeat any potential undersea opponent, even if significantly outnumbered.” But in the Arctic, facing only the Canadians, Russians, Danes and Norwegians — none of whom have large or healthy sub fleets — the U.S. Navy’s 50 Los Angeles-, Seawolf- and Virginia-class subs would be more numerous as well as more powerful. And besides, an Arctic war is highly unlikely, at best**. “**Militarized conflict over the Arctic is unlikely, and regional disputes are unlikely to cause an overall deterioration in relations between or among polar nations**,” the Carnegie Endowment for International Peace [concluded in a 2009 conference](http://www.carnegieendowment.org/events/?fa=eventDetail&id=1359&zoom_highlight=collins). “Security issues should not be sensationalized in order to attract attention towards the Arctic.” But **it’s rare anyone writes stories about how we’ve got enough weapons — and don’t really need them, besides. After all, it’s the sensational stories about shortages and looming disaster that sell newspapers.**

***The risk of war is zero --- Bostrum’s a joke***

**Ball ‘5** (Desmond, professor at the Strategic Defence Studies Centre of The Australian National University, May. “The probabilities of 'On the Beach'Assessing 'Armageddon Scenarios' in the 21 st Century,” Manning Clark House Symposium Science and Ethics: Can Homo sapiens Survive? <http://www.manningclark.org.au/papers/se05_ball.html>)

**The prospects of a nuclear war between the US and Russia must now be deemed fairly remote. There are now no geostrategic issues that warrant nuclear competition and no inclination in either Washington or Moscow to provoke such issues. US and Russian strategic forces have been taken off day-to-day alert and their ICBMs 'de-targeted', greatly reducing the possibilities of war by accident, inadvertence or miscalculation**. On the other hand, while the US-Russia strategic competition is in abeyance, there are several aspects of current US nuclear weapons policy which are profoundly disturbing. In December 2001 President George W. Bush officially announced that the US was withdrawing from the Anti-Ballistic Missile (ABM) Treaty of 1972, one of the mainstays of strategic nuclear arms control during the Cold War, with effect from June 2002, and was proceeding to develop and deploy an extensive range of both theatre missile defence (TMD) and national missile defence (NMD) systems. The first anti-missile missile in the NMD system, designed initially to defend against limited missile attacks from China and North Korea, was installed at Fort Greely in Alaska in July 2004. The initial system, consisting of 16 interceptor missiles at Fort Greely and four at Vandenberg Air Force in California, is expected to be operational by the end of 2005. The Bush Administration is also considering withdrawal from the Comprehensive Test Ban Treaty (CTBT) and resuming nuclear testing. (The last US nuclear test was on 23 September 1992). In particular, some key Administration officials believe that testing is necessary to develop a 'new generation' of nuclear weapons, including low-yield, 'bunker-busting', earth-penetrating weapons specifically designed to destroy very hard and deeply buried targets (such as underground command and control centres and leadership bunkers).

### Oil

***SQUO solves energy dependence***

**Levi ‘12**

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"Barack **Obama Is Bad for the Oil and Gas Industry**."

**False**. The oil and gas industry does not exactly love President Obama. Many of the industry's most prominent members rail against his "job-killing tax hikes," bankroll his opponents, and assert that his claims about oil production "couldn't be farther from the truth." Some of this frustration stems from real policy disagreements. Many oil and gas producers scoff at efforts to promote clean energy. They chafe at the drilling restrictions put in place in the aftermath of the Deepwater Horizon oil spill and are apoplectic about the president's denial of a permit for the Keystone XL pipeline.

Yet **Obama has presided over an extraordinary boom in oil and gas production. That fact alone suggests he isn't out to wreck the industry.** So why the hostility? Bennett Johnston, then a Democratic senator from Louisiana, put the dynamic well, though he was talking about another president and another energy boom 30 years ago: "When I go down in my state, I see virtually none of the independent oil producers for Carter.… **We've gotten higher drilling rig counts, more dollars being spent, more activity, more profits being made by oil people than ever before**. But do they like Carter? Oh no, they hate him because of his rhetoric."

So let's get real: **Obama may criticize the energy industry, but he has been pretty damn good for business**. Washington under his watch may not be turning into Riyadh on the Potomac, but **these are happy days for oil and gas producers.** **Even the president's efforts to remove industry tax breaks would amount to an additional burden of around $4 billion a year for an industry that posted more than $100 billion in profits** (and far more in revenues) last year. **And far from shutting down business with draconian new rules, his administration has worked to craft regulations that keep production going while also protecting the public.** **After pausing to improve safety** provisions **in the wake of** the **Deepwater Horizon** oil spill, **Obama has allowed new offshore oil drilling and production to resume**. No president has a perfect record on energy. Yet **if America's energy industry and its supporters set aside rhetoric, they'll find quite a lot to gush about.**

***Energy independence causes retrenchment --- decimates heg***

Steve LeVine is the author of The Oil and the Glory and a longtime foreign correspondent. 3-23-12, Foreign Policy, The Weekly Wrap -- March 23, 2012 [,](http://oilandglory.foreignpolicy.com/posts/2012/03/23/the_weekly_wrap_march_23_2012m) <http://oilandglory.foreignpolicy.com/posts/2012/03/23/the_weekly_wrap_march_23_2012>, jj

**A coming U.S. renaissance -- and an oil price crash**: Citibank's Ed Morse unloads a monster, 92-page report forecasting no less than a new American Industrial Revolution. This economic resurgence is carried on the back of low natural gas prices as far as the eye can see (pictured above, hydraulic fracturing in Pennsylvania), in addition to a shale-oil, oil-sands, deepwater-oil boom that makes the U.S. "the new Middle East." In line with other top analysts, notably Deutsche Bank, Morse forecasts a tight global market in the next few years, notwithstanding the U.S. abundance, with the suggestion that prices will be high as well. But nirvana will arrive by the end of the decade with the convergence of U.S. oil abundance and a burst of production from west and east Africa, the Gulf of Mexico, India and the Caspian Sea. By the 2020s, we will see maximum oil prices of $85 a barrel, Morse writes in a teaser at the Wall Street Journal. **There are** of course **potential geopolitical consequences**, Morse writes: It is unclear what **the** political **consequences** of this might be **in terms of American attitudes to continuing to play the various roles adopted since World War II -- guarantor of supply lanes globally, protector of main producer countries in the Middle East and elsewhere.** **A U.S. economy that is less vulnerable to oil disruptions, less dependent on oil imports and supportive of a stronger currency will inevitably play a central role globally.** But with such a turnaround in its energy dependence, it is questionable how arduously the U.S. government might want to play those traditional roles.

### China Econ

***Chinese economy not dependent on low prices***

Sana **Zaouali**, Economic Researcher and Assistant Professor in the Economic Department at the University of Paris XII, Paris, France, “Impact of higher oil prices on the Chinese economy”, OPEC ReviewVolume 31, Issue 3, Sept **2007** (BJN)

**In principle,** **a sharp rise in world oil prices should** significantly **affect an economy as dependent on oil as China**. **Nonetheless**, we remark (table 3) that **the production, investment, imports and exports of non petroleum sectors have declined but slightly and with a weak amount.** Then **the Chinese economy does not seem deeply harmed by the high oil prices**. **We explain this limited negative impact by the fact that the strong investment and the large flow of foreign capital in China were sufficient to counterbalance and to cushion the negative impact of oil prices hik**e. Conclusion The rise of international oil prices has caused an economic cost to the Chinese economy and a decrease in its welfare. Its GDP has dropped by 0.5 per cent for the first scenario and by 0.9 per cent for the second. **The impact of higher oil prices is** nonetheless relatively **modest. The strong investment and the large flow of foreign capital in China were sufficient to counterbalance the negative impact of higher oil prices**

before.

***Err on our side - The empirics have never supported their thesis***

Weiqi **Tang**, Libo Wu, ZhongXiang Zhang , Department of World Economy, School of Economics, Fudan University, “Oil price shocks and their short- and long-term effects on the Chinese economy”, Energy Economics, Volume 32, Supplement 1, September **2010** (BJN)

**Rapid increase of oil price since 2003 has caused great concerns worldwide**. Most of the theoretical and empirical studies so far have acknowledged that sharp increase of oil price may exert an influence on the economic activity and macroeconomic policies. However, in an international context, such influence may vary country by country due to their different economic structure, energy intensity, energy mix and dependence on international energy market. C**hina's oil consumption doubled over the past decade, and the economic growth is highly energy intensive** (see Fig. 2). Energy consumption per US$1000 GDP of China in 2007 was 0.57 tonnes of oil equivalent (toe), higher than those of Germany (0.09), Japan (0.12) and the U.S. (0.17). The energy efficiency of industries in China is also very low: energy consumption per unit of output for cement is 53% higher than the world's average; that of glass is 47% higher; Petro-chemicals 45%; and alkali 34%. Moreover, China's dependence on imported oil increased to over 52% in 2007 (BP, 2008). **Therefore, China could not have avoided the oil shock without any economic losses. However, the empirical evidence seems to suggest otherwise. Like most of the emerging economies, China has accomplished spectacular economic development in the new century. Over the period 2000–2007, China's GDP had grown at the average annual rate of 9.76% per year, the rate topping all the economies groupings** in Fig. 3.

# 2NC

**XO**

**CP Solves – Signal**

***Executive action solves signal***

**Feldman 5-7-’13**, Noah Feldman, a law professor at Harvard University and the author of the forthcoming “Cool War: The Future of Global Competition,” is a Bloomberg View columnist, 5-7-’13, Bloomberg, Obama Can Close Guantanamo. Here’s How., <http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html>, jj

President Barack Obama’s renewed request to close the prison at Guantanamo Bay, Cuba, confirms what the detainees have already shown with their hunger strike: Permanent detention at the U.S. naval station isn’t viable as a matter of practicality or conscience.¶ **It’s easy to blame Congress for standing in the way of a rational solution. But if the Obama administration would take some of the legal ingenuity that it has applied in justifying indefinite detention and apply it instead to closing the island prison, maybe something could actually be done**, despite the organized madness that is our constitutional separation of powers.¶ **Start with the most fundamental reason that Obama should be able to act unilaterally. The president is commander in chief, and the Guantanamo detainees were all held pursuant to the executive power to wage war**. The Obama administration says the detainees are being held as, in effect, prisoners of war pursuant to the Geneva Conventions, until the end of hostilities with al-Qaeda -- whenever that may be. So why doesn’t the president, who has the absolute power to hold and release the detainees, have the authority to move them around according to his sound judgment?¶ Reputation Cost¶ 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 suitable 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.**¶ This argument isn’t a certain winner. And there would still be the problem of whether the president could put the detainees in an existing prison. But at least spelling this out would put the fear of God into Congress. Continued congressional resistance would also trigger a court case.¶ The president could have a tough time convincing five justices. According to the framework developed by Justice Robert Jackson in the Truman-era steel seizure case, and used today by the courts, the president’s power is at its “lowest ebb” when Congress has expressly barred him from acting. **But even at ebb tide there is still an ocean, and lots of things Congress can’t stop the president from doing. Complying with his legal obligations should surely be at the top of the list.**

***The president solves modeling, signal, and international perception --- Obama weighing in on the merits of a policy outweighs the process which it is passed***

* Foreign countries don’t care about the nitty-gritty of inter-agency process, they want to see Obama has taken a stand on the issue --- which the CP solves
* President obviously perceived. The CP lays the groundwork for an intl coalition

**Singer** 5-23-**’13**, Peter W. Singer, Director, Center for 21st Century Security and Intelligence, Brookings Institution, Finally, Obama Breaks His Silence on Drones, <http://www.brookings.edu/research/opinions/2013/05/23-drones-obama-singer>, jj

**As this played out, the president's absence from the debate became more and more telling**. Yes, there were a couple of speeches by presidential aides finally acknowledging the use of such technology, quick mentions on late-night talk shows and even presidential jokes about drone strikes. But the administration's case in the public debate remained disjointed, tentative and, as the controversy surrounding John Brennan's confirmation hearings as CIA director illustrated, far from strategic or satisfactory. **The time was long overdue for the true stamp of presidential voice and authority on the topic to be heard**.¶ **That is what makes the president's speech** Thursday at National Defense University **so important**, and simultaneously so challenging for him. He has to try to strike a balance between arguing that terrorism threats will remain with us for the long term, as recent events in Boston and London would illustrate, but that the structures we gradually built up in response, from the prison at Guantanamo Bay, Cuba, to the drone campaign, cannot remain with us in their ad hoc manner for the long term.¶ ***Beyond all the internal policy questions*** — such as what the CIA should control versus what the Pentagon controls — ***he has a broader task***. **He must lay out the overdue case for regularizing, so to speak, our counter-terrorism strategy itself, from the means to the ends**. This will require touching on thorny issues such as how to bring more transparency to the ugly task of a targeted killings campaign, how to create more interaction with Congress — which both wants and avoids oversight — and, finally, how to find a path out of the Gitmo conundrum.¶ **Beginning this kind of discussion has been described by some as just a way to change the topic in the midst of other would-be scandals dominating the news cycle**. But let's be crystal clear: The president is making a big bet by speaking out on issues on which he still enjoys fairly broad public support.¶ The reason to take this bet is that the speech offers enormous advantages over the alternative of remaining silent. Though it may or may not assuage the genuine concerns at home about the drone campaign, the very act is hugely important inside government. ***Only the president can operate above the interagency disputes, and his vision will set the terms of internal policy development across multiple agencies*** (why those staff speeches and confirmation hearings never could substitute for his voice).¶ In turn, the public side of the speech matters in a manner beyond any blip in domestic poll numbers. Here again, ***only the president can truly stake out America's vision in a way the world notices***. If well played, **the speech might even be the foundation for future international norms that need to be set in the post-9/11, post-Osama bin Laden world**. **This is all the more important as our technologies proliferate and other nations, such as Russia, China and Iran, may seek to follow** (or misuse) **our precedents in drone strikes and targeted killings**.¶ **The issues at play are not just about which agency gets to do what and when to tell whom on Capitol Hill, but also how the United States might build a global coalition of the like-minded on the future of counter-terrorism**.¶ In short, **sometimes a speech is more than just a speech**. **By finally speaking out on some of the key issues that have grown to define his place in foreign policy history, Obama has his chance, finally, to set the terms of the debate and steer it toward more positive ends.**

***Executive standards are perceived and modeled***

**Economist ’13**, 6-1, Killer drones, Out of the shadows, <http://www.economist.com/news/united-states/21578689-barack-obamas-rules-drones-could-shape-new-global-laws-war-out-shadows>, jj

In the long run, Mr **Obama’s speech may be remembered for effects far from Washington**. **At its core lay (still classified) guidelines codifying standards for lethal drone strikes**. In his description, America now only acts “against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured—the highest standard we can set.”¶ Officials added a further gloss in briefings. In a shift backed by such Obama aides as John Brennan, a former White House counter-terrorism chief recently appointed to run the CIA, the government would prefer to move away from CIA strikes (which are secret and deniable) towards drone attacks controlled by the armed forces (which would be more transparent). In addition to oversight by Congress, Mr Obama suggested new controls: perhaps a special court with powers to authorise killings, or an independent overseer within the executive branch.¶ Mr Obama left himself wriggle-room, for example over how an imminent threat should be defined. Much damage has already been done to America’s diplomatic standing worldwide and to its image among Muslims. But **if, by binding America unilaterally to higher standards**, Mr **Obama helps set norms for other countries as they acquire drones, that would be something. Such example-setting is a slow process**, says Mr Bellinger, but “**this is how *c*ustomary *i*nternational *l*aw is made”.**

