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## 1

#### The Executive Branch of the United States should establish an intra-executive National Security Court with sole jurisdiction over cases pursuant to Section 1021 of the National Defense Authorization Act for Fiscal Year 2012.

#### Executive Order 13563 enables review of executive branch agencies-including those relevant to National Security

DHS 2011

[Department of Homeland Security, May 18, 2011, Preliminary Plan for Retrospective Review of Existing Regulations, <http://www.whitehouse.gov/files/documents/2011-regulatory-action-plans/DepartmentofHomelandSecurityPreliminaryRegulatoryReformPlan.pdf>, uwyo//amp]

A. Executive Summary of Preliminary Plan & Compliance with Executive Order 13563 Executive Order 13563 requires each Executive Branch agency to develop a preliminary plan to periodically review its existing regulations to determine whether any regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving its regulatory objectives. Before a rule has been promulgated and implemented, it can be difficult to be certain of its consequences, including its costs and benefits. The U.S. Department of Homeland Security’s (DHS or Department) Preliminary Plan is designed to create a process for identifying regulations that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. The DHS retrospective review process is intended to facilitate the identification of rules that warrant repeal or modification, or strengthening, complementing, or modernizing, where necessary or appropriate.

#### Executive Orders best preserve presidential flexibility—saves time and solves for future crises

Machon 6 [MAJ Matthew J, writing for the School of Advanced Military Studies US Army Command and General Staff College, “Targeted Killing as an Element of U.S. Foreign Policy in the War on Terror”, A Monograph, School of Advanced Military Studies, 2006, [http://www.dtic.mil/dtic/tr/fulltext/u2/a450537.pdf]AM](http://www.dtic.mil/dtic/tr/fulltext/u2/a450537.pdf%5dAM)

“The true effect of the executive order is neither to restrict in any meaningful way the ¶ President’s ability to direct measures he determines to be necessary to national security.”68 The ¶ advantage of an executive order over congressional legislation banning assassination is its ¶ inherent flexibility. Issuing an executive order can usually be accomplish in far less time than ¶ enacting legislation, and if a president wishes to rescind or modify the executive order at any ¶ time, he has the authority.69 “Additionally, the President may designate any of these changes as ¶ classified if he considers them ‘intelligence activities . . . or intelligence sources and methods,’ ¶ effectively preventing them from ever reaching public view.”70¶ As revealed in the sections above the executive order banning assassination allows the ¶ President a significant amount of flexibility in policy-making given the ambiguity presented by ¶ the failure to define assassination. The assassination ban, loose as that ban might be, may also be ¶ circumvented through a number of executive actions. The President may request a declaration of ¶ war, under which foreign leaders could possibly be classified as combatants and therefore legally ¶ targeted. The President might invoke the United States’ rights under Article 51 of the United ¶ Nation’s Charter, the right of self-defense, which authorizes the state’s use of force equivalent to ¶ a declaration of war.71 According to Colonel Parks, ¶ acting consistent with the Charter of the United Nations, a decision by the ¶ President to employ clandestine, low visibility or overt military force would not¶ constitute assassination if the U.S. military forces were employed against the ¶ combatant forces of another nation, a guerrilla force, or a terrorist or other ¶ organization whose actions pose a threat to the security of the United States.72¶

## 2

#### [1.] Presidential power high now-historical precedent and Obama domestic and international expansion

Fein ‘12

[Bruce Fein, associate deputy attorney general under President Reagan , A History of the Expansion of Presidential Power, <http://www.nytimes.com/2012/04/28/opinion/a-history-of-the-expansion-of-presidential-power.html>, uwyo//amp]

The unilateral actions of President Obama in the domestic arena to circumvent Congress are more than matched by the president’s unilateralism in foreign affairs. Among other things, President Obama has unilaterally commenced war, authorized the assassination of American citizens abroad and denied the writ of habeas corpus to detainees not accused of a crime. Executive branch power at the expense of Congress and the Constitution’s checks and balances has mushroomed since World War II. Examples include President Truman’s undeclared war against North Korea; President Eisenhower’s executive agreements to defend Spain; President Johnson’s Gulf of Tonkin Resolution regarding Vietnam; President Nixon’s secret bombing of Cambodia and assertions of executive privilege; President Clinton’s undeclared war against Bosnia; and President Bush’s countless presidential signing statements, Terrorist Surveillance Program, waterboarding and Iraq war.