**A2: Do CP – vs. Courts**

1. ***The perm severs court action --- the 1NC Katyal proves the CP’s internal restrictions are distinct from the plan’s external statutory restrictions***
2. ***Perm makes them not topical --- “Judicial” means belonging to the judiciary branch --- not internal agency action like the CP***

**Merriam-Webster Online Dictionary 13**

(http://www.merriam-webster.com/dictionary/judicial)

**Belonging to the branch of government that is charged with trying all cases that involve the government and with the administration of justice within its jurisdiction**

***Severance is a voter for fairness and education --- makes them a moving target, kills clash, and ruins negative strategy***

**2NC A2: Agent CP’s Bad**

***Counter-Interpretation: CP’s that use the executive, courts or congress are legitimate***

***First our offense:***

***1) Agent CP’s are a pre-req to war powers education --- executive action is key to test the desirability of statutory or judicial restrictions***

**Crocker ’12**, Thomas P. Crocker, Associate Professor of Law, University of South Carolina School of Law. J.D. Yale Law School; Ph.D. Vanderbilt University, July, 2012¶ Connecticut Law Review¶ 44 Conn. L. Rev. 1511, COMMENTARY: NATIONAL SECURITY: RESPONSE: Who Decides on Liberty?, Lexis, jj

**Whether approached as a matter of executive discretion, judicial role, or individual rights, questions about security are never far removed from questions about liberty**. **We are often told that there must be a tradeoff between liberty and security**. As Jeremy Waldron described the ubiquity of this claim, "[t]alk of a liberty/security balance has become so common that many view it as just an ambient feature of our political environment." n1 Despite the purported equivalence of these two values, this tradeoff is seldom framed with reasons to adopt policies that make us more insecure to achieve the benefits of greater freedom. If "it has become part of the drinking water in this country that there has been a trade off of liberty for security," n2 this is because talk of tradeoffs is unidirectional. Scholarly defenses of national security expertise will argue not that we must take care to preserve civil liberties, but "that the government must make tradeoffs, that policy should become less libertarian during emergencies, and that courts should stay out of the way." n3¶ **This question of tradeoffs cannot be approached without asking the question of *who* decides on the proper allocation of liberty and security**. n4 **Defenders of unbounded executive power argue that security relies on experts to whom citizens and courts alike must defer**. n5 Especially during emergencies, **executive officials are presumed to have superior information** [\*1513] about what is necessary to preserve security. n6 According to the deference thesis, to impose constitutional limits on executive discretion risks creating security harms rather than enhancing freedoms. Deference to experts means "that the executive branch, not Congress or the judicial branch, should make the tradeoff between security and liberty." n7 When citizens, scholars, or judges attempt to intervene in debates over the proper measure of security, defenders of unchecked executive power claim that "they are amateurs playing at security policy, and there is no reason to expect that courts can improve upon government's emergency policies in any systemic way." n8 On this view, citizens and courts lack sufficient specialized knowledge to make optimal decisions about security. According to Judge Richard Posner, critics of executive expertise risk erroneous tradeoffs, because "civil libertarians tend to exaggerate the costs . . . and to ignore or slight the benefits" of security policy. n9 To interpose legal principles protecting rights and liberties as barriers to security policy risks producing "tangible harms," n10 while adding nothing relevant to expert decision making.

***2) Education --- the CP forces better aff writing by shifting debate away from generic “detention bad” or “drones bad” affs towards in-depth technical debates on how to actually limit pres powers***

***3) Negative ground --- agent CP’s are a core neg arg that is key to check small and unpredictable affs.***

***Err neg --- the CP is predictable and has tons of lits on both sides. The aff only needs a congress/courts key warrant to beat this counterplan.***

***Noting a voting issue --- reject the arg not the team.***

**Def**

**2NC / 1NR – Exec Flex High**

***Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms***

**Posner 9/3**, Law Prof at University of Chicago

(Eric, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President **Obama’s** surprise **announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making**, even by critics. **But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever**. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, **the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him**. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) **People who celebrate the president for humbly begging Congress for approval** also apparently **don’t realize that his understanding of the law—that it gives him the option to go to Congress**—**maximizes executive power vis-à-vis Congress**. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. **If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.**

***Obama’s Syria move increased Presidential war powers because it maintained ultimate control with the executive***

**Balkin 9/3, Law Prof at Yale**

(Jack, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/)

**One of the most misleading metaphors in the discussion of President Obama’s Syria policy is that the president has “boxed himself in” or has “painted himself into a corner.” These metaphors treat a president’s available actions as if they were physical spaces and limits on action as if they were physical walls. Such metaphors would make sense only if we also stipulated that Obama has the power to snap his fingers and create a door or window wherever he likes. The Syria crisis has not created a new precedent for limiting presidential power. To the contrary, it has offered multiple opportunities for increasing it. If Congress says no to Obama, it will not significantly restrain future presidents from using military force. At best, it will preserve current understandings about presidential power. If Congress says yes, it may bestow significant new powers on future presidents** -- and it will also commit the United States to violating international law. For Obama plans to violate the United Nations Charter, and he wants Congress to give him its blessing. **People who believe Obama has painted himself into a corner or boxed himself in might not remember that the president always has the option to ask Congress to authorize any military action he proposes**, thus sharing the responsibility for decision if the enterprise goes sour. If Congress refuses, Obama can easily back away from any threats he has made against Syria, pointing to the fact that Congress would not go along. There is no corner. There is no box. Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now. If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally. **Some commentators argue** (or hope) t**hat whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers.** Syria presents a case in which previous precedents did not apply. There is no direct threat to American security, American personnel, or American interests. There is no Security Council resolution to enforce. And there is no claim that America needs to shore up the credibility of NATO or another important security alliance. Nor does Obama have even the feeble justification that the Clinton Administration offered in Kosovo­: that congressional appropriations midway through the operation offered tacit and retroactive approval for the bombings. **It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria**. If a president can plausibly assert that any of the previous justifications apply -- ­including those offered in the Libya intervention -- the case of Syria is easily distinguishable.

**2NC UQ Wall – Deference Now**

***Courts are deferring to the executive now --- extend Gershman --- they are rigidly upholding the political question doctrine and giving Obama lots of leeway in the status quo***

***Deference now --- when the courts have taken up national security cases, they haven’t clearly resolved legal issues around executive power***

**Entin 12** Jonathan L. Entin, Associate Dean for Academic Affairs (School of Law), David L. Brennan ¶ Professor of Law, and Professor of Political Science, Case Western ¶ Reserve University. CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL.45·2012, War Powers, Foreign Affairs, ¶ and the Courts: Some ¶ Institutional Considerations, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1%262.21.Article.Entin.pdf), jj

**To be sure, the Supreme Court has decided some well-known** ¶ **national security cases**. Among them are the Steel Seizure case, ¶ Youngstown Sheet & Tube Co. v. Sawyer;¶ 2¶ the Pentagon Papers case, ¶ New York Times Co. v. United States;¶ 3¶ the Iranian hostage case, ¶ Dames & Moore v. Regan;¶ 4¶ and some notable First Amendment cases ¶ arising out of World War I, such as Schenck v. United States5¶ and ¶ Abrams v. United States.¶ 6¶ Then there are the Japanese internment ¶ decisions during World War II, notably Korematsu v. United States,¶ 7¶ as well as Ex parte Quirin,¶ 8¶ which upheld the use of military ¶ commissions to try German agents who landed in the United States as ¶ part of a sabotage mission. **Most recently, the Supreme Court has** ¶ **addressed questions arising from the government’s response to the** ¶ **attacks of September 11, 2001, in such cases as Hamdi** v. Rumsfeld,¶ 9¶ **Hamdan** v. Rumsfeld,¶ 10 **and Boumediene** v. Bush.¶ 11 **These cases** do ¶ matter, but they **have not clearly resolved the constitutional and** ¶ **other legal issues that pervade the debate about presidential power** ¶ **and foreign affairs**.¶ Beyond the limitations of the Supreme Court rulings, **the** ¶ **judiciary probably will not contribute very much to the debate**. ¶ Various procedural and jurisdictional obstacles make it difficult for ¶ courts to address the merits of disputes about war powers and foreign ¶ affairs. Even if those obstacles can be surmounted, **those who decry** ¶ **what they view as presidential excess should note that the judiciary** ¶ **typically has taken a deferential role in reviewing challenges to** ¶ **executive action.**

***Deference is the overall trend --- recent rulings against the executive have been extremely narrow***

**Entin 12** Jonathan L. Entin, Associate Dean for Academic Affairs (School of Law), David L. Brennan ¶ Professor of Law, and Professor of Political Science, Case Western ¶ Reserve University. CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL.45·2012, War Powers, Foreign Affairs, ¶ and the Courts: Some ¶ Institutional Considerations, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1%262.21.Article.Entin.pdf), jj

The picture in the post-2001 era is less clear. **In three different** ¶ **cases the Supreme Court has rejected the executive branch’s position**, ¶ **but all of those rulings were narrow in scope**. For example, **Hamdi v**. ¶ **Rumsfeld**81 **held that a U.S. citizen held as an enemy combatant must** ¶ **be given a meaningful opportunity to have a neutral decision-maker** ¶ **determine the factual basis for his detention. There was no majority** ¶ **opinion, however, so the implications of the ruling were ambiguous to** ¶ **say the least**. Justice O’Connor’s plurality opinion for four members ¶ of the Court concluded that Congress had authorized the president to ¶ detain enemy combatants by passing the Authorization for Use of ¶ Military Force82 and that the AUMF satisfied the statutory ¶ requirement of congressional authorization for the detention of U.S. citizens.83 Justice Souter, joined by Justice Ginsburg, thought that the ¶ AUMF had not in fact authorized the detention of American citizens ¶ as required by the statute,84 which suggested that Hamdi should be ¶ released. But the Court would have been deadlocked as to the remedy ¶ had he adhered to his view of how to proceed. This was because ¶ Justices Scalia and Stevens also believed that Hamdi’s detention was ¶ unlawful and that he should be released on habeas corpus,85 whereas ¶ Justice Thomas thought that the executive branch had acted within ¶ its authority and therefore would have denied relief.86 This alignment ¶ left four justices in favor of a remand for more formal proceedings, ¶ four other justices in favor of releasing Hamdi, and one justice ¶ supporting the government’s detention of Hamdi with no need for a ¶ more elaborate hearing. To avoid a deadlock, therefore, Justice Souter ¶ reluctantly joined the plurality’s remand order.87¶ **Hamdi was atypical because that case involved a U.S. citizen who** ¶ **was detained. The vast majority of detainees have been foreign** ¶ **nationals.** **In Hamdan v. Rumsfeld**,¶ 88 **the Supreme Court ruled that** ¶ **the military commissions that the executive branch had established in** ¶ **the wake of the September 11 attacks had not been authorized by** ¶ **Congress and therefore could not be used to try detainees**.89 **A** ¶ **concurring opinion made clear that the president could seek** ¶ **authorization from Congress to use the type of military commissions** ¶ **that had been established unilaterally in this case.**90¶ **Congress responded to that suggestion by enacting the Military** ¶ **Commissions Act of 2006**,91 **which sought to endorse the executive’s** ¶ **detainee policies and to restrict judicial review of detainee cases**. **In** ¶ **Boumediene v. Bush**,¶ 92 the Supreme Court again rejected the ¶ government’s position. First, the statute did not suspend the writ of habeas corpus.93 Second, the statutory procedures for hearing cases ¶ involving detainees were constitutionally inadequate.94 At the same ¶ time, **the Court emphasized that the judiciary should afford some** ¶ **deference to the executive branch in dealing with the dangers of**¶ **terrorism**95 **and should respect the congressional decision to** ¶ **consolidate judicial review of detainee cases in the District of** ¶ **Columbia Circuit**.96¶ **Detainees who have litigated in the lower federal courts in the** ¶ **District of Columbia have not found a sympathetic forum**. **The U.S**. ¶ **Court of Appeals for the D.C. Circuit has not upheld a single district** ¶ **court ruling that granted any sort of relief to detainees, and the** ¶ **Supreme Court has denied certiorari in every post-Boumediene**¶ **detainee case in which review was sought**.97 In only one case involving ¶ a detainee has the D.C. Circuit granted relief, and that case came up ¶ from a military commission following procedural changes adopted in ¶ the wake of Boumediene.¶ 98 About a month after this symposium took ¶ place, in Hamdan v. United States99 the court overturned a conviction ¶ for providing material support for terrorism. The defendant was the ¶ same person who successfully challenged the original military ¶ commissions in Hamdan v. Rumsfeld.¶ 100 This very recent ruling ¶ emphasized that the statute under which he was prosecuted did not ¶ apply to offenses committed before its enactment.101 It remains to be ¶ seen how broadly the decision will apply. Meanwhile, **other challenges to post-2001 terrorism policies also** ¶ **have failed, and the Supreme Court has declined to review those** ¶ **rulings as well. For example, the lower courts have rebuffed claims** ¶ **asserted by foreign nationals who were subject to extraordinary** ¶ **rendition.** In Arar v. Ashcroft,¶ 102 the U.S. Court of Appeals for the ¶ Second Circuit affirmed the dismissal of constitutional and statutory ¶ challenges brought by a plaintiff holding dual citizenship in Canada ¶ and the United States.103 And in Mohamed v. Jeppesen Dataplan, ¶ Inc.,¶ 104 the U.S. Court of Appeals for the Ninth Circuit held that the ¶ state-secrets privilege barred a separate challenge to extraordinary ¶ rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and ¶ Yemen.105 Unlike Arar, in which the defendants were federal ¶ officials,106 this case was filed against a private corporation that ¶ allegedly assisted in transporting the plaintiffs to overseas locations ¶ where they were subjected to torture.107 Although at least four judges ¶ on the en banc courts dissented from both rulings,108 the Supreme ¶ Court declined to review either case.109

***Even when the courts have rejected the executive --- it has been narrowly --- history is on our side***

**Entin 12** Jonathan L. Entin, Associate Dean for Academic Affairs (School of Law), David L. Brennan ¶ Professor of Law, and Professor of Political Science, Case Western ¶ Reserve University. CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL.45·2012, War Powers, Foreign Affairs, ¶ and the Courts: Some ¶ Institutional Considerations, [http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf](http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1%262.21.Article.Entin.pdf), jj

II. DEFERENCE TO THE EXECUTIVE ON THE MERITS¶ Although these procedural and jurisdictional barriers to judicial ¶ review can be overcome, **those who seek to limit what they regard as** ¶ **executive excess in military and foreign affairs should not count on** ¶ **the judiciary to serve as a consistent ally**. **The Supreme Court has** ¶ **shown substantial deference to the president in national security** ¶ **cases. Even when the Court has rejected the executive’s position, it** ¶ **generally has done so on relatively narrow grounds**.¶ Consider the Espionage Act cases that arose during World War I. ¶ Schenck v. United States,¶ 63 which is best known for Justice Holmes’s announcement of the clear and present danger test, upheld a ¶ conviction for obstructing military recruitment based on the ¶ defendant’s having mailed a leaflet criticizing the military draft ¶ although there was no evidence that anyone had refused to submit to ¶ induction as a result. Justice Holmes almost offhandedly observed ¶ that “the document would not have been sent unless it had been¶ intended to have some effect, and we do not see what effect it could ¶ be expected to have upon persons subject to the draft except to ¶ influence them to obstruct the carrying of it out.”¶ 64 The circumstances ¶ in which the speech took place affected the scope of First Amendment ¶ protection: “When a nation is at war many things that might be said ¶ in time of peace are such a hindrance to its effort that their utterance ¶ will not be endured so long as men fight and that no Court could ¶ regard them as protected by any constitutional right.”¶ 65 A week later, ¶ without mentioning the clear and present danger test, the Court ¶ upheld the conviction of the publisher of a German-language ¶ newspaper for undermining the war effort66 and of Eugene Debs for a ¶ speech denouncing the war.67 Early in the following term, Justice ¶ Holmes refined his thinking about clear and present danger while ¶ introducing the marketplace theory of the First Amendment in ¶ Abrams v. United States,¶ 68 but only Justice Brandeis agreed with his ¶ position.69 The majority, however, summarily rejected the First ¶ Amendment defense on the basis of Holmes’s opinions for the Court ¶ in the earlier cases.70¶ Similarly, **the Supreme Court rejected challenges to the** ¶ **government’s war programs** during World War II. For example, **the** ¶ **Court rebuffed a challenge to the use of military commissions to try** ¶ **German saboteurs**.71 Congress had authorized the use of military ¶ tribunals in such cases, and the president had relied on that ¶ authorization in directing that the defendants be kept out of civilian ¶ courts.72 In addition, **the Court upheld the validity of the Japanese** ¶ **internment program**.73 Of course, the Court did limit the scope of the program by holding that it did not apply to “concededly loyal”¶ citizens.74 But it took four decades for the judiciary to conclude that ¶ some of the convictions that the Supreme Court had upheld during ¶ wartime should be vacated.75 Congress eventually passed legislation ¶ apologizing for the treatment of Japanese Americans and authorizing ¶ belated compensation to internees.76¶ The Court never directly addressed the legality of the Vietnam ¶ War. The Pentagon Papers case, for example, did not address how ¶ the nation became militarily involved in Southeast Asia, only whether ¶ the government could prevent the publication of a Defense ¶ Department study of U.S. engagement in that region.77 The lawfulness ¶ of orders to train military personnel bound for Vietnam gave rise to ¶ Parker v. Levy,¶ 78 but the central issue in that case was the ¶ constitutionality of the provisions of the Uniform Code of Military ¶ Justice that were the basis of the court-martial of the Army physician ¶ who refused to train medics who would be sent to the war zone.79 **The** ¶ **few lower courts that addressed the merits of challenges to the** ¶ **legality of the Vietnam War consistently rejected those challenges**.80

**2NC – Detention**

***A new detention ruling would destroy deference --- extend Jacob --- Courts have struck a goldilocks balance between judicial review and pres flex now --- reasserting a judicial role on detention causes interference that hampers military operations***

***Detention law is up in the air now --- the plan sets a precedent and tilts it towards judicial control***

Monica **Eppinger ’13**, +, Assistant Professor, Saint Louis University School of Law and Department of Sociology and Anthropology; J.D., Yale Law School; Ph.D. Anthropology, University of California Berkeley, Winter, 2013, Catholic University Law Review, 62 Cath. U.L. Rev. 325, REALITY CHECK: DETENTION IN THE WAR ON TERROR, Lexis, jj

[\*326] **Law on detention is not settled, and policy on detention and detainee treatment is still a matter of active wrangling between the legislative, executive, and judicial branches**. n1 **Political leaders and the public face a situation aptly described as a "mess" of detentions**: n2 166 remaining **detainees at** [\*327] the **Guantanamo** Bay facilities, n3 3,200 more **detainees at facilities in Afghanistan**, n4 **and a jumbled legacy of practice** n5 **and precedent** n6 **that itself remains to be sorted through**. This Article is one of a series of projects motivated by concern over effective advocacy by a U.S. legal community confronting extensions of executive power after 9/11. n7 The aim of this Article is to reflect on these recent experiences with practices of detention and to propose changes to lawyerly strategy, national security policy, and international law in regard to detention and detainees with an eye toward future conduct.

***Err neg since they don’t spec grounds***

**\*2NC – Courts Internal Link Overview**

***Plan’s violation of the deference doctrine spills over --- extend Bloomberg --- in the status quo, Congress and the Courts only scrutinize executive action retrospectively --- the plan’s new restriction sets a precedent that leads to intrusions on war powers in all areas***

***Recent court decisions have reasserted judicial authority, but not restored it --- plan obliterates deference***

**Flaherty ’12**, MARTIN S. FLAHERTY, Leitner Professor of International Law, Fordham Law School; Visiting Professor, Woodrow Wilson School of Public and International Affairs, Princeton University, 2011 / 2012, New York Law School Law Review¶ 56 N.Y.L. Sch. L. Rev. 119, Judicial Foreign Relations Authority After 9/11, Lexis, jj

**For a time the forces of judicial isolationism appeared to have gained traction and may yet carry the day. It is all the more surprising, then, that the Supreme Court reasserted the judiciary's traditional foreign affairs role in the areas in which its opponents assert deference is most urgent--national security, terrorism, and war**. Yet so far, in every major case arising out of 9/11, the Court has rejected the position staked out by the executive branch, even when supported by Congress. At critical points, moreover, each of these rejections involved the Court reclaiming its primacy in legal interpretation, an area in which advocates of judicial deference have appeared to make substantial progress. The Court nonetheless rejected deference in statutory construction in Rasul v. Bush. n16 It took the same tack with regard to treaties in Hamdan v. Rumsfeld. n17 It further rejected deference in constitutional interpretation in both Hamdi v. Rumsfeld n18 and Boumediene v. Bush. n19 Together, these cases represent a stunning reassertion of the judiciary's proper role in foreign relations. **Whether reassertion will mean restoration, however, still remains to be seen**.¶ This essay sketches the foundations for assuring that restoration, an undertaking that offers a firmer basis for the Court's 9/11 jurisprudence. Part II will consider the doctrine of judicial deference, which threatens, partly successfully and partly not, to remove the judiciary from its proper role in foreign relations. Part III begins a critique of the deference doctrine by returning to separation of powers fundamentals, especially as understood at the Founding. As John Jay suggests, the Founders generally believed that the judiciary should be a full player in the separation of powers [\*123] framework, including foreign relations. n20 Among other things, this expectation meant the courts should interpret the law--including international law--without deference to the President or Congress, even when the nation's foreign policy was at stake. Part IV demonstrates that current developments in international relations make the Founding design more vital, not less. Globalization, along with typical responses to global terror, represent new forces accelerating the comparative growth of executive authority throughout the world, not least in the United States. The resulting imbalance of power makes the need for an independent judicial check, if anything, more critical now than it was originally, above all in foreign relations. Part V builds upon these foundations to supplement the rationales that the Court offered in its principal 9/11 decisions. In particular, this section argues that the Court rightly afforded the President zero deference when interpreting statutes, treaties, and constitutional provisions. This essay concludes that **the Court should draw upon both original understanding and international relations to solidify its recent reassertion of its proper role in foreign relations cases.**

***BREAKING DEFERENCE SNOWBALLS – ONE ACT SETS PRECEDENT FOR FUTURE DECISIONS SINCE CURRENT LITIGATION IS UNCLEAR***

**Hofstra Law Review 89**. [ Winter, 1989 17 Hofstra L. Rev. 465]

**To say that the Court's military jurisprudence is in need of clarification is**, perhaps, **an understatement**. In the fifteen years since the Court first expressed the principle of deference in Parker v. Levy, n160 **the Court has repeatedly failed to formulate a clear and coherent statement of the proper relationship between the political branches of government and the judiciary in** defining **servicemembers**' constitutional **rights**. n161 While the implications of some of the statements in Goldman may suggest that the Court is close to adopting a definitive resolution, namely, that the Bill of Rights are inapplicable to servicemembers, n162 the Court's continued adherence to its traditional principle of deference analysis indicates that the Court has not yet  [\*492]  reconciled this constitutional dilemma. n163 If the Court's failure to state a standard of review indicates -- as Goldman may suggest -- that servicemembers have no Bill of Rights protections and that the judiciary has no function in this context, this should be made explicit. **If**, however, **the Court is sincere in its repeated assertions that the Bill of Rights is applicable to servicemembers and the judiciary does**, in fact, **maintain an essential role in protecting those rights, then the Court must formulate and express a** ***clear standard of review***. While reasonable people ultimately may disagree as to whether the adopted standard adequately reaches the proper balance between military necessity and servicemembers' rights, n164 **an intelligible articulation of that standard would add clarity**, precision, **and *guidance* to the Court's** present **analysis**.

***PLAN SETS THE PRECEDENT***

**TAYLOR 4**. [Stuart, Senior writer with the National Journal magazine and Contributing Editor of Newsweek, Legal Times, 1-12]

**An enlightened administration would heed its former officials’ warnings by seizing the opportunity to establish a legacy of care in balancing** the imperatives of **liberty and security. There is no indication that the** executive-power absolutists who dominate the Bush **White House and Pentagon would dream of doing anything so sensible. Unless**, perhaps, **the Supreme Courts fires a *loud shot* or two across Bush’s bow.**

**Terror**

**UQ**

***On uniqueness --- extend Thiessen & Pompeo --- Guantanamo is providing intelligence and disrupting terrorism in the status quo --- err neg, the lack of a major terrorist attack since 9/11 is proof of our status quo detention policy’s effectiveness.***

***The risk of terrorism is low, but latent --- recent successes are reversible if the U.S. lowers its guard***

**McLaughlin 13** (John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, ¶ 06:00 AM ET¶ Terrorism at a moment of transition7/12, http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

**A** third **major trend has to do with the debate underway among terrorists** over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. **But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the *U*nited *S*tates, as Pakistan’s Tehrik e Taliban did** in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, **many of the groups are becoming intrigued by** the possibility of **scoring gains against regional governments that are now struggling** to gain or keep their balance – **opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes**, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ **Documents from al Qaeda in** the Islamic Maghreb, discovered after French forces chased them from **Mali, reveal awareness that they were too harsh on local inhabitants**, especially women. **They also recognized that they need to move more gradually and provide tangible services to populations** – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. **If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ *Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion*** and division in the movement **or**, more likely, ***extend its life and impart new momentum***.¶ So **if we are ever tempted to lower our guard** in debating whether and when this war might end, **we should take heed** of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "**It needs but one foe to breed a war, not two** ..."

**2NC Link Wall**

***The plan causes terrorist resurgence--- extend Thiessen, Pompeo, and Waxman --- unrestricted indefinite detention is good, and key to keep pressure on Al Qaeda --- 4 warrants why our links outweigh the link turns:***

1. ***Incapacitation – detention keeps terrorists off the battlefield***
2. ***Deterrence – threat of getting caught and sent to Gitmo dissuades recruitment, linking turning all the 2AC’s offense***
3. ***Disruption – detention prevents terrorists from plotting new attacks***
4. ***Intel – detention gets us vital intel through interrogation, monitoring, and turning terrorists against us each-other***

***Intel outweighs – lets us prevent attacks and mitigate the impact***

**WND** 20**13**(WND, independent news company dedicated to uncompromising journalism, seeking truth and justice and revitalizing the role of the free press as a guardian of liberty, March 10, "Obama 'Rewarding' Terrorists With Civilian Trials", http://www.wnd.com/2013/03/obama-rewarding-terrorists-with-civilian-trials/)

**McCarthy admitted that he and fellow prosecutors have amassed a strong conviction record against terrorist suspects**, but possible **exoneration is not his biggest concern**. He said **trials in civilian court always trigger intelligence flows that make our nation more vulnerable**.¶ “**You have to turn over discovery, meaning all of our intelligence files under the due process rules**. You’re also, in effect, rewarding the worst actors,” McCarthy said. “Basically, we’re taking the insane position that if you’re a foreign or even an American enemy combatant, and we happen to catch you in Yemen, we can take you out with a drone strike with no due process, no anything, even if you haven’t actually carried out a terrorist attack yet. But if you hit the jihadist jackpot and manage to get to the United States and kill 3,000 Americans, we’ll bring you into Manhattan and give you the bells-and-whistles civilian trial. That’s a pretty perverse set of incentives to give our enemy.”¶ **The case of the first World Trade Center bombings proved to McCarthy that terrorists who have full legal protections in U.S. courts have no incentive to reveal vital information.** He said the military commissions system is very different.¶ “**One of the best benefits of the law of war paradigm that we switched to after the 9/11 attacks is that if you treat people like enemy combatants, you can detain them and interrogate them** counsel,” said McCarthy, noting that this concept has nothing to do with enhanced interrogation techniques.¶ “I’m talking simply, over a long period of time, to try to question people and glean information. **When you’re in a terrorist war, as the war that we’re in right now is, *intelligence is really your No. 1 asset***,” he said.¶ According to McCarthy, Obama is squandering chance after chance of picking up valuable intelligence.¶ “You can’t really foresee a traditional end to this war. **The only thing you can do is get whatever intelligence is available to you to try to identify the cells and stop the plot**. That’s how we protect the country,” McCarthy said. “Unfortunately, the Obama administration has really adopted a posture where when they can kill or capture, they generally kill. When they capture or when someone falls into their lap as happened this week, they bring the person right into the civilian justice system, which means you don’t get to interrogate them.”