**Congressional restrictions on presidential war power prevent the presidency from responding to crises**

**Turner 2012**

[Professor Turner holds both professional and academic doctorates from the University of Virginia School of Law, where in 1981 he co-founded the Center for National Security Law with Professor John Norton Moore—who taught the nation’s first course on national security law in 1969. Turner served as chairman of the ABA Standing Committee on Law and National Security from 1989–1992., The War Powers Resolution at 40: Still an Unconstitutional, Unnecessary, and Unwise Fraud That Contributed CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, Directly to the 9/11 Attacks, <http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf>, uwyo//amp]

**The 1973 War Powers Resolution** was a fraud upon the American people, **portrayed as a legislative fix to the problem of “imperial presidents” taking America to war** **in Korea and Vietnam without public approval** or the constitutionally required legislative sanction. By its own terms, the War Powers Resolution would not have stopped the Vietnam War. Sadly, **this and other legislative intrusions upon the constitutional authority of the president contributed to the loss of millions of lives in** places like **Cambodia, Afghanistan, Angola, and Central America**. The statute played a clear role in encouraging the terrorist attack that killed 241 Marines in 1983, and equally clearly encouraged Osama bin Laden to kill thousands of Americans on September 11, 2001. Similarly **unconstitutional usurpations of presidential power prevented our Intelligence Community from preventing those attacks and dissuaded a key ally from sharing sensitive information** **that might also have prevented them**. After forty years, **the time has come to bring an end to this congressional lawbreaking.**

**Courts ruling on areas of military detention encroaches upon presidential discretion**

**Kaplan 2013**

[Lewis A. Kaplan, District Judge, 07/17/2013, Hedges v. Obama, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Hedges.2d-Circuit-Opinion.pdf>, uwyo//amp]

Nothing in this decision should be confused as deference to the political branches because the case involves national security and foreign affairs. We adhere to the principle that courts have a vigorous and meaningful role to play **in assessing the propriety of military detention**, as the Supreme Court has made clear in cases from Hamdi to Boumediene.195 We hold only that **a court first must satisfy itself that the case comports with the “irreducible constitutional minimum” of Article III standing.196 This inquiry is rooted in fundamental separation-of-powers principles and must be “especially rigorous” where,** as here, **the merits of the dispute require the court to “decide whether an action taken by one of the other two branches** of the Federal Government **was unconstitutional**.”197 **Section 1021 is concerned entirely with the military authority of the Presiden**t with respect to non-citizens abroad—a context **in which Congress provides the President broad authority to exercise with considerable discretion.** Particularly after **Clapper, plaintiffs must show more than that they fall within the ambit of this authority to establish the sufficient threat of enforcement** necessary for Article III standing**. They have failed to do so here.**

**Détente in Iranian relations solves prolif—Only a summit between heads of state will solve—it empirically has**

**Rieger and Schiller 2012** [René , Chair of Middle East International Affairs Research Group, Professor of IR at Ludwig-Maximilians-University of Munich; Markus , Nuclear Security Fellow at RAND, “Pre-emptive Strike against Iran: Prelude to An Avoidable Disaster?,” December 11, 2012, Middle East Policy, [Volume 19, Issue 4,](http://onlinelibrary.wiley.com/doi/10.1111/mepo.2012.19.issue-4/issuetoc) pages 127–139, Wiley-//wyo-sc]

The Persian Gulf is of global strategic — particularly economic — importance. Any conflict escalation will negatively affect Western interests. Therefore, it **is imperative** that **the West**ern state community **reach a détente in its relations with Iran.** The history of international relations is full of examples of nations with irreconcilable ideological differences and contradictory interests finding a *modus vivendi* and reducing the risk of a conflict escalation that would hurt them both. As a matter of fact, **the West** **and** the regime in **Tehran share** more **interests** than mere prevention of major conflict escalation. The **stability of Afghanistan and** the **containment of piracy are** only two **examples**. This partial **congruence of interests is the ideal starting point for a détente in Western-Iranian relations; it is the key to solving the Iranian nuclear crisis**. However, a **détente requires direct personal contact between** the states and **governments involved**. Therefore**, we suggest** that, for the first time since the 1979 Iranian Revolution, **the U.S. and Iranian heads of state meet for a summit on neutral ground.** While such a summit would unlikely produce any significant concrete political results, **its symbolic relevance and long-term effects should not be underestimated**. **The** 1986 **Reykjavik** **Summit between Reagan and Gorbachev** or the 1970 Erfurt Summit between then heads of government of West and East Germany, Willy Brandt and Willi Stoph, **are** but two **examples** **of the significant impact of high-level summits.** The obvious objection is that the Iranian regime would instrumentalize such a summit for propaganda purposes and thereby gain domestic legitimacy. This, though unlikely, might be true in the short run; however, much more important, the Iranian regime would lose one of its most significant domestic and foreign-policy propaganda tools. By meeting with the U.S. government, the Iranian regime, too, would relativize its rejection and demonization of the United States and could no longer maintain its propaganda myth as the only Muslim state that does not deal with the “Great Satan.” Moreover, the mere fact that the United States resumed de facto relations with Iran would not stabilize the Iranian regime's domestic power position. On the contrary, Tehran would still face the same public criticism and opposition it does now. Nonetheless, it can be expected that **the Iranian regime would welcome the offer to meet with the U.S. government.** For one thing, the **Iran**ian government **is looking for public** **acceptance of its role as a regional power in the Gulf**. Though **Iran** rejects the United States and its policies, it **is aware of America's irrefutable superpower status**; **hence**, **meeting on** an **equal footing** with the United States **would improve Iran's** (**perceived**) **regional-power status.** Moreover, **Tehran could not afford** **to reject a U.S. offer to meet on a head-of-state level.** So far, Iran has portrayed itself domestically and internationally as the innocent victim in this crisis. **The rejection of an unconditional olive branch** **would** **hurt the government's skillfully constructed reputation** among a significant number of its supporters. Without a doubt, **it is** politically **difficult for any U.S. president to meet with the Iranian head of state** at eye level. **However, taking this first step** on a new path in Western-Iranian relations **would pay off in the long** **run**.