***Err neg --- the absence of major terrorist attacks since 9/11 means presumption should be against changing policies that have been empirically effective***

***Civilian prosecution will destroy foreign cooperation in the war on terror***

**McCarthy and Velshi 9** August, 20 Andrew C. McCarthy is Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. Alykhan Velshi is a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force. “We Need a National Security” Court<http://www.defenddemocracy.org/stuff/uploads/documents/national_security_court.pdf>

5. **The discovery requirements endanger national security by discouraging cooperation from our allies**. **As illustrated by the recent investigations conducted by Congress, the Silberman/Robb Commission, and the 9/11 Commission regarding pre 9/11 intelligence failures, the United States relies heavily on cooperation from foreign intelligence services,** particularly in areas of the world from which threats to American interests are known to stem and where our own human intelligence resources have been inadequate. **It is vital that we keep that pipeline flowing**. Clearly, **however, foreign intelligence services** (understandably, much like our own CIA**) will necessarily be reluctant to share information with our country if they have good reason to believe that information will be revealed under the generous discovery laws that apply in U.S. criminal proceedings.**

***Detention is key to prevent terror --- criminal prosecution makes attacks inevitable for a plethora of reasons***

**Waxman ’09**, Matthew C. Waxman\*, \* Associate Professor, Columbia Law School; Adjunct Senior Fellow, Council on Foreign Relations; Member of the Hoover Institution Task Force on National Security and Law, 2009¶ Journal of National Security Law & Policy¶ 3 J. Nat'l Security L. & Pol'y 1, Article: Administrative Detention of Terrorists: Why Detain, and Detain Whom?, Lexis, jj

The reason administrative detention is widely discussed at all is because **the threat of terrorism is thought** by propo-nents **to involve a category of individuals for whom neither criminal justice nor the law of war** - the two legal systems historically used to authorize and regulate most long-term detention of dangerous individuals - **offers effective and just solutions**. n49 The argument generally begins with the notion that **exclusive reliance on prosecution, along with its usual panoply of defendants' rights and strict rules of evidence, cannot effectively, expeditiously, or exhaustively remove the threat of dangerous terrorists**. n50 **The reasons for** [\*11] **this include: information used to identify terrorists and their plots includes extremely sensitive intelligence sources and methods, the disclosure of which during trial would under-mine or even negate counterterrorism operations; the conditions under which some suspected terrorists are captured, especially in faraway combat zones or ungoverned regions, make it impossible to prove criminal cases using normal evidentiary rules**; n51 **prosecution is designed to punish past conduct, but fighting terrorism requires stopping suspects before they act; and criminal justice is deliberately tilted in favor of defendants so that few if any innocents will be punished, but the higher stakes of terrorism cannot allow the same likelihood that some guilty persons will go free.** n52

***Err neg --- should maintain flexibility for worst case scenarios***

**Wittes ’11**, Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School - Brookings Project on Law and Security. Detention and Denial [electronic resource] : The Case for Candor after Guantanamo. Washington : Brookings Institution Press, 2011., ebook, accessed via Wayne State online library, pg 102, jj

**To be sure, sometimes it all works out rather well. The criminal justice system**, under some circumstances, **can operate** as an ¶ excellent intelligence gathering tool. The United States has had a ¶ string of big successes within that system of late—Abdulmutallab ¶ is one; Najibullah Zazi is another; the would-be Times Square car ¶ bomber, Faisal Shahzad, is a third. In all of those cases, the justice ¶ system pushed potentially major terrorist figures relatively swiftly ¶ into a cooperative posture. **Those successes suggest that conservatives have sometimes underestimated the capacity and utility** ¶ **of the criminal justice apparatus** as an instrument for disrupting ¶ terrorism. **It does not, however, indicate that that apparatus is the** ¶ **ideal instrument or that it has been optimally tuned to handle all**¶ **crisis detentions**. Indeed, **there have been times when falling back** ¶ **on the criminal justice system has failed us—and *it will happen*** ¶ ***again***. **There will come a time when there really are other planes** ¶ **in the air and the captive takes his Miranda rights seriously or** ¶ **when we simply lack the authority to take custody of someone** ¶ **whom it would be imprudent to free. There will come a time** ¶ **when we will miss having a crisis detention authority designed for** ¶ **the purpose at hand.**

***Reforms result in catastrophic terrorism---releases them and kills intel gathering***

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

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

***Prez flex is key to quick action and intel***

Glenn **Sulmasy 9**, law faculty of the United States Coast Guard Academy, , Anniversary Contributions: Use of Force: Executive Power: the Last Thirty Years, 30 U. Pa. J. Int'l L. 1355

Since the attacks of 9/11, the original concerns noted by Hamilton, Jay, and Madison have been heightened. ***Never before*** in the young history of the United States ***has the need for an energetic executive been more vital to its national security***. **The need for quick** **action** in this arena **requires an executive response** - **particularly when fighting a shadowy enemy like al Qaeda** - **not** the **deliberative bodies** **opining on** what and **how to conduct warfare** or determining how and when to respond. **The threats from non-state actors**, such as al Qaeda, **make the need for dispatch and rapid response even greater**. Jefferson's **concerns about the slow** and deliberative institution of **Congress being prone to informational leaks** **are even more relevant** in the twenty-first century. The advent of the twenty-four hour media only leads to an increased need for retaining enhanced levels of executive [\*1362] control of foreign policy. This is particularly true in modern warfare. **In the war on** international **terror, intelligence is vital to ongoing operations and** successful **prevention of attacks.** **Al** **Qaeda** now **has both the will and the ability to strike** with the equivalent force and might of a nation's armed forces. **The need to identify** these **individuals before they can operationalize an attack is vital. Often** international terror **cells consist of** only **a small number of** **individuals** - **making intelligence that much more difficult to obtain and even more vital** than in previous conflicts. The normal movements of tanks, ships, and aircrafts that, in traditional armed conflict are indicia of a pending attack are not the case in the current "fourth generation" war. Thus, the need for intelligence becomes an even greater concern for the commanders in the field as well as the Commander-in-Chief.¶ Supporting a strong executive in foreign affairs does not necessarily mean the legislature has no role at all. In fact, their dominance in domestic affairs remains strong. Additionally, besides the traditional roles identified in the Constitution for the legislature in foreign affairs - declaring war, ratifying treaties, overseeing appointments of ambassadors, etc. - this growth of executive power now, more than ever, necessitates an enhanced, professional, and apolitical oversight of the executive. An active, aggressive oversight of foreign affairs, and warfare in particular, by the legislature is now critical. Unfortunately, the United States - particularly over the past decade - has witnessed a legislature unable to muster the political will necessary to adequately oversee, let alone check, the executive branch's growing power. Examples are abundant: lack of enforcement of the War Powers Resolution abound the executive's unchecked invasions of Grenada, Panama, and Kosovo, and such assertions as the Authorization for the Use of Military Force, the USA Patriot Act, military commissions, and the updated Foreign Intelligence Surveillance Act ("FISA"). There have been numerous grand-standing complaints registered in the media and hearings over most, if not all, of these issues. However, in each case, the legislature has all but abdicated their constitutionally mandated role and allowed the judicial branch to serve as the only real check on alleged excesses of the executive branch. This deference is particularly dangerous and, in the current environment of foreign affairs and warfare, tends to unintentionally politicize the Court.¶ The Founders clearly intended the political branches to best serve the citizenry by functioning as the dominant forces in [\*1363] guiding the nation's foreign affairs. They had anticipated the political branches to struggle over who has primacy in this arena. In doing so, they had hoped neither branch would become too strong. The common theme articulated by Madison, ambition counters ambition, n17 intended foreign affairs to be a "give and take" between the executive and legislative branches. However, inaction by the legislative branch on myriad policy and legal issues surrounding the "war on terror" has forced the judiciary to fulfill the function of questioning, disagreeing, and "checking" the executive in areas such as wartime policy, detentions at Guantanamo Bay, and tactics and strategy of intelligence collection. The unique nature of the conflict against international terror creates many areas where law and policy are mixed. The actions by the Bush administration, in particular, led to outcries from many on the left about his intentions and desire to unconstitutionally increase the power of the Presidency. Yet, the Congress never firmly exercised the "check" on the executive in any formal manner whatsoever.¶ For example, many policymakers disagreed with the power given to the President within the Authorization to Use Military Force ("AUMF"). n18 Arguably, this legislation was broad in scope, and potentially granted sweeping powers to the President to wage the "war on terror." However, Congress could have amended or withdrawn significant portions of the powers it gave to the executive branch. This lack of withdrawal or amendment may have been understandable when Republicans controlled Congress, but as of November 2006, the Democrats gained control of both houses of the Congress. Still, other than arguing strongly against the President, the legislature did not necessarily or aggressively act on its concerns. Presumably this inaction was out of concern for being labeled "soft on terror" or "weak on national security" and thereby potentially suffering at the ballot box. This virtual paralysis is understandable but again, the political branches were, and remain, the truest voice of the people and provide the means to best represent the country's beliefs, interests, and national will in the arena of foreign affairs. It has been this way in the past but the more recent (certainly over the past thirty years and even more so in the past decade) intrusions of the judicial branch into what [\*1364] was intended to be a "tug and pull" between the political branches can properly be labeled as an unintended consequence of the lack of any real legislative oversight of the executive branch.¶ Unfortunately, now nine unelected, life-tenured justices are deeply involved in wartime policy decision making. Examples of judicial policy involvement in foreign affairs are abundant including Rasul v. Bush; n19 Hamdi v. Rumsfeld; n20 Hamdan v. Rumsfeld; n21 as well as last June's Boumediene v. Bush n22 decision by the Supreme Court, all impacting war policy and interpretation of U. S. treaty obligations. Simply, judges should not presumptively impact warfare operations or policies nor should this become acceptable practice. Without question, over the past thirty years, this is the most dramatic change in executive power. It is not necessarily the strength of the Presidency that is the change we should be concerned about - the institutional search for enhanced power was anticipated by the Founders - but they intended for Congress to check this executive tendency whenever appropriate. Unfortunately, this simply is not occurring in twenty-first century politics. Thus, the danger does not necessarily lie with the natural desire for Presidents to increase their power. The real danger is the judicial branch being forced, or compelled, to fulfill the constitutionally mandated role of the Congress in checking the executive.¶ 4. PRESIDENT OBAMA AND EXECUTIVE POWER¶ The Bush presidency was, and continues to be, criticized for having a standing agenda of increasing the power of the executive branch during its eight-year tenure. Numerous articles and books have been dedicated to discussing these allegations. n23 However, as argued earlier, the reality is that it is a natural bureaucratic tendency, and one of the Founders presciently anticipated, that each branch would seek greater powers whenever and wherever possible. **As the world becomes** increasingly **interdependent, technology and armament become more sophisticated, and with** [\*1365] **the rise of** twenty-first century **non-state actors**, ***the need for strong executive power is not only preferred, but also necessary***. **Executive power in the current world dynamic is something, regardless of policy preference** or political persuasions, **that the new President must maintain** in order to best fulfill his constitutional role of providing for the nation's security. This is simply part of the reality of executive power in the twenty-first century. n24

**A2 coop**

***Alt caus --- death penalty policies***

Mithre J. **Sandrasagra**, 6-10-20**06**, Common Dreams, Inter Press Service¶ A Hindrance to U.S. War on Terror, Say Rights Groups, <http://www.commondreams.org/headlines06/0610-04.htm>, jj

NEW YORK - **Continued use of the death penalty in the United States is straining its relations with allies and hampering the war on terror, say international human rights and legal experts**.¶ **Governments increasingly are refusing to extradite criminal suspects to** countries like **the United States** and China, **which impose the death penalty**, without first obtaining guarantees that executions will not be carried out. ¶ In response, the George W. Bush administration has resorted to what amounts to kidnapping as a means to side-step international extradition law in its so-called rendition programme (the extra-judicial seizure and transfer of terrorist suspects to detention in third countries), human rights advocates such as Amnesty International and Human Rights Watch said. ¶ "**As more and more countries turn their backs on the death penalty -- about 124 countries are now abolitionist in law or practice** -- �**the U.S. finds itself increasingly isolated on this fundamental issue**," Rob Freer of Amnesty International told IPS. ¶ **Continued implementation of the death penalty has eroded U.S. moral authority in the international community**, Freer said, adding, "the U.S.'s claim to be the global human rights champion rings a little more hollow with each execution." ¶ **The majority of the world's governments, including European nations**, Lebanon and Canada, **now refuse to extradite criminal suspects** to the United States without first obtaining guarantees that the death penalty will not be sought or imposed, according to Amnesty statistics. ¶ In December 2005, Germany refused to extradite Mohammed Ali Hamadi -- who was freed on parole by German authorities after serving 19 years of a life sentence for the 1985 hijacking of a TWA airplane -- because he could face the death penalty in the United States on charges of killing a Navy diver in the hijacking. U.S. Attorney General Alberto Gonzales personally asked the German government not to release the terrorist, but was rebuffed. ¶ Hamadi is now in Lebanon, which does not have an extradition treaty with the United States. ¶ Since 1990, an average of three countries each year abolish the death penalty, according to Amnesty's statistics. In contrast, the United States has executed on average one prisoner a week since 1990. ¶ In part because of that dichotomy, the U.S. is having trouble arresting terror suspects abroad, even after the terror attacks of Sep. 11, 2001 in New York and Washington, because of the likelihood of the death penalty being levied. ¶ In November 2001, immediately following the Sep. 11 attacks, Spain refused to extradite eight alleged members of the al-Qaeda network to the United States because there was a risk that they could face the death penalty or trial by special military tribunals. ¶ The British Home Office also confirmed to IPS that nobody would be extradited from Britain to the U.S. without assurances that they would not be executed. ¶ Because countries will not turn over suspects without obtaining assurances the death penalty will not be used, the United States has been forced to circumvent formal extradition procedures, Anjana Malhotra, co-author of Human Rights Watch's recent report "Witness to Abuse: Human Rights Abuse under the Material Witness Law since September 11," told IPS.

**2NC – Resentment Inev**

***Detention isn’t key to terrorist recruitment or resentment --- extend Krauthammer --- their list of grievances is endless and self-replenishing --- capitulation solves nothing --- they will find other recruitment tactics even if detention ends***

***Al Qaeda doesn’t even use detention to recruit***

**Joscelyn ’10**, Thomas Joscelyn is a senior fellow at the Foundation for Defense of Democracies. 27th December 2010, Foundation for the Defense of Democracies, Gitmo Is Not al Qaeda’s ‘Number One Recruitment Tool’ - <http://www.defenddemocracy.org/media-hit/gitmo-is-not-al-qaedas-number-one-recruitment-tool/>, jj