#### Obama cut commitments in the Middle East leaving Israel responsible for Iran nuclear program

**Kristol & Fly 2012**

[William Kristol, editor of the Weekly Standard, & Jamie Fly, writer for the Weekly Standard,, July 2nd, 2012, It’s time for Congress to seriously explore an AUMF to halt Iran’s nuclear program, says FPI's William Kristol and Jamie Fly, <http://www.foreignpolicyi.org/content/it%E2%80%99s-time-congress-seriously-explore-aumf-halt-iran%E2%80%99s-nuclear-program-says-fpis-william-kristol#sthash.IPc1SQML.dpuf>, uwyo//amp]

So what’s next? Already there is bipartisan consternation on the Hill, where there is movement for yet more sanctions in addition to those that kick in this week targeting Iran’s energy and banking sectors. But sanctions aren’t going to stop the Iranians. The conventional wisdom has it that all eyes are now on Israel, to see if or when Prime Minister Benjamin Netanyahu will attack Iran. Obama has promised that he has Israel’s back, that all options are on the table, and that he doesn’t bluff. But the real question is why the responsibility to act is seen to be Israel’s. **Why has Obama made Israel the focus when the United States has its own considerable stake in the outcome? And that stake isn’t just preventing a nuclear arms race in the Middle East,** important as that is. **It’s also preserving American hegemony** in the Persian Gulf. For more than 60 years **the Persian Gulf has been an American lake, and protecting its vast energy resources has been a cornerstone of U.S. strategy**, through the Cold War, two wars in Iraq, and another in Afghanistan. **If the Iranians are now fearless in dealing with the Obama administration, it’s because they have recognized that Obama is shockingly unconcerned with maintaining America’s longstanding commitments in the Gulf.** Let’s look at Obama’s Middle East policy the way Tehran must. Obama withdrew U.S. troops from Iraq and has scheduled a similar exit from Afghanistan, exposing the region to Iranian influence that the United States will have little ability to check. Instead the administration has left U.S. interests in the hands of largely incapable allies. The Obama administration did sell $30 billion worth of F-15s to Saudi Arabia—as if hoping that with enough hardware Riyadh would be capable of defending itself. But consider how the White House has treated its regional partners when the going gets tough. During the course of the Arab Spring, Obama turned his back on Egyptian president Hosni Mubarak, angering the rulers of Saudi Arabia, America’s key Gulf allies because they happen to sit on the world’s largest known reserves of oil. At the time that might have been defensible. However, now it simply looks incoherent. When Syrian president Bashar al-Assad, who has plagued the Saudis for years, was targeted by a popular uprising, Obama did nothing to topple Iran’s lone Arab ally. Instead, he backed a Russian-inspired diplomatic process that has served only to buy Assad time​—​just as three rounds of nuclear talks have helped protect Iran from an Israeli strike. So the net effect of Obama’s Middle East strategy has been to protect Tehran’s regional security interests​—​Syria, Hezbollah, and the bomb. Sure, U.S. sanctions hurt the Iranian economy, but not the nuclear program. And the strictest sanctions were imposed only because Congress gave the White House no choice. **Every signal that Obama has sent suggests the president believes the United States no longer has vital interests in the Gulf. This marks a profound reversal of American strategy. The Obama Doctrine amounts to a repudiation of the Carter Doctrine, which declared control of the Persian Gulf** and its energy resources **to be a vital U.S. interest. The free flow of Gulf oil has been central to the stability of the world economy.** But it wasn’t until the Soviet invasion of Afghanistan in 1979 that American policymakers spelled out just how far they were willing to go. As Carter explained in his 1980 State of the Union address: “An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force.” Ronald Reagan’s corollary, pursued by succeeding administrations, was that Washington would use force to protect Gulf security from internal threats as well as external ones. The George H. W. Bush administration expelled Saddam Hussein from Kuwait before he could make a run at Saudi Arabia. Clinton maintained no-fly zones in the north and south of Iraq and added a 1998 bombing campaign to further contain Saddam. Perhaps most significantly, the George W. Bush White House recognized in the wake of 9/11 that Saudi Arabia itself, or segments of it, could not be relied on to uphold the stability of global energy markets**.** The American troops whose presence in Saudi Arabia had served as one of Osama bin Laden’s rallying cries were withdrawn, and the White House sought an alternative security pillar in Iraq.**The Gulf’s enormous reserves of oil make it one of the world’s great priz**es​—​**as has been recognized by those most hostile to the United States, from the Nazis and the Soviets, to Saddam Hussein, al Qaeda, and the Islamic Republic of Iran. What has compounded the danger for Washington is that the political order of the Gulf is inherently unstable,** as has been abundantly clear ever since the collapse of the shah’s regime, which had once been an American security pillar in the Gulf, in the 1979 Islamic Revolution**. That responsibility to prevent an Iranian nuclear breakout may have now fallen to Netanyahu is not an indication that Israel’s sphere of influence has expanded but rather that under the Obama administration America’s has contracted. It’s a startlingly narrow focus for an American president after more than 60 years of American hegemony** in the Persian Gulf. If, as we believe, control of the region remains a vital U.S. interest, **the United States must be prepared to defend it. The Obama Doctrine seems to suggest it is not** and we won’t.