President Obama and his surrogates have made this argument before, but they have provided no real evidence that it is true. In fact, **al Qaeda’s top leaders rarely mention Guantanamo in their messages to the West, Muslims and the world at large**.¶ No journalist in attendance had the opportunity to challenge President Obama’s assertion. The president should have been asked: **If Guantanamo is such a valuable recruiting tool, then why do al Qaeda’s leaders rarely mention it?**¶ **THE WEEKLY STANDARD has reviewed translations of 34 messages and interviews delivered by top al Qaeda leaders operating in Pakistan and Afghanistan** (“Al Qaeda Central”), **including Osama bin Laden and Ayman al Zawahiri, since January 2009**. **The translations were published online by the NEFA Foundation. Guantanamo is mentioned in only 3 of the 34 messages.** **The other 31 messages contain no reference to Guantanamo. And even in the three messages in which al Qaeda mentions the detention facility it is not a prominent theme**.¶ Instead, **al Qaeda’s leaders repeatedly focus on a narrative that has dominated their propaganda for the better part of two decades**. **According to bin Laden, Zawahiri, and other al Qaeda chieftains, there is a Zionist-Crusader conspiracy against Muslims**. **Relying on this deeply paranoid and conspiratorial worldview, al Qaeda routinely calls upon Muslims to take up arms against Jews and Christians**, as well as any Muslims rulers who refuse to fight this imaginary coalition.¶ This theme forms the backbone of al Qaeda’s messaging – not Guantanamo.¶ To illustrate this point, consider the results of some basic keyword searches. **Guantanamo is mentioned a mere 7 times in the 34 messages we reviewed**. (Again, all 7 of those references appear in just 3 of the 34 messages.)¶ **By way of comparison, all of the following keywords are mentioned far more frequently: Israel/Israeli/Israelis (98 mentions), Jew/Jews (129), Zionist(s) (94), Palestine/Palestinian (200), Gaza (131), and Crusader(s) (322).** (Note: Zionist is often paired with Crusader in al Qaeda’s rhetoric.)¶ **Naturally, al Qaeda’s leaders also focus on the wars in Afghanistan (333 mentions) and Iraq (157). Pakistan (331), which is home to the jihadist hydra, is featured prominently, too**. Al Qaeda has designs on each of these three nations and implores willing recruits to fight America and her allies there. **Keywords related to other jihadist hotspots also feature more prominently than Gitmo, including Somalia (67 mentions), Yemen (18) and Chechnya (15).** ¶ Simply put, ***there is no evidence*** in the 34 messages we reviewed that ***al Qaeda’s leaders are using Guantanamo as a recruiting tool.*** Undoubtedly, “Al Qaeda Central” has released other messages during the past two years that are not included in our sample. Some of those messages may refer to Guantanamo. And some of the al Qaeda messages provided by NEFA, which does a remarkable job collecting and translating al Qaeda’s statements and interviews, may be only partial translations of longer texts.¶ However, the messages we reviewed also surely include most of what al Qaeda’s honchos have said publicly since January 2009. These messages do not support the president’s claim.¶ A closer look at the 3 out of 34 messages in which “Al Qaeda Central” actually referred to Guantanamo reveals just how weak the president’s argument is. Even in these messages **al Qaeda is far more interested in other themes**.¶ **In a February 17, 2010 message entitled, “The Way to Save the Earth,” Osama bin Laden made an offhand reference to Guantanamo. But it is hardly a prominent feature of the terror master’s message**. **As bin Laden makes clear in the opening lines, his main concern is climate change**.¶ “This is a message to the whole world about those who cause climate change and its dangers – intentionally or unintentionally – and what we must do,” bin Laden said. **Bin Laden blames the “greedy heads of major corporations” and “senior capitalists” who are “characterized by wickedness and hardheartedness” for the supposed deleterious effects of global warming**.¶ **Bin Laden does refer to Guantanamo, but it is brief and in the context of a rambling passage**. **In the surrounding sentences, bin Laden criticizes America for waging war in Iraq for oil, incorrectly claims that America and her allies have “killed, wounded, orphaned, widowed and displaced more than 10 million Iraqis,” and calls President Obama’s acceptance of the Nobel Peace Prize “an extreme example of the deception and humiliation of humanity**.”¶ **If bin Laden’s February 17th message is evidence that al Qaeda is using Guantanamo as a recruiting tool, then it is also evidence that al Qaeda is using climate change and President Obama’s Nobel to earn new recruits**.¶ The other two messages in our sample that refer to Guantanamo do not fare much better when any amount of scrutiny is applied. ¶ **In a message dated September 15, 2010, Ayman al Zawahiri focuses most of his critique on Muslim governments and especially the Pakistani government. There is a single reference to Guantanamo and it is a throwaway line in which Ayman al Zawahiri repeats the myth that America has desecrated the Koran at Gitmo**. Referring to NATO, Zawahiri asks rhetorically, “And aren’t they the forces which humiliated the noble Qur’an in Guantanamo, Iraq and elsewhere?” **There is no other mention of Guantanamo in the 12-page translation provided by NEFA**.¶ In an August 5, 2009 tape entitled, “The Facts of Jihad and the Lies of the Hypocrites,” Ayman al Zawahiri mentioned Guantanamo five times. **The August 5th tape comes closest to validating the president’s theory of jihadist recruitment and yet it still falls way short. Words related to “Iraq” and “Afghanistan” appear more than 70 times each. The words “Israel” and “Israelis” appear 39 times. And the word “Zionist” appears another four times—in the context of the aforementioned imagined American-Zionist conspiracy against the Muslim world**. (According to Ayman al-Zawahiri, by the way, Obama is himself a participant in this conspiracy.) **And the words “Jew,” “Jewish,” and “Jewishness” appear another 12 times**.¶ Last week, President **Obama cited jihadist propaganda as his chief reason for closing Guantanamo**. But as the analysis above makes clear, **it is not true that Guantanamo is the terror network’s “number one recruitment tool.” Even if it were, al Qaeda would just move on to another pretext for its terror once Gitmo is closed**.¶ **There is no good reason for an American president to cite jihadist propaganda in defense of his policy decision. By that standard, if President Obama must close Guantanamo, then he must also withdraw all American forces from Iraq and Afghanistan, as well as move to end the “Zionist-Crusader” conspiracy against Muslims elsewhere around the world**.¶

***Detention restrictions won’t solve terrorism --- only a risk they cause it***

**McCarthy ’09**, Andrew C. McCarthy III is a former Assistant United States Attorney for the Southern District of New York, he is most notable for leading the 1995 terrorism prosecution against Sheik Omar Abdel Rahman and eleven others, New York Times best-selling author, 12-7-09, National Review, Gitmo Does Not Cause Terrorism, <http://www.nationalreview.com/articles/228819/gitmo-does-not-cause-terrorism/andrew-c-mccarthy>, jj

**So we’re going to shut down the detention center at the U.S. naval base on Guantanamo Bay and move the 200-plus terrorists detained there to a seldom-used civilian correctional center in Thomson, Ill. And we’re doing it,** the **Obama** administration **and Sen**. Dick **Durbin assure us**, not because they want to use federal money to indemnify their home state for a white-elephant prison Illinois taxpayers should never have built, but **because Guantanamo Bay simply must be closed. Gitmo, they say, causes terrorism.¶** **It’s worth remembering that the “Blind Sheikh,” Omar Abdel Rahman, perhaps the world’s most influential jihadist, was never held in Gitmo. Instead, he and eleven of his followers got the gold-plated due-process plan: a nine-month 1995 trial in the criminal justice system for waging war against the American people**. (That’s not rhetoric; that was the charge: conspiracy to levy war against the United States — Section 2384 of the federal penal code.)¶ **The red-carpet treatment didn’t begin or end with the trial. There were Miranda warnings upon arrest (no one cooperated). Counsel was appointed, with the defendants choosing their lawyers — and, for some, Uncle Sam paid for two or more attorneys. Mountains of evidence were culled from intelligence files and duly shared with overseas terrorist organizations. The defense enjoyed a couple of years to make motions to get more discovery, to suppress evidence, and to dismiss the indictment. When things finally went to trial, there was a two-month defense case (that’s much longer than most criminal trials), which allowed them to put the government on trial for its investigative tactics**. There was a post-trial hearing on their motion to vacate their convictions and dismiss the case on the ground of “outrageous government misconduct.” There was elaborate litigation before severe sentences were imposed: The Blind Sheikh got life imprisonment, and the other sentences ranged from 25 years to life**. That was followed by a three-year appeals process, during which the court appointed new lawyers to argue that their clients had been railroaded through the incompetence of the old lawyers, while the old lawyers continued arguing that their clients had been railroaded by the malevolence of the government**. **Finally, when the appeals were done and the convictions upheld, the defendants began filing habeas corpus petitions — a practice that continues to this day — claiming that this or that constitutional right was infringed, or that this or that prison condition was inhumane.¶ So the Islamic world and its sundry terrorist bands were all very impressed with this ostentatious display of our humanity, our benign intentions, and “our values” — right? Wrong. The usual Islamist organizations claimed that America had put Islam on trial — the original slander that was refitted after 9/11 into the equally spurious charge that America is at war with Islam**. In early 1997, about a year after sentencing, Sheikh Abdel Rahman’s Egyptian terrorist organization, al-Gama’at al-Islamia (the Islamic Group), issued a statement declaring “all American interests legitimate targets” for “legitimate jihad” until the release of all those convicted terrorists, beginning with their beloved leader.¶ A few months later, Abdel Rahman’s always-helpful American lawyers (one of whom has since been convicted of helping him run Gama’at from his U.S. prison cell) issued a statement pressuring U.S. officials to release him. “It sounds,” they wrote, “like the Sheikh’s condition is deteriorating and obviously could be life-threatening.” On cue, Gama’at publicly warned that if any harm were to come to the sheikh, the group would “target . . . all of those Americans who participated in subjecting his life to danger.” The terrorists elaborated that they considered every American official, from Pres. Bill Clinton down to “the despicable jailer,” to be “partners endangering the Sheikh’s life.” The organization promised to do everything in its power to free Abdel Rahman.¶ On Nov. 17, 1997, they made good on the promise. As 58 foreign tourists visited an archeological site in Luxor, Egypt, they were set upon by six Gama’at murderers. The jihadists brutally shot and stabbed them to death – also killing several Egyptian police. The torso of one victim was slit so the terrorists could insert in it a leaflet demanding the release of the Blind Sheikh. Similar leaflets were scattered about the carnage.¶ Luxor was not the last of these atrocities, but it is the most savage so far, and it is the scene that should leap to mind every time some useful idiot like Senator Durbin makes **the absurd claim that Guantanamo Bay must be shut down because it causes terrorism and spurs terrorist recruitment**. That this claim **is mindlessly repeated** by high-ranking military officers and intelligence officials doesn’t make it any less absurd.¶ **We are talking about people who live in sharia states where they still stone women for adultery, apostates for daring to abandon Islam, and homosexuals for breathing. We are talking about people who riot and murder over cartoons — people who use mosques to hide weapons and Korans to transmit terrorist messages and then murder non-Muslims for purportedly defaming their religion. It makes no difference to these people that we detain Muslim terrorists in military brigs under the laws of war rather than detaining them in civilian prisons after trial in our criminal justice system.¶** **After 17 years of attacks, we should have learned the difference between causes of terrorism and pretexts for terrorism. Terrorism is caused, and terrorist recruitment is driven, by Islamist ideology and by American weakness in the face of terror attacks**. **In that sense**, Senator ***Durbin causes more terrorism than Gitmo ever will***. **Terrorist organizations are encouraged when they come to believe they can win — when they come to believe they can outlast America because we lack resolve.¶** The Blind Sheikh, echoed by Osama bin Laden, has promised for years that if “battalions of Islam” keep reprising Hezbollah’s 1983 bombing of the Marine barracks in Beirut, and al-Qaeda’s orchestration of the 1993 “Black Hawk Down” incident in Somalia, then the Americans will pack up and go home. **The terrorists tell their recruits we’re soft and won’t defend ourselves if it gets ugly. When a U.S. senator takes to the floor of the chamber and compares heroic American troops to Hitler, Stalin, and Pol Pot, he confirms Abdel Rahman and bin Laden’s views**. **When he suggests that terrorism is somehow caused by locking up terrorists in a secure, offshore military facility, where they can no longer threaten Americans or anyone else, the Islamic world’s fence-sitters start thinking, “The jihadists are right: America doesn’t have the stomach to tough it out. If we just make it bloody enough, we can win.”¶** ***The only part of Gitmo that causes terrorism is its front gates, when we allow terrorists to walk out of them so they can go back to the battle***. Gitmo is a pretext for terrorism. Terrorists use it because, unlike us, they know it’s irresponsible not to study and understand the enemy. They know the Left exercises outsize influence on the media and that the Left’s key characteristic is projection.

***Terrorists will hate us inevitably***

**Meese ’12**, Edwin Meese III is the Ronald Reagan Distinguished Fellow in Public Policy and chairman of the Center for Legal & Judicial Studies at the Heritage Foundation. He served as the 75th attorney general of the United States under President Reagan. 1-11-12, Heritage Foundation, Guantanamo Bay Prison is Necessary, <http://www.heritage.org/research/commentary/2012/01/guantanamo-bay-prison-is-necessary>, jj

**It has been said that the mere existence of Guantanamo is a recruiting tool for the enemy. However, recall that there was no Guantanamo detention facility when al Qaeda bombed the World Trade Center in the 1990s or blew up the U.S. embassies in East Africa in 1998 or attacked the USS Cole in 2000**. And I suspect that if the Bush administration had brought the Guantanamo detainees not to Cuba but to a detention facility in the United States, that facility would have been the object of their scorn and derision.¶ All things considered, **the detention facility at Guantanamo Bay has played an invaluable role in the war against terrorists by keeping them off the battlefield and allowing for lawful interrogations.**

**2NC – Detention Solves Terror**

***Plan causes terrorism --- extend Gaffney --- ending detention is a key symbolic move that emboldens the global jihadist movement --- that boosts recruitment while denying us key intelligence and putting soldiers back on the battle-field.***

***Their recruitment link turn is nonsense --- ending detention only costs us vital intelligence***

**Thiessen & Pompeo 7-9-’13**, MODERATOR:¶ MARC A. THIESSEN, AEI¶ SPEAKER:¶ MIKE POMPEO, U.S. HOUSE ¶ OF REPRESENTATIVES (R-KS)¶ AMERICAN ENTERPRISE INSTITUTE, CLOSING GITMO? ¶ A CONVERSATION WITH REP. MIKE POMPEO, <http://www.aei.org/files/2013/07/15/-closing-gitmo-transcript_140008739936.pdf>, jj

REP. POMPEO: No, that’s ridiculous. I mean, **it’s ridiculous on its face to say** ¶ **that Guantanamo Bay created more terrorists than it’s stopped**. It’s silly on its face.¶ Look, **those who want to kill us, those who don’t like the Western way and radical** ¶ **Islamic terrorism, can find any of hundreds of reasons not to like America, not to like the** ¶ **West, and to want to kill folks all over the world** who don’t – **who stand in the way of** ¶ **their radical Islamic goals**. **They don’t need Guantanamo Bay as a rationale for that** ¶ **terrorism or for that behavior**.¶ It’s a good storyline that the Left likes to tell about how Guantanamo causes these ¶ things. But more than it being factually inaccurate, I think it’s deeply immoral to make ¶ that statement. It gives – there’s this idea of this equivalence that says, boy, if you catch a ¶ terrorist and you detain them, consistent with the rules of law and international law in ¶ war, that someone has a right to come out and kill civilians. That would be the argument ¶ that’s being made, that it somehow justifies terrorism. It’s both ridiculous and silly and ¶ perhaps most importantly dangerous.¶ MR. THIESSEN: The – Guantanamo was initially going to this issue of creating ¶ versus stopping terrorism. **Guantanamo was initially established not** as a – **just as a** ¶ **detention facility, but as a *strategic interrogation center***. And Mark Bowden in his book, ¶ “The Finish,” actually documents the fact that **two detainees in Guantanamo actually** ¶ **gave us the first leads on the courier network that led us to Osama bin Laden**. So what is ¶ the state of Guantanamo as an interrogation center? Are they still doing interrogations ¶ there and how has it helped our national security? What did they tell you there?¶ REP. POMPEO: Well, I don’t want to go into details about all of that, but here’s ¶ what I can say. The interrogations that a lot of folks were concerned with that were taking ¶ place previously are no longer taking place at the facility. Second, there is still, although ¶ admittedly attenuated, **there is still important information that is derived from the** ¶ **detainees there**. They still have families back in places from which they came. They have ¶ contact. They’re able to make telephone calls and have communications with folks back ¶ in their home countries. And **it is absolutely case that there is still information that is** ¶ **coming from these detainees that is relevant to the continued war on terror.**

***Detention is key to prevent terror --- criminal prosecution makes attacks inevitable for a plethora of reasons***

**Waxman ’09**, Matthew C. Waxman\*, \* Associate Professor, Columbia Law School; Adjunct Senior Fellow, Council on Foreign Relations; Member of the Hoover Institution Task Force on National Security and Law, 2009¶ Journal of National Security Law & Policy¶ 3 J. Nat'l Security L. & Pol'y 1, Article: Administrative Detention of Terrorists: Why Detain, and Detain Whom?, Lexis, jj

The reason administrative detention is widely discussed at all is because **the threat of terrorism is thought** by propo-nents **to involve a category of individuals for whom neither criminal justice nor the law of war** - the two legal systems historically used to authorize and regulate most long-term detention of dangerous individuals - **offers effective and just solutions**. n49 The argument generally begins with the notion that **exclusive reliance on prosecution, along with its usual panoply of defendants' rights and strict rules of evidence, cannot effectively, expeditiously, or exhaustively remove the threat of dangerous terrorists**. n50 **The reasons for** [\*11] **this include: information used to identify terrorists and their plots includes extremely sensitive intelligence sources and methods, the disclosure of which during trial would under-mine or even negate counterterrorism operations; the conditions under which some suspected terrorists are captured, especially in faraway combat zones or ungoverned regions, make it impossible to prove criminal cases using normal evidentiary rules**; n51 **prosecution is designed to punish past conduct, but fighting terrorism requires stopping suspects before they act; and criminal justice is deliberately tilted in favor of defendants so that few if any innocents will be punished, but the higher stakes of terrorism cannot allow the same likelihood that some guilty persons will go free.** n52