#### US failure to engage Iran means Israel will strike in the coming years

**Allin and Simon 2011** [Dana H., Senior Fellow for US Foreign Policy and Transatlantic Affairs at the International Institute for Strategic Studies; Steven , Executive Director [IISS](http://en.wikipedia.org/wiki/IISS)-US and Corresponding Director IISS-Middle East, Former National Security Council Senior Director for the Middle East and North Africa, “Obama's Dilemma: Iran, Israel and the Rumours of War”, Survival: Global Politics and Strategy, 15-44, Dec 2, 2011, Taylor & Francis-//wyo-sc]

**The most dangerous impasse** **was** in **the failure**, so far at least, **of the administration’s attempt at engagement with Iran.** **Tehran was continuing**, albeit with some technical setbacks, to progress **towards** a **nuclear-weapons capability**. **This progress raised a** palpable **prospect of** **war**: there is every reason to worry that, **in the coming years**, **a fearful Israel will** **conclude** **that it is cornered**, **with no choice but to launch a preventive war aimed at crippling Tehran’s nuclear infrastructure** and **removing** – or at least forestalling – **what** many **Israelis** **consider a threat to the Jewish state’s very existence.**

**Iran closes Strait of Hormuz preventing oil trade—causes oil price shocks**

**Rieger and Schiller 2012** [René , Chair of Middle East International Affairs Research Group, Professor of IR at Ludwig-Maximilians-University of Munich; Markus , Nuclear Security Fellow at RAND, “Pre-emptive Strike against Iran: Prelude to An Avoidable Disaster?,” December 11, 2012, Middle East Policy, [Volume 19, Issue 4,](http://onlinelibrary.wiley.com/doi/10.1111/mepo.2012.19.issue-4/issuetoc) pages 127–139, Wiley-//wyo-sc]