***Court trials hamstring the executive—triggers the link***

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

**Empirically, *judicial demands on executive branch procedural compliance, if unchecked, become steadily more demanding over time.*** **The executive naturally responds by being more internally exacting to avoid problems.** Progressively, **executive compliance**, initially framed and understood as a reasonably modest set of burdens to promote the integrity of judicial proceedings, **becomes instead a consuming priority and expenditure, which, if permitted in the context of warfare, *would inevitably detract from the military mission that is the bedrock of our national security.*** *¶*In the fore here, plainly, are such matters as discovery and confrontation rights. **If the courts were given final authority, while hostilities are ongoing, to second-guess the executive’s decision to detain a combatant by scrutinizing reports** that summarize the basis for detention, **it is only a short leap to the court’s asking follow-up questions or determining that testimony**, perhaps subject to cross-examination, **is appropriate.** Are we to make combat personnel available for these proceedings? Shall we take them away from the battle we have sent them to fight so they can justify to the satisfaction of a judge the capture of an alien enemy combatant that has already been approved by military commanders? Given the fog and anxiety of war, shall we expect them to render events as we would an FBI agent describing the circumstances of a domestic arrest? ¶ Nor is that the end of the intractable national security problems. **What if capture was effected by our allies rather than our own forces** (as was the case, for example, with the jihadist who was the subject of the Hamdi case)? Shall we try to compel affidavits or testimony from members of, say, the Northern Alliance? **What kinds of *strains will be put on our essential wartime alliances* if they are freighted with requests to participate in American legal proceedings, and *possibly compromise intelligence methods and sources* – all for the purpose of providing heightened due process to the very terrorists who were making war on those allies? ¶** These are lines that Congress must draw. **Leaving them for the courts themselves to sort out would place us on a path toward *full-blown civilian trials for alien enemy combatants* – the very outcome the creation of a new system was intended to avoid.**

# 1NR

### 2NC Impact Overview

#### Disad outweighs

#### a. Faster – failure to raise the debt ceiling causes quick unraveling of the U.S. and global economy – collapse before November

Sahadi 9/10

Jeanne, “Debt ceiling 'X date' could hit Oct. 18”, <http://money.cnn.com/2013/09/10/news/economy/debt-ceiling-bills-coming-due/index.html>, MCR

A new analysis by a think tank shows that **Washington's drop-dead deadline for the debt ceiling could hit as soon as Oct. 18**.¶ Estimating exactly when the Treasury Department will be unable to pay all the bills coming due if Congress fails to raise the nation's legal borrowing limit is notoriously difficult.¶ That's why, in an analysis released Tuesday, the Bipartisan Policy Center put the "X date" between Oct. 18 and Nov. 5.¶ Treasury Secretary Jack Lew has warned that **by mid-October the agency will have only $50 billion in cash on top of incoming revenue.**¶That may sound like a lot. But, as the Bipartisan Policy Center details, **it won't last very long**.¶ If the "X" date turns out to be Oct. 18, Treasury would run about $106 billion short of the money it owes between then and Nov.15. That means it wouldn't be able to pay the equivalent of a third of all the bills due during that period.¶ Here's why: Treasury handles about 80 million payments a month. Those payments are not evenly spaced out so on some days more is owed than on others. And the revenue flowing into federal coffers is unpredictable and varies from day to day.¶ Payments include IRS refunds, Social Security and veterans benefits, Medicare reimbursements for doctors and hospitals, bond interest owed investors, payments to contractors and paychecks for federal workers and military personnel.¶ If Congress fails to act in time, Treasury will have to make difficult -- and legally questionable -- decisions about who should get paid and who should be stiffed. It may decide to pay some bills in full and on time and not others.¶ Or it may decide to delay all payments due on a given day until it has sufficient revenue on hand to pay in full. in a Treasury Inspector General's report that this might be the most plausible and least harmful approach.¶ But under that scenario, **delays would grow over time from a day or two to several weeks**. For example, the payments due to seniors, veterans and active duty military personnel on Nov. 1 wouldn't go out until Nov. 13.¶ In any case, the expectation is that the agency will try to prioritize payments to bond investors over everyone else, lest the financial markets go haywire. Politically, of course, that carries risk, said Steve Bell, the senior director of the Bipartisan Policy Center's economic policy project.¶ "There's a political danger you'll be accused of paying bondholders over Social Security recipients," Bell said.¶ On both Oct. 23 and Nov. 14, $12 billion in Social Security benefits come due, while another $25 billion comes due on Nov. 1, according to the analysis.¶ Meanwhile, on Oct. 24, Treasury will have to roll over $57 billion in outstanding debt and another $115 billion on Oct. 31. Normally that's not a problem, because U.S. Treasury auctions attract a lot of buyers willing to purchase bonds at low rates.¶ But if those rollover dates come after the "X" date, and **the perception is that the United States is defaulting on some of its obligations, Treasury could have trouble finding enough buyers or investors could demand higher interest rates**.¶ The debt ceiling is currently set at $16.7 trillion. That ceiling was reached on May 19, and ever since Treasury has been using a host of special measures to keep the country's borrowing at or below that ceiling. But those measures will be exhausted by mid-October, according to Treasury.¶ If lawmakers want to raise the ceiling enough to get past the 2014 midterm elections in November, the Bipartisan Policy Center estimates they will have to raise it by $1.1 trillion to $17.8 trillion. To top of page

#### b.) SCOPE – US economic decline triggers military withdrawal across the globe—causes a power vacuum and nuclear war—hegemony deters hostile powers and controls the escalation of all conflict—solves the impact to the aff—that’s our 1NC Impact

#### c.) TURNS CASE – debt default means the plan would be delayed or under-funded – fiat only means the plan passes

#### Their internal link is very long term --- they have to trickle over to Venezuela – itll take years to reform venezuelas court system --- but debt ceiling failure causes collapse before November

#### We control global impact uniqueness – Interdependence checks war. Plan undermines this crucial form of restraint.

Daniel **Griswold**, director of the Center for Trade Policy Studies, 4/20/**’7**, Trade, Democracy and Peace, p. http://www.freetrade.org/node/681

A second and even more potent way that trade has **promote**d **peace is by promoting** more **economic integration.** **As national economies become more intertwined with each other**, those **nations have** more to lose should war break out. War in a globalized world not only means human casualties and bigger government, but also **ruptured trade and investment ties that impose lasting damage on the economy.** In short, **globalization** has dramatically raised the economic cost of war.

#### Turns every country that would be affected by arms sales

**Kemp 10**

Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

#### Extinction

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The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. **The world economic situation weakens rather than strengthens**, and **India, China, and Japan suffer a major reduction in their growth rates**, further **weakening the global economy**. As a result, **energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That** in turn **leads to political unrest: and nurtures** different **radical groups**, **including**, but not limited to, **Islamic extremists**. The **internal stability** **of** some **countries is challenged**, and **there are more “failed states**.” Most serious is **the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly**. **Iran**, always worried about an extremist Pakistan, expands and **weaponizes its nuclear program. That** further **enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states.** Under these circumstances, **the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population**.

### Impact – Turns Terrorism

#### Economic collapse causes terrorism – increase recruitment too

Kevin J. Fandl 04, Adjunct Law Professor - Washington College of Law, ‘4 (19 Am. U. Int'l L. Rev. 587)

In his final speech in the United Kingdom as President of the United States, Bill Clinton stressed: "we have seen how abject poverty accelerates conflict, how it creates recruits for terrorists and those who incite ethnic and religious hatred, [and] how it fuels a violent rejection of the economic and social order on which our future depends." 50 His words carried more significance than he could have known at that moment. 51 The terrorist networks that have come about in recent history are a significant threat to world security not only because of the suicidal methods they employ, but also because of the status of the countries [\*598] where these networks recruit new members, engage in training exercises and where the leadership seeks refuge. These countries are not equipped politically or economically to design proactive plans to uproot such organizations in their own countries, despite their expressed efforts to do so. 52 They are developing countries with weak, or no, democratic political structure with which to coordinate such efforts. They do not have the resources that European countries, for instance, have in place to take preventative measures in order to sustain peace. 53 The George W. Bush Administration indicated that it "is aware of the link between desperate economic circumstances and terrorism." 54 Yet, rather than working to develop sustainable economies capable of both directly (through increased political pressure and rule of law programs) and indirectly (through increased employment opportunities and social stability) eradicating terrorism, President Bush has chosen to dedicate significant resources to a military conquest against the elusive concept of terrorism itself. 55 Many Americans and, to a much lesser extent, other Western citizens, support the view that terrorism can be fought with tanks and [\*599] bombs. 56 They obstinately believe that military technology is capable of uncovering each potentially threatening terrorist cell and keeping the West safe. 57 This conventional method of warfare, while effective in pinpointing targets in complete darkness, will be useless in eliminating the ideology that fuels terrorism. Terrorists are non-conventional actors using non-conventional means through amorphous concepts that cannot be identified, contained, or labeled. These are actors whose most potent weapon is the communication of ideas among masses of people awaiting an opportunity for a better life. Many of us watch in excited anticipation for Osama bin Laden's capture and/or death. However, we should rest assured that whether he is still alive will have no bearing on the control that his ideas, and the ideas of those like him, have on the impoverished and desperate in the Middle East, South Asia, and perhaps beyond. No military technology will be able to destroy the prevalence and furtherance of those ideas. 58

### Uniqueness Wall 2NC

#### Their ev misses the boat --- Obama won’t negotiate is our UQ arg --- he has enough PC that he doesn’t have to negotiate --- the GOP will feel pressed to raise the debt ceiling --- the plan is a major loss for Obama, which causes him to look weak --- forces negotiation because republicans wont cave to a weak Obama -- that’s chait, parsons, and Giroux

#### Debt Ceiling bill will pass but it will be close

Rubin, 9/19/13 (Jennifer, “Steady as they go in the House,” http://www.washingtonpost.com/blogs/right-turn/wp/2013/09/19/steady-as-they-go-in-the-house/, bgm)

The reports from House Republicans who attended Wednesday’s conference meeting were cautiously optimistic about the battles over a continuing resolution, debt and Obamacare that lie ahead. The simplistic media narrative, that the leadership is losing to the crazies, simply isn’t true.

One insider told Right Turn, “The conference really was more unified than I’ve seen it in a while.” The shape of the deal is far from certain, but the mood in the room gave leadership confidence that the House would hold together. “We’ll figure something out, ” the insider said cheerfully.

In public remarks, House Speaker John Boehner (Ohio) let it be known that the real action would be on the debt ceiling. (“For decades, congresses and presidents have used the debt limit for legislation to cut spending, and even President Obama worked with us two years ago in the debt-limit negotiations to put controls on spending. This year is not going to be any different.”)

#### Debt ceiling is at the top of the agenda

Moran, 9/18/13 (Andrew, “Dollar collapse inevitable as CBO warns of unsustainable debt levels,” http://economiccollapsenews.com/2013/09/18/dollar-collapse-inevitable-as-cbo-warns-of-unsustainable-debt-levels/, bgm)

The United States national debt has taken a backseat over the past couple of months due to the potential war with Syria. Over the next few weeks, though, it is expected that the federal debt and budget deficit will capture headlines again because of the looming debt ceiling fight between President Obama and Republican lawmakers. At the present time, the U.S. faces a $17 trillion national debt and a near $1 trillion budget deficit. The Congressional Budget Office (CBO) published a report Tuesday that warned the U.S. public debt could account for more than 100 percent of the country’s economic output within the next 25 years unless action is taken.

#### GOP will cave on negotiations now

The AP 9-18-13, House Republicans push new plan to defund ‘Obamacare’ without causing default , <http://www.nydailynews.com/news/politics/house-republicans-push-new-plan-defund-obamacare-causing-default-article-1.1460191>, KEL

Republicans paid a heavy political price two decades ago as the result of twin government shutdowns, at a time then-Speaker Newt Gingrich was insisting President Bill Clinton agree to cuts in Medicare, Medicaid and other popular programs. Nor are Republicans eager to shoulder the blame for any market-shaking government default, which would probably occur if the Treasury could not continue to borrow funds to pay debts already incurred. Treasury Secretary Jack Lew has estimated that without action by Congress, that default will arrive in mid-October.

#### \*\*\*dem’s united behind Obama – GOP divided and failing now

JONATHAN ALLEN, 9/19/13,GOP battles boost President Obama, Politico, <http://www.politico.com/story/2013/09/republicans-budget-obama-97093.html?hp=r8>, KEL

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other. And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve. If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit. For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal. Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.). Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect. The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law.

#### BACK TO FLOW

### A2: Obama doesn’t get the blame

#### This arg makes no sense --- the court rules against one of Obama’s war powers --- contrains the president and makes him look weak – that tanks pc

### A2: courts shield

#### No – their court ruling makes him look weak –

**Empirically – Court detention cases caused a Congressional backlash**

**Abramowitz and Weisman 6** – Washington Post Staff Writers (6/1/06, Michael and Jonathan, The Washington Post, “GOP Seeks Advantage In Ruling On Trials”, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/30/AR2006063001737.html>) AC

**Republicans** yesterday **looked to wrest a political victory from a legal defeat in the Supreme Court, serving notice to Democrats that they must back President Bush on how to try suspects at Guantanamo Bay or risk being branded as weak on terrorism.**

**In striking down the military commissions** Bush sought for trials of suspected members of al-Qaeda and other terrorist groups, **the high court Thursday invited Congress to establish new rules and put the issue prominently before the public** four months before the midterm elections. As the White House and lawmakers weighed next steps, **House GOP leaders signaled they are ready to use this week's turn of events as a political weapon**.

House Majority Leader John A. **Boehner** (R-Ohio) **criticized** House Minority Leader Nancy **Pelosi's comment Thursday that the court decision "affirms the American ideal that all are entitled to the basic guarantees of our justice system**." Th**at statement, Boehner said, amounted to** Pelosi's **advocating "special privileges for terrorists**."

Similar views ricocheted around conservative talk radio -- Rush Limbaugh called Pelosi's comments "deranged" on his show Thursday -- and **Republican strategists said they believed that the decision presented Bush a chance to put Democrats on the spot while uniting a Republican coalition** that lately has been splintered on immigration, spending and other issues.

"**It would be good politics to have a debate about this if Democrats are going to argue for additional rights for terrorists,"** said Terry Nelson, a prominent GOP political strategist who was political director for Bush's reelection campaign in 2004.

#### Shielding arguments don’t apply—1nc Parsons and Moore are on point

#### Reducing war powers will end Obama’s credibility with Congress – it causes stronger GOP pushback on the debt ceiling – and the fight alone will wreck markets

**Seeking Alpha, 9/10/13** (“Syria Could Upend Debt Ceiling Fight”, <http://seekingalpha.com/article/1684082-syria-could-upend-debt-ceiling-fight>)

Unless President Obama can totally change a reluctant public's perception of another Middle-Eastern conflict, it seems unlikely that he can get 218 votes in the House, though he can probably still squeak out 60 votes in the Senate. This defeat would be totally unprecedented as a President has never lost a military authorization vote in American history. To forbid the Commander-in-Chief of his primary power renders him all but impotent. At this point, a rebuff from the House is a 67%-75% probability.

I reach this probability by looking within the whip count. I assume the 164 declared "no" votes will stay in the "no" column. To get to 218, Obama needs to win over 193 of the 244 undecided, a gargantuan task. Within the "no" column, there are 137 Republicans. Under a best case scenario, Boehner could corral 50 "yes" votes, which would require Obama to pick up 168 of the 200 Democrats, 84%. Many of these Democrats rode to power because of their opposition to Iraq, which makes it difficult for them to support military conflict. The only way to generate near unanimity among the undecided Democrats is if they choose to support the President (recognizing the political ramifications of a defeat) despite personal misgivings. The idea that all undecided Democrats can be convinced of this argument is relatively slim, especially as there are few votes to lose. In the best case scenario, the House could reach 223-225 votes, barely enough to get it through. Under the worst case, there are only 150 votes. Given the lopsided nature of the breakdown, the chance of House passage is about one in four.

While a failure in the House would put action against Syria in limbo, I have felt that the market has overstated the impact of a strike there, which would be limited in nature. Rather, investors should focus on the profound ripple through the power structure in Washington, which would greatly impact impending battles over spending and the debt ceiling.

Currently, the government loses spending authority on September 30 while it hits the debt ceiling by the middle of October. Markets have generally felt that Washington will once again strike a last-minute deal and avert total catastrophe. Failure in the Syrian vote could change this. For the Republicans to beat Obama on a President's strength (foreign military action), they will likely be emboldened that they can beat him on domestic spending issues.

Until now, consensus has been that the two sides would compromise to fund the government at sequester levels while passing a $1 trillion stand-alone debt ceiling increase. However, the right wing of Boehner's caucus has been pushing for more, including another $1 trillion in spending cuts, defunding of Obamacare, and a one year delay of the individual mandate. Already, Conservative PACs have begun airing advertisements, urging a debt ceiling fight over Obamacare. With the President rendered hapless on Syria, they will become even more vocal about their hardline resolution, setting us up for a showdown that will rival 2011's debt ceiling fight.

I currently believe the two sides will pass a short-term continuing resolution to keep the government open, and then the GOP will wage a massive fight over the debt ceiling. While Obama will be weakened, he will be unwilling to undermine his major achievement, his healthcare law. In all likelihood, both sides will dig in their respective trenches, unwilling to strike a deal, essentially in a game of chicken. If the House blocks Syrian action, it will take America as close to a default as it did in 2011. Based on the market action then, we can expect massive volatility in the final days of the showdown with the Dow falling 500 points in one session in 2011.

As markets panicked over the potential for a U.S. default, we saw a massive risk-off trade, moving from equities into Treasuries. I think there is a significant chance we see something similar this late September into October. The Syrian vote has major implications on the power of Obama and the far-right when it comes to their willingness to fight over the debt ceiling. If the Syrian resolution fails, the debt ceiling fight will be even worse, which will send equities lower by upwards of 10%. Investors must be prepared for this "black swan" event.

Looking back to August 2011, stocks that performed the best were dividend paying, less-cyclical companies like Verizon (VZ), Wal-Mart (WMT), Coca-Cola (KO) and McDonald's (MCD) while high beta names like Netflix (NFLX) and Boeing (BA) were crushed. Investors also flocked into treasuries despite default risk while dumping lower quality bonds as spreads widened. The flight to safety helped treasuries despite U.S. government issues. I think we are likely to see a similar move this time.

Assuming there is a Syrian "no" vote, I would begin to roll back my long exposure in the stock market and reallocate funds into treasuries as I believe yields could drop back towards 2.50%. Within the stock market, I think the less-cyclical names should outperform, making utilities and consumer staples more attractive. For more tactical traders, I would consider buying puts against the S&P 500 and look toward shorting higher-beta and defense stocks like Boeing and Lockheed Martin (LMT). I also think lower quality bonds would suffer as spreads widen, making funds like JNK vulnerable. Conversely, gold (GLD) should benefit from the fear trade.

I would also like to address the potential that Congress does not vote down the Syrian resolution. First, news has broken that Russia has proposed Syria turn over its chemical stockpile. If Syria were to agree (Syria said it was willing to consider), the U.S. would not have to strike, canceling the congressional vote. The proposal can be found here. I strongly believe this is a delaying tactic rather than a serious effort. In 2005, Libya began to turn over chemical weapons; it has yet to complete the hand-off. Removing and destroying chemical weapons is an exceptionally challenging and dangerous task that would take years, not weeks, making this deal seem unrealistic, especially because a cease-fire would be required around all chemical facilities. The idea that a cease-fire could be maintained for months, essentially allowing Assad to stay in office, is hard to take seriously. I believe this is a delaying tactic, and Congress will have to vote within the next two weeks.

The final possibility is that Democrats back their President and barely ram the Syria resolution through. I think the extreme risk of a full-blown debt stand-off to dissipate. However, Boehner has promised a strong fight over the debt limit that the market has largely ignored. I do believe the fight would still be worse than the market anticipates but not outright disastrous. As such, I would not initiate short positions, but I would trim some longs and move into less cyclical stocks as the risk would still be the debt ceiling fight leading to some drama not no drama.

Remember, in politics everything is connected. Syria is not a stand-alone issue. Its resolution will impact the power structure in Washington. A failed vote in Congress is likely to make the debt ceiling fight even worse, spooking markets, and threatening default on U.S. obligations unless another last minute deal can be struck.

**A2: Not Announced Till June**

***--Kills ground – it makes the aff a moving target and removes uniqueness considerations from DA evaluation.***

***“Should” is immediate and mandatory.***

**SUMMER ‘94** (Justice, Oklahoma City Supreme Court, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CIteID= 20287#marker3fn14)

**The legal question to be resolved by the court is whether the word “should”** 13 in the May 18 order **connotes futurity or may be deemed a ruling in praesenti.**14 The answer to this query is not to be divined from rules of grammar;15 it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, “and the same hereby is”,(1) makes it an in futuro ruling – i.e., an expression of what the judge will or would do at a later stage – or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge’s intent must be garnered from the four corners of the entire record.16 Nisi prius orders should be so construed as to give effect to every words and ever part of the text, with a view to carrying out the evident intent of the judge’s direction. 17 The order’s language ought not to be considered abstractly. The actual meaning intended by the document’s signatory should be derived from the context in which the phrase to be interpreted is used. 18 When applied to the May 18 memorial, these told **canons impel my conclusion that the judge doubtless intended his ruling as an in praesenti resolution** of Dollarsaver’s quest for judgment n.o.v. Approval of all counsel plainly appears on the face of the critical May 18 entry which is [885 P.2d 1358] signed by the judge. 19 True minutes20 of a court neither call for nor bear the approval of the parties’ counsel nor the judge’s signature. To reject out of hand the view that in this context “should” is impliedly followed by the customary, “and the same hereby is”, makes the court once again revert to medieval notions of ritualistic formalism now so thoroughly condemned in national jurisprudence and long abandoned by the statutory policy of this State. IV Conclusion Nisi prius judgments and orders should be construed in the manner which gives effect and meaning to the complete substance of the memorial. When a judge-signed direction is capable of two interpretations, one of which would make it a valid part of the record proper and the other would render it a meaningless exercise in futility, the adoption of the former interpretation is this court’s due. A rule – that on direct appeal views as fatal to the order’s efficacy the mere omission from the journal entry of a long and customarily implied phrase, i.e., “and the same hereby is” – is soon likely to drift into the body of principles which govern the facial validity of judgments. This development would make judicial acts acutely vulnerable to collateral attack for the most trivial reasons and tend to undermine the stability of titles or other adjudicated rights. It is obvious the trial judge intended his May 18 memorial to be an in praesenti order overruling Dollarsaver’s motion for judgment n.o.v. It is hence that memorial, and not the later June 2 entry, which triggered appeal time in this case. Because the petition in errir was not filed within 20 days of May 18, the appeal it untimely. I would hence sustain the appellee’s motion to dismiss.21 Footnotes: 1 The pertinent terms of the memorial of May 18, 1993 are: IN THE DISTRICT COURT OF BRYAN COUNTRY, STATE OF OKLAHOMA COURT MINUTE /18/93 No. C-91-223 After having heard and considered arguments of counsel in support of and in opposition to the motions of the Defendant for judgement N.O.V. and a new trial, the Court finds that the motions should be overruled. Approved as to form: /s/ Ken Rainbolt /s/ Austin R. Deaton, Jr. /s/ Don Michael Haggerty /s/ Rocky L. Powers Judge 2 The turgid phrase – “should be and the same hereby is” – is a tautological absurdity. This is so because **“should” is synonymous with ought or must and is in itself sufficient to effect an inpraesenti ruling** – one that is couched in “a present indicative synonymous with ought.” See infra note 15.3 Carter v. Carter, Okl., 783 P.2d 969, 970 (1989); Horizons, Inc. v. Keo Leasing Co., Okl., 681 P.2d 757, 759 (1984); Amarex, Inc. v. Baker, Okl., 655 P.2d 1040, 1043 (1983); Knell v. Burnes, Okl., 645 P.2d 471, 473 (1982); Prock v. District Court of Pittsburgh County, Okl., 630 P.2d 772, 775 (1981); Harry v. Hertzler, 185 Okl., 151, P.2d 656, 659 (1939); Ginn v. Knight, 106 Okl. 4, 232 P. 936, 937 (1925). 4 “Recordable” means that by force of 12 O.S. 1991 24 an instrument meeting that section’s criteria must be entered on or “recorded” in the court’s journal. The clerk may “enter” only that which in “on file.” The pertinent terms of 12 O.S. 1991 24 are: “Upon the journal record required to be kept by the clerk of the district court in civil cases…shall be termed copies of the following instruments on file” 1. All items of process by which the court acquired jurisdiction of the person of each defendant in the case; and 2. All instruments filed in the case that bear the signature of the end judge and specify clearly the relief granted or order made.” [Emphasis added.] 5 See 12 O.S. 1991 1116 which states in pertinent part: “Every direction of a court of judge made or entered in writing, and not included in a judgment is an order.” [Emphasis added.] 6 The pertinent terms of 12 O.S. 1993 696 3, effective October 1, 1993, are: “A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain: 1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument; 2. A statement of the disposition of the action, proceeding, or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties; 3. The signature and title of the court;…”7 The court holds that the May 18 memorial’s recital that “the Court finds that the motions should be overruled” is a “finding” and not a ruling. In its pure form, a finding is generally not effective as an order or judgment. See, e.g., Tillman v. Tillman, 199 Okl. 130, 184 P.2d 784 (1947), cited in the court’s opinion. 8 When ruling upon a motion for judgment n.o.v. the court must take into account all the evidence favorable to the party against whom the motion is directed and disregard all conflicting evidence favorable to the movant. If the court should concluded that the motion is sustainable, it must hold, as a matter of law, that there is an entire absence of proof tending to show a right to recover. See Austin v. Wilkerson, Inc., Okl., 519 P.2d 899, 903 (1974). 9 See Bullard v. Grisham Const. Co., Okl., 660 P.2d 1045, 1047 (1983), where this court reviewed a trial judge’s “findings of fact”, perceived as a basis for his ruling on a motion for judgment in n.o.v. (in the face of a defendant’s reliance on plaintiff’s contributory negligence). These judicial findings were held impermissible as an invasion of the providence of the jury proscribed by OKLA. CONST. ART, 23 6 Id. At 1048. 10 Everyday courthouse parlance does not always distinguish between a judge’s “finding”, which denotes nisi prius resolution of face issues, and “ruling” or “conclusion of law”. The latter resolves disputed issues of law. In practice usage members of the bench and bar often confuse what the judge “finds” with what the official “concludes”, i.e., resolves as a legal matter. 11 See Fowler v. Thomsen, 68 Neb. 578, 94 N.W. 810, 811-12 (1903), where the court determined a ruling that “[1] find from the bill of particulars that there is due the plantiff the sum of…” was a judgment and not a finding. In reaching its conclusion the court reasoned that “[e]ffect must be given to the entire in the docket according to the manifest intention of the justice in making them.” Id., 94 N.W. at 811. 12 When the language of a judgment is susceptible of two interpretations, that which makes it correct and valid is preferred to one that would render it erroneous. Hale v. Independent Powder Co., 46 Okl. 135, 148 P. 715, 716 (1915); Sharp v. McColm, 79 Kan. 772, 101 P. 659, 662 (1909); Clay v. Hildebrand, 34 Kan. 694, 9 P. 466, 470 (1886); see also 1 A.C. FREEMAN LAW OF JUDGMENTS 76 (5th ed. 1925). 13 “Should” not only is used as a “present indicative” synonymous with ought but also is the past tense of “shall” with various shades of meaning not always to analyze. See 57 C.J. Shall 9, Judgments 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143,144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain **contexts mandate a construction of the term “should” as more than merely indicating preference or desirability.** Brown, supra at 1080-1081 (jury instructions stating that jurors **“should”** reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff **was held to imply an obligation and to be more than advisory**; Carrrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party “should devote a section of the brief to the request for the fee and expenses” was interpreted to mean that a party under an obligation to included the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) (“should” would mean the same as “shall” or “must” when used in an instruction to the jury which tells the triers they “should disregard false testimony”). 14 **In praesenti means literally “at the present time.”** BLACK’S LAW DICTIONARY 792 (6th Ed. 1990). **In legal parlance the phrase denotes that which in law is presently or immediately effective, as opposed to something that will or would become effective in the future** [in futurol]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

***Substantial requires that the increase be definite and immediate***

**Words and Phrases 64**, (40 W&P 759)

The words “outward, open, actual, visible, **substantial**, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed, not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which no merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; **certain; absolute**; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admiring, or pertaining to any others; undivided; sole; opposed to inclusive.

***Totally leaks***

James Q. **Wilson**, **and** John J. **Dilulio**, **UCLA and Princeton political science professors** (respectively),19**98**

[American Government: Institutions and Policies, p. 291]

American government is the leakiest in the world. The bureaucracy, members of Congress, and the White House staff regularly leak stories favorable to their interests. Of late the leaks have become geysers, gushing forth torrents of insider stories. Many people in and out of government find it depressing that our government seems unable to keep anything secret for long. Others think that the public has a right to know even more and that there are still too many secrets. However you view leaks, you should understand why we have so many. The answeris found in the Constitution. Because we have separate institutions that must share power, **each branch** of government competes with the others to get power. One way to compete is to try to use the press **to advance your pet projects** **and** to make the side look bad. There are far fewer leaks in other democratic nations in party because power is centralized in the hands of a prime minister, who does not need to leak in order to get the upper hand over the legislature, and because the legislature has too little information to be a good source of leaks. In addition, we have no Official Secrets Act Of the kind that exists in England; except for a few matters, it is not against the law for the press to receive and print government secrets.

***They’re factually wrong --- Court decisions are frequently released before June --- if we win it’s POSSIBLE for Courts to announce before June you should err neg and force them to defend immediacy to preserve neg ground***

June is a deadline for court decisions --- they can and often are released earlier. There is no rule saying it must be June

**US Courts.gov, no date** – U.S. SUPREME COURT PROCEDURES, <http://www.uscourts.gov/EducationalResources/ConstitutionResources/SeparationOfPowers/USSupremeCourtProcedures.aspx>, jj

All **opinions of the Court are, typically, handed down by the last day of the Court's term** (the day in late **June**/early July when the Court recesses for the summer). With the exception of this deadline, ***there are no rules concerning when decisions must be released***. **Typically, decisions** that are unanimous **are released sooner** than those that have concurring and dissenting opinions. While ***some*** unanimous ***decisions are handed down as early as December***, some controversial opinions, even if heard in October, may not be handed down until the last day of the term.