Most **advocates of a pre-emptive strike** **play down** the possible **economic consequences of an attack** **on Iran**. **They argue** that the regime in **Tehran** **would not** be able to effectively **disrupt oil and gas** **exports through the Strait of Hormuz**, and that the loss of supplies to the world market would only be temporary and limited. **This hypothesis comprises** several significant **flaws**. First, while **Tehran could** at best **effect** a complete **disruption** of oil and gas **exports through the Strait of Hormuz** for a short period of time**, it could curtail** the **oil trade** in the Gulf **significantly** **over an extended period**. It would be impossible to compensate fully for the loss in oil shipments; and the longer the disruption lasted, the more difficult compensation attempts would become. Second, the dimensions of **global spare oil capacity** are obscure; in any case, they **are** very limited and largely **reliant on the Strait of Hormuz for export**. The world's **spare capacity** **is held almost entirely** **by Saudi Arabia**, though it is highly likely that it is considerably below the officially claimed 2.5 million barrels per day (mbd). Third, **Saudi Arabia** and the other oil-producing Gulf states **have only limited capacity to redirect** their **oil exports away from the Strait of Hormuz.** **Only 1.5 mbd of Saudi oil** (including spare production) **could be redirected** through the East-West pipeline to the Yanbu al-Bahr port on the Red Sea.[23](http://onlinelibrary.wiley.com/doi/10.1111/j.1475-4967.2012.00565.x/full#fn23) The United Arab Emirates has recently completed the so-called Habshan-Fujairah oil pipeline, which also bypasses the Strait of Hormuz. However, the pipeline's current capacity does not exceed 1 mbd. **Compared to the 17 million** **barrels that pass through the Strait of Hormuz** on a **daily** basis (roughly 20 percent of the world's traded oil), the Gulf countries’ **compensation capacity is** relatively **limited**. **An essential factor in oil pricing is market psychology…. The mere possibility of a serious disruption of the transit routes in the Gulf following an attack on Iran has the potential to provoke skyrocketing oil prices.** Fourth, there is the possibility, however remote, that Venezuela, a close ally of the Iranian regime and the fourth-largest oil supplier to the United States (roughly 900,000 bpd), would cut its exports. This would put even more pressure on the international oil market and directly affect the U.S. economy.[24](http://onlinelibrary.wiley.com/doi/10.1111/j.1475-4967.2012.00565.x/full#fn24) Fifth, to compensate a significant supply shortage provoked by massive curtailment or interruption of trade routes in the Gulf, oil-importing nations could tap their strategic stocks. However, particularly in the early stage of a massive supply crisis, commercial, logistical and political considerations would inhibit countries releasing enough reserve stocks to compensate fully for the shortage.[25](http://onlinelibrary.wiley.com/doi/10.1111/j.1475-4967.2012.00565.x/full#fn25) Sixth, Iran could commit acts of sabotage against oil installations in the Gulf, also interrupting supply. Finally, an essential factor in oil pricing is market psychology. Irrespective of actual changes in oil supply, **market** **expectations** **or fears of supply** **cuts** can **have drastic effects on prices.** As a significant portion of the global oil **supply** **originates in the Gulf**, **the** oil **market** **is** particularly **sensitive to developments there**. Hence, **the mere possibility** **of** a serious **disruption** **of** the **transit** routes in the Gulf **following an** **attack on Iran has** the potential **to** **provoke skyrocketing oil prices**. **The more** the **conflict** then **escalates** and the longer the crisis lasts, **the more enduring** **would be the effect on the oil prices**. In the current global economy **a prolonged increase in oil prices would have disastrous consequences**.

**Economic decline causes protectionism and war – their defense doesn’t assume accompanying shifts in global power.**

**Royal 10** – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215

Less intuitive is how periods of **economic decline may increase the likelihood of external conflict**. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defense behavior of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that **rhythms in the global economy are associated with the rise and fall of a pre-eminent power** and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as **economic crisis could usher in a redistribution of relative power** (see also Gilpin, 1981) **that leads to uncertainty about power balances, increasing the risk of miscalculation** (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Seperately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland’s (1996, 2000) **theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behavious of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations**, However, **if** the **expectations of** future **trade decline**, particularly for difficult to replace items such as energy resources, **the likelihood for conflict increases**, as states will be inclined to use force to gain access to those resources. **Crisis could** potentially **be the trigger for decreased trade expectations** either on its own or because it triggers protectionist moves by interdependent states. Third, **others** have **considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess** (2002) **find a strong correlation between internal conflict and external conflict**, particularly **during** periods of **economic downturn**. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favor. Moreover, the presence of a recession tends to amplify the extent to which international and external conflict self-reinforce each other. (Blomberg & Hess, 2002. P. 89) Economic decline has been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘D**iversionary theory’ suggests** that, **when facing unpopularity arising from economic decline, sitting governments have increase incentives to fabricate external military conflicts to create a ‘rally around the flag’ effect**. Wang (1996), DeRouen (1995), and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that **the tendency towards diversionary tactics are greater for democratic states than autocratic states**, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlated economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels. This implied connection between integration, crisis and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

## 3

#### Immigration is top of docket and will pass now – political momentum

Evan McMorris, Santoro BuzzFeed Staff, “Obama Has Already Won The Shutdown Fight And He’s Coming For Immigration Next,” 10/15/13. http://www.buzzfeed.com/evanmcsan/obama-has-already-won-the-shutdown-fight-and-hes-coming-for

WASHINGTON — As the fiscal fight roiling Washington nears its end, the White House is already signaling that it plans to use the political momentum it has gained during the shutdown fight to charge back into the immigration debate. And this time, Democratic pollsters and advocates say, they could actually win. ¶ The final chapter of the current crisis hasn’t been written yet, but Democrats in Washington are privately confident that they’ll emerge with the upper hand over the conservatives in Congress who forced a government shutdown. And sources say the administration plans to use its victory to resurrect an issue that was always intended to be a top priority of Obama’s second-term agenda. ¶ Advocates argue the post-fiscal crisis political reality could thaw debate on the issue in the House, which froze in earlier this year after the Senate passed a bipartisan immigration bill that was led by Republican Sen. Marco Rubio and Democratic Sen. Chuck Schumer. ¶ “It’s at least possible with sinking poll numbers for the Republicans, with a [GOP] brand that is badly damaged as the party that can’t govern responsibly and is reckless that they’re going to say, ‘All right, what can we do that will be in our political interest and also do tough things?’” said Frank Sharry, executive director of the immigration reform group America’s Voice. “That’s where immigration could fill the bill.”¶ ¶ The White House and Democrats are “ready” to jump back into the immigration fray