***They can be released as early as October***

**Answers.com, no date** – When does the US Supreme Court announce decisions? <http://wiki.answers.com/Q/When_does_the_US_Supreme_Court_announce_decisions>, jj

**The US Supreme Court releases opinions on Tuesday and Wednesday mornings**, and on the third Monday of each sitting. The public is usually alerted a few days prior to an opinion being released, but the specific case name and docket number are kept secret until the formal announcement. ***This practice may begin as early as October*** of the new Term and typically ends in late June or early July of the following year.

### A2: no link – O won’t push

#### That’s not the link --- the point is his war powers getting restricted is a loss --- that makes him look bad which tanks his political capital – means he cant hold the line on negotiations

#### Plan’s a giant loss – Obama won’t let Congress restrict his power without a fight – plan passes over his veto

Howard Fineman 9/14, is editorial director of the Huffington Post Media Group. Huffington Post, Tim Kaine's Bold New War Proposal For Obama, <http://www.huffingtonpost.com/2013/09/14/tim-kaine-obama_n_3923450.html>, jj

Conventional wisdom and history hold that presidents never willingly cede an angstrom of their power to wage war, which is grounded in their role as commander in chief. The corollary is that they'll veto any efforts to limit such power -- which is what even the embattled Richard Nixon did in 1973.

***Kills the agenda – Losers Lose***

Dr. Andrew J. **Loomis** 20**07** is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

American political analystNorman **Ornstein writes of the domestic context**, In a system **where a President has limited formal power, perception matters. The reputation for success**—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—**is the most valuable resource a chief executive can have**. **Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms**, winners win and **losers lose more often than not. *Failure begets failure***. In short, a **president experiencing declining amounts of political capital has diminished capacity to advance his goals.** As a result, **political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence**—and thus their prospects for enjoying success in pursuing preferred foreign policies—**go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.**

### A2: McConnell

#### No ev that the primary next year effects his decisions now --- McConnell will prob look worse if the econ collapses

#### Also doesn’t say a clean bill won’t pass, just that its difficult --- Obamas looking strong is key --- it forces repulicans to cave – that was above

### A2: plan is stealth

#### Gut check --- there’s zero risk that a ruling ending indefinite detention won’t be noticed

#### Courts link to politics

Hamilton, JD Candidate, Stanford Law School, 12

(Eric, “Politicizing the Supreme Court,” 8-30-12, http://www.stanfordlawreview.org/online/politicizing-supreme-court)

To state the obvious, Americans do not trust the federal government, and that includes the Supreme Court. Americans believe politics played “too great a role” in the recent health care cases by a greater than two-to-one margin.[1] Only thirty-seven percent of Americans express more than some confidence in the Supreme Court.[2] Academics continue to debate how much politics actually influences the Court, but Americans are excessively skeptical. They do not know that almost half of the cases this Term were decided unanimously, and the Justices’ voting pattern split by the political party of the president to whom they owe their appointment in fewer than seven percent of cases.[3] Why the mistrust? When the Court is front-page, above-the-fold news after the rare landmark decision or during infrequent U.S. Senate confirmation proceedings, political rhetoric from the President and Congress drowns out the Court. Public perceptions of the Court are shaped by politicians’ arguments “for” or “against” the ruling or the nominee, which usually fall along partisan lines and sometimes are based on misleading premises that ignore the Court’s special, nonpolitical responsibilities.

#### Court decisions are heavily politicized, will trigger a Congressional backlash

Calabresi, 2008

[Massimo, TIME, 6-26, “Obama's Supreme Move to the Center Washington” Thursday, http://www.time.com/time/politics/article/0,8599,1818334,00.html]

When the Supreme Court issues rulings on hot-button issues like gun control and the death penalty in the middle of a presidential campaign, Republicans could be excused for thinking they'll have the perfect opportunity to paint their Democratic opponent as an out-of-touch social liberal. But while Barack Obama may be ranked as one of the Senate's most liberal members, his reactions to this week's controversial court decisions showed yet again how he is carefully moving to the center ahead of the fall campaign. On Wednesday, after the Supreme Court ruled that the death penalty was unconstitutional in cases of child rape, Obama surprised some observers by siding with the hardline minority of Justices Scalia, Thomas, Roberts and Alito. At a press conference after the decision, Obama said, "I think that the rape of a small child, six or eight years old, is a heinous crime and if a state makes a decision that under narrow, limited, well-defined circumstances the death penalty is at least potentially applicable, that that does not violate our Constitution." Then Thursday, after Justice Scalia released his majority opinion knocking down the city of Washington's ban on handguns, Obama said in a statement, "I have always believed that the Second Amendment protects the right of individuals to bear arms, but I also identify with the need for crime-ravaged communities to save their children from the violence that plagues our streets through common-sense, effective safety measures. The Supreme Court has now endorsed that view." John McCain's camp wasted no time in attacking, with one surrogate, conservative Senator Sam Brownback of Kansas, calling Obama's gun control statement "incredible flip-flopping." McCain advisor Randy Scheunemann was even tougher in a conference call Thursday. "What's becoming clear in this campaign," Scheunemann said, is "that for Senator Obama the most important issue in the election is the political fortunes of Senator Obama. He has demonstrated that there really is no position he holds that isn't negotiable or isn't subject to change depending on how he calculates it will affect his political fortunes."maked Politicians are always happy to get a chance to accuse opponents of flip-flopping, but McCain's team may be more afraid of Obama's shift to the center than their words betray. Obama has some centrist positions to highlight in the general election campaign on foreign policy and national security, social issues and economics. His position on the child rape death penalty case, for example, is in line with his record in Illinois of supporting the death penalty. He is on less solid ground on the gun ban as his campaign said during the primary that he believed the D.C. law was constitutional. A top legal adviser to Obama says both cases are consistent with his previous positions. "I don't see him as moving in his statements on the death penalty or the gun case," says Cass Sunstein, a former colleague of Obama's at the University of Chicago. Sunstein says Obama is "not easily characterized" on social issues, and says the Senator's support for allowing government use of the Ten Commandments in public, in some cases, is another example of his unpredictability on such issues. On the issue of gun control, he says Obama has always expressed a belief that the Second Amendment guarantees a private right to bear arms, as the court found Thursday. But Obama's sudden social centrism would sound more convincing in a different context. Since he wrapped up the primary earlier this month and began to concentrate on the independent and moderate swing voters so key in a general election, Obama has consistently moved to the middle. He hired centrist economist Jason Furman, known for defending the benefits of globalization and private Social Security accounts, to the displeasure of liberal economists. On Father's Day, Obama gave a speech about the problem of absentee fathers and the negative effects it has on society, in particular scolding some fathers for failing to "realize that what makes you a man is not the ability to have a child — it's the courage to raise one." Last week, after the House passed a compromise bill on domestic spying that enraged liberals and civil libertarians, Obama announced that though he was against other eavesdropping compromises in the past, this time he was going to vote for it. Whether Obama's new centrist sheen is the result of flip-flopping or reemphasizing moderate positions, the Supreme Court decisions have focused attention again on the role of the court in the campaign season. McCain himself is vulnerable to charges of using the Supreme Court for political purposes. Earlier this month, when the court granted habeas corpus rights to accused terrorist prisoners at Guantanamo Bay, McCain attacked the opinion in particularly harsh language, though advisers say closing the prison there is high on his list of actions to rehabilitate America's image around the world. Liberals are hoping that despite Obama's moderate response to the Supreme Court decisions, the issues alone will rally supporters to him. "What both of these decisions say to me is that the Supreme Court really is an election-year issue," says Kathryn Kolbert, president of People For the American Way. "We're still only one justice away from a range of really negative decisions that would take away rights that most Americans take for granted," she says. And Obama's run to the center surely won't stop conservatives from using the specter of a Democratic-appointed Supreme Court to try to rally support. "Its pretty clear that if he's elected and Justice Scalia or Kennedy retires that he's going to appoint someone who's very likely to reverse [the gun control decision]," says Eugene Volokh, a professor at the UCLA School of Law. Given how Obama has been responding to the recent Supreme Court decisions, however, you're not likely to hear him talking about appointing liberal justices much between now and November.

### A2: making controversial deciions now

#### This card is talking about things like the next affirmative action case --- no reason that hurts Obama --- this ev also doesn’t say the cases are going to be announced anytime soon --- they haven’t even heard oral args on the cases they cite

### A2: he wont negotiate

#### That’s our PC arg --- I exaplined aboe

### A2: tea party

#### This ev is answered by the slew of uq ev I read above about how the GOP will cave to a clean bill --- this ev is from 2 weeks ago --- prefer newer ev because political climate constantly changing

### A2: debt ceiling no collapse

#### Answered in the overview --- collapse happens quick

#### protracted fight is economic sabotage – collapse growth, markets and confidence.

Johnson, 9/4/13 - Campaign for America's Future (Dave, “Fresh Hell When Congress Returns”, <http://truth-out.org/opinion/item/18597-fresh-hell-when-congress-returns>

There are two different levels of economic damage from a debt-ceiling fight. First there is the cost of the fight itself, as the world worries over whether Republicans would actually pull the trigger. The fact that they would talk about this at all causes considerable damage to growth and confidence. But the other level of damage – far more serious – comes if they actually do it. If the U.S. defaulted, the consequences to the country’s and world’s economic system are literally unimaginable. In January, The Washington Post looked at reports of the economic damage caused by the last debt-ceiling fight – the one that led to the economic damage of the “sequester.” The Post report summarized: The protracted, unsettling nature of the negotiations between the White House and Republicans dramatically slowed the recovery, economists conclude, looking back at the episode. Consumer confidence collapsed, reaching its worst level since the depths of the financial crisis. Hiring stalled, with the private sector creating jobs at its slowest pace since the economy exited the recession. The stock market plunged, sending the Standard & Poor’s 500-stock index down more than 10 percent. In the last debt-ceiling hostage battle, the government spent an extra $1.3 billion to borrow because of lender uncertainty over whether they would be paid back, according to the Government Accounting Office (GAO). Following the battle the Standard & Poor’s credit agency “downgraded” the U.S. credit rating, saying that any country that would even discuss default does not deserve the top rating. On top of that, the 10-year cost of higher interest rates from that fight is $18.9 billion. The unemployment rate increased as job growth was cut in half by the fight. Consumer confidence plunged “more than it did following the collapse of Lehman Brothers Holdings Inc. in 2008.” The consequences of actually letting the country default would begin with a panic in the stock market. And there would likely be a “run” on money markets, because the safety of the U.S. dollar is the foundation of the entire financial system. Next, many of the things the U.S. government must pay for would not be paid for. Because raising the debt ceiling is about allowing the government to get the money to pay for the things Congress has already spent money on, existing invoices would not be paid. So the government would default on paying for contracts, hospitals and doctors who had already performed services, fuel purchases, everything right up to payments to Social Security recipients and people trying to redeem their government bonds. The government would have to prioritize who to pay based on what is coming in from tax receipts, fees and market transactions, which would all drop dramatically as the world’s economy exploded. In any event, the government doesn’t have the computer systems in place to prioritize payments, and wouldn’t have the time or funds to get those running. There would be a dramatic rise in interest rates for borrowing. The United States would no longer be a “safe” borrower, so the price of loans – the interest rate – would go up. That would ripple out to the price of a loan to a business, a mortgage, a car loan and everything else that Americans finance. No matter how fast a default of the country was resolved, the shock to the confidence of the entire economic system would not go away. If the United States was no longer a “safe haven,” then a restructuring of the world’s core understanding of debt and repayment would follow. With the effect of the last fight now understood, any new fight has to be seen for what it is: “economic sabotage.”

#### Delay risks economic collapse

**Puzzanghera, 9/18/13** (Jim, “Delay in raising debt limit risky, Lew says” Los Angeles Times, lexis)

As the nation fast approaches its debt limit, Treasury Secretary Jacob J. Lew issued his strongest warning yet to Congress about the economic consequences of waiting until just before the deadline to pass an increase.

"Trying to time a debt-limit increase to the last minute could be very dangerous," Lew told the Economic Club of Washington on Tuesday. "We cannot afford for Congress to gamble with the full faith and credit of the United States of America."

Republicans are balking at raising the $16.7-trillion debt limit, which Congress must do by as early as mid-October, unless the Obama administration agrees to major concessions including deep spending cuts and a delay in implementing the healthcare reform law.

During a meeting last week, House Speaker John A. Boehner (R-Ohio) gave Lew a list of times in the past when the White House and Congress used the need to raise the debt limit as a way to find bipartisan solutions on fiscal issues, Boehner's office said.

Boehner has said that any increase in the debt limit must be offset by budget cuts or spending reforms at least as large as the increase.

But Lew reiterated Tuesday that President Obama would not negotiate over raising the debt limit because it involves paying for bills already authorized by Congress and because the notion of a federal government default should not be a bargaining chip.

Lew specifically ruled out a delay in the healthcare law, the Affordable Care Act, a move being pushed by some House conservatives.

"That's just not reality, and they're going to have to start dealing in reality," he said.

But as the Treasury runs out of the accounting maneuvers it has used since the spring to continue borrowing to pay the nation's bills, Lew said lawmakers needed to act.

Since the U.S. technically reached its debt limit in the spring, the Treasury has been using so-called extraordinary measures, such as suspending investments in some federal pension funds, to juggle the nation's finances to pay bills. Those measures will be exhausted by the middle of October.

Lew noted that Washington politicians like to wait until they are up against a deadline to act, as they often do with spending bills and did last year with the so-called fiscal cliff, the combination of automatic tax increases and government spending cuts.

But the debt limit is different, Lew said, because of the complexity of identifying an exact date when the nation would run out of borrowing authority -- and because of the consequences of a first-ever federal government default.

Lew said a default would be "a self-inflicted wound that can do harm to our economy right at a moment when the recovery is strengthening."

A bitter battle over the debt limit in 2011, resolved at the last minute, raised fears of a first-ever U.S. government default. The lengthy standoff led Standard & Poor's to downgrade the nation's credit rating for the first time and triggered financial market turmoil along with a deep drop in consumer confidence.

"Some in Congress seem to think they can keep us from failing to pay our nation's bills by simply raising the debt ceiling right before the moment our cash balance is depleted," Lew said. Such a view is misguided, he said.

The Treasury Department doesn't know with precision the exact day that it won't have enough incoming cash to make all the required outgoing payments once it runs out of borrowing authority.

Lew formally told Congress last month that the Treasury would run out of borrowing authority in mid-October. At that point, the government would be able to pay bills only with cash on hand of about $50 billion on any given day.

An analysis released last week by the Bipartisan Policy Center, which also cited the difficulty of pegging an exact date, estimated that the U.S. would run out of borrowing authority between Oct. 18 and Nov. 5.

The vagaries of the debt-limit issue mean that Congress must act sooner rather than later, Lew said.

"I'm nervous about the desire to drive this to the last minute when the last minute is inherently unknowable and the risk of making a mistake could be catastrophic," he said.