when the fiscal crises ends, Sharry said. And advocates are already drawing up their plans to put immigration back on the agenda — plans they’ll likely initiate the morning after a fiscal deal is struck.¶ “We’re talking about it. We want to be next up and we’re going to position ourselves that way,” Sharry said. “There are different people doing different things, and our movement will be increasingly confrontational with Republicans, including civil disobedience. A lot of people are going to say, ‘We’re not going to wait.’”¶ The White House isn’t ready to talk about the world after the debt limit fight yet, but officials have signaled strongly they want to put immigration back on the agenda. ¶ Asked about future strategic plans after the shutdown Monday, a senior White House official said, “That’s a conversation for when the government opens and we haven’t defaulted.” But on Tuesday, Press Secretary Jay Carney specifically mentioned immigration when asked “how the White House proceeds” after the current fracas is history.¶ “Just like we wish for the country, for deficit reduction, for our economy, that the House would follow the Senate’s lead and pass comprehensive immigration reform with a big bipartisan vote,” he said. “That might be good for the Republican Party. Analysts say so; Republicans say so. We hope they do it.”¶ The president set immigration as his next priority in an interview with Univision Tuesday.¶ “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama said. He also set up another fight with the House GOP on the issue.¶ “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives.”

#### Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 **In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic.** Scholars have long noted that President Lyndon **Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking** the requisite funds in a war-depleted treasury and **the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away** as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, **many of** President **Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.**61 **When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Immigration reform key to increase high skilled workers:

Esther Yu-Hsi Lee, 10/16/2013 (staff writer, “Class Divide Widens Between Low-Wage And High-Wage Workers In Silicon Valley,” <http://thinkprogress.org/immigration/2013/10/16/2779601/wage-immigrants-silicon-valley/>, Accessed 10/17/2013, rwg)

Faced with a growing need for high-skilled foreign workers, Silicon Valley has taken a pointed interest in immigration reform in the past year, as is made clear by FWD.us, Facebook founder Mark Zuckerberg’s advocacy group lobbying for comprehensive immigration reform. Zuckerberg has emphasized that high-skilled immigration reform is no different than low-skilled immigration reform. Yet as the tech industry pushes for a more diverse workforce, a worsening class divide is pushing the area’s low-wage immigrants out of their homes and marginalizing them in the immigration debate.¶ As NPR reports this week, less than 7 miles from the Facebook headquarters lies a 4.5 acre mobile home park that is valued at $30 million by Silicon Valley real estate developers. Soon, the 400 mobile home park residents, about 80 percent of whom are Latino, may be squeezed out of the increasingly ritzy area, which has some of the most expensive homes in the country. The median household income is $101,471. In comparison, a two-bedroom, two-bath trailer home costs about $79,000.¶ Children living in the mobile home park would also be forced out of the sixth best school district out of 1,000 California public schools. Latino students in Palo Alto have a 52 point gain on standardized test scores over other Latinos statewide.¶ Some Palo Alto parents want the mobile home park to stay. Nancy Krop, a civil rights attorney said to National Public Radio, “I want every child to have the opportunity that my son’s going to have… My son has gone on play dates to homes where he found out his friend didn’t have a bedroom… You learn what they don’t have; you learn the richness of what they do have too — the strength of their community and culture and heritage.”¶ Silicon Valley companies have mainly focused on immigration reform for highly educated foreign workers. Technology companies spent about $13.8 million in just three months to ensure that the Senate immigration bill would expand temporary visas and green cards for technology workers. The industry successfully influencing senators to nearly double its allotment of high-skilled, H-1B visas from 65,000 to 110,000 in the Senate immigration bill.

#### Skilled worker access will determine the future of the biotech industry

**Dahms 3**, executive director of the California State University System Biotechnology Program (CSUPERB); chair of the Workforce Committee, Biotechnology Industry Organization; and a member of the ASBMB Education and Professional Development Committee, (A. Stephen, “ Foreign Scientists Seen Essential to U.S. Biotechnology,” in Pan-Organizational Summit on the U.S. Science and Engineering Workforce: Meeting Summary, National Academy of Sciences, <http://www.ncbi.nlm.nih.gov/bookshelf/picrender.fcgi?book=nap10727&blobtype=pdf>)

The scarcity of skilled technicians is seen by the biotechnology industry in the U.S. and Canada as one of its most serious challenges. The success of this industry is dependent on the quality of its workforce, and the skills and talents of highly trained people are recognized as one of the most vital and dynamic sources of competitive advantage. The U.S. biotechnology industry workforce has been growing 14 to 17 percent annually over the last six years and is now over 190,000 and conservatively estimated to reach 500,000 by 2012. Despite efforts by the industry to encourage U.S. institutions to increase the production of needed specialists, a continual shortfall in the needed expertise requires access to foreign workers. Foreign workers with unique skills that are scarce in the U.S. can get permission to stay in the U.S. for up to six years under the H1B classification, after which they can apply for permanent resident status. There are currently over 600,000 foreign workers in this category across all industries, and they are critical to the success and global competitiveness of this nation. Of these H-1B visa holders, 46 percent are from India and 10 percent are from China, followed in descending order by Canada, Philippines, Taiwan, Korea, Japan, U.K., Pakistan, and the Russian Federation. Our annual national surveys have demonstrated that between 6 and 10 percent of the biotechnology workforce have H-1B visas. The constant shortfall in specialized technical workers that has been experienced by the biotechnology industry over the past six years has been partially alleviated by access to talented individuals from other nations. However, the industry’s need is sufficient to justify a 25 percent increase in H-1Bs in 2004. Biotechnology industry H-1B visa holders are mainly in highly sought after areas such as analytical chemistry, instrumentation specialization, organic synthesis, product safety and surveillance, clinical research/biostatistics, bio/pharm quality, medicinal chemistry, product scale-up, bioinformatics and applied genomics, computer science, cheminformatics, pharmacokinetics, and pharmacodynamics. Forty percent of H-1B foreign workers are at the Ph.D. level, 35 percent M.S., 20 percent B.S., and 5 percent M.D. In comparison, the U.S. biotechnology industry technical workforce is estimated to be 19 percent Ph.D., 17 percent M.S., 50 percent B.S., and 14 percent combined voc-ed/ community college trained. These and other survey data by industry human resource groups clearly show that the H-1B worker skills match the most pressing employment needs of the biotechnology industry. The data demonstrate that maintaining a reasonably-sized H-1B cap is critical to the industry. Although the national annual H-1B visa cap was raised from 115,000 to 195,000 in the 106th Congress via S. 2045, the cap has already been exceeded. The increased cap remains in effect until 2003 and efforts are under way to ensure that it remains high. The Third Annual National Survey of H-1Bs in the biotechnology industry found that 80 percent are from U.S. universities, and 85 percent of those eventually get green cards. Companies now spend, on average, $10,200 in processing fees and legal expenses to obtain each green card, an estimated cost to the industry of more than $150 million over the past 5 years. In the wake of the 9/11 World Trade Center attacks, debate has been focused on more restrictions on foreign students, a development that would have a severe impact upon the competitiveness of the U.S. biotechnology industry. Clearly, the H-1B route provides a temporary solution to shortages in the national and domestic biotechnology labor pools, shortages mirroring the inadequate production of appropriately trained U.S. nationals by U.S. institutions of higher learning. The reality is that universities have inadequate resources for expanding the training pipeline, particularly in the specialized areas of the research phase of company product development. Efforts should be directed toward influencing greater congressional and federal agency attention to these important topics.

#### Solves bioterror

**Bailey, 1** [Ronald, award-winning science correspondent for Reason magazine and Reason.com, where he writes a weekly science and technology column. Bailey is the author of the book Liberation Biology: The Moral and Scientific Case for the Biotech Revolution (Prometheus, 2005), and his work was featured in The Best American Science and Nature Writing 2004. In 2006, Bailey was shortlisted by the editors of Nature Biotechnology as one of the personalities who have made the "most significant contributions" to biotechnology in the last 10 years. 11/7/1, “The Best Biodefense,” Reason, <http://reason.com/archives/2001/11/07/the-best-biodefense>]

But Cipro and other antibiotics are just a small part of the arsenal that could one day soon be deployed in defending America against biowarfare. Just consider what’s in the pipeline now that could be used to protect Americans against infectious diseases, including bioterrorism. A Pharmaceutical Manufacturers and Research Association survey found 137 new medicines for infectious diseases in drug company research and development pipelines, including 19 antibiotics and 42 vaccines. With regard to anthrax, instead of having to rush a sample to a lab where it takes hours or even days to culture, biotech companies have created test strips using antibody technologies that can confirm the presence of anthrax in 15 minutes or less, allowing decontamination and treatment to begin immediately. Similar test strips are being developed for the detection of smallpox as well. The biotech company EluSys Therapeutics is working on an exciting technique which would "implement instant immunity." EluSys joins two monoclonal antibodies chemically together so that they act like biological double-sided tape. One antibody sticks to toxins, viruses, or bacteria while the other binds to human red blood cells. The red blood cells carry the pathogen or toxin to the liver for destruction and return unharmed to the normal blood circulation. In one test, the EluSys treatment reduced the viral load in monkeys one million-fold in less than an hour. The technology could be applied to a number of bioterrorist threats, such as dengue fever, Ebola and Marburg viruses, and plague. Of course, the EluSys treatment would not just be useful for responding to bioterrorist attacks, but also could treat almost any infection or poisoning. Further down the development road are technologies that could rapidly analyze a pathogen’s DNA, and then guide the rapid synthesis of drugs

like the ones being developed by EluSys that can bind, or disable, segments of DNA crucial to an infectious organism's survival. Again, this technology would be a great boon for treating infectious diseases and might be a permanent deterrent to future bioterrorist attacks. Seizing Bayer’s patent now wouldn’t just cost that company and its stockholders a little bit of money (Bayer sold $1 billion in Cipro last year), but would reverberate throughout the pharmaceutical research and development industry. If governments begin to seize patents on the pretext of addressing alleged public health emergencies, the investment in research that would bring about new and effective treatments could dry up. Investors and pharmaceutical executives couldn’t justify putting $30 billion annually into already risky and uncertain research if they couldn’t be sure of earning enough profits to pay back their costs. Consider what happened during the Clinton health care fiasco, which threatened to impose price controls on prescription drugs in the early 1990s: Growth in research spending dropped off dramatically from 10 percent annually to about 2 percent per year. A far more sensible and farsighted way to protect the American public from health threats, including bioterrorism, is to encourage further pharmaceutical research by respecting drug patents. In the final analysis, America’s best biodefense is a vital and profitable pharmaceutical and biotechnology industry.

X apply extinction impact

## Lead

**No nuke terror. Even if they wanted to – chances of success are about 1 in 3 billion**

**Mueller 2008**

[John Woody Hayes Chair of National Security Studies, Mershon Center Professor of Political Science Department of Political Science, Ohio State University. THE ATOMIC TERRORIST: ASSESSING THE LIKELIHOOD Prepared for presentation at the Program on International Security Policy, University of Chicago, January 15, 2008 ]

Evaluating the likelihood **Even if there is some desire** for the bomb by terrorists (something assessed more fully below), **fulfillment** of that desire is obviously **another matter**. Even alarmists Bunn and Wier contend that the **atomic terrorists' task "would clearly be among the most difficult types of attack to carry out**" or "one of the most difficult missions a terrorist group could hope to try" (2006, 133-34, 147). But, stresses George Tenet, a terrorist atomic bomb is "possible" or "not beyond the realm of possibility" (Tenet and Harlow 2007, 266, 279). **It might be useful to take a stab at estimating just how "difficult" or "not impossible" their task is, or how distant the "realm of possibility" might be**. After all, lots of things are "not impossible." As I recall, there is a James Bond movie out there someplace in which Our Hero leaps from a low-flying plane or helicopter and lands unruffled in the back seat of a speeding convertible next to a bemused blonde. Although this impressive feat is "not impossible," it may not have ever been accomplished--or perhaps more importantly, ever attempted--in real life. **Or it is entirely "not impossible"** that **a** colliding meteor or **comet could destroy the earth**, that Vladimir Putin or **the British could** decide one morning to **launch a few nuclear weapons at Massachusetts**, George Bush could decide to bomb Hollywood, that an underwater volcano could erupt to cause a civilization-ending tidal wave, **or that Osama bin Laden could convert to Judaism**, declare himself to be the Messiah, and fly in a gaggle of mafioso hit men from Rome to have himself publicly crucified.20 In all this, Brodie's cautionary comment in the 1970s about the imaginative alarmists in the defense community holds as well for those in today's terrorism community, both of which are inhabited by people of a wide range of skills and sometimes of considerable imagination. All sorts of notions and propositions are churned out, and often presented for consideration with the prefatory works: "It is conceivable that..." Such words establish their own truth, for the fact that someone has conceived of whatever proposition follows is enough to establish that it is conceivable. Whether it is worth a second thought, however, is another matter (1978, 83). At any rate, **experience thus far cannot be too encouraging** to the would-be atomic terrorist. One group that tried, in the early 1990s, to pull off the deed was **the** Japanese **apocalyptic group, Aum Shinrikyo**. Unlike al-Qaeda, it was **not under siege,** and it **had money, expertise, a remote and secluded haven** in which **to set up shop, even a private uranium mine.** But it **made dozens of mistakes** in judgment, planning, and execution (Linzer 2004). **Chagrined, it turned to biological weapons which,** as it happened**, didn't work** either, and **finally to chemical ones, resulting** eventually **in a** somewhat **botched release of** sarin **gas** in a Tokyo subway **that managed to kill** a total of 12 people. Appraising the barriers. As noted earlier, **most discussions** of atomic terrorism **deal** rather **piecemeal** with the subject--focusing separately on individual tasks such as procuring HEU or assembling a device or transporting it. But, as the Gilmore Commission, a special advisory panel to the President and Congress, stresses, building a nuclear device capable of producing mass destruction presents "Herculean challenges" and requires that a whole series of steps be accomplished. The process requires obtaining enough fissile material, designing a weapon"that will bring that mass together in a tiny fraction of a second, before the heat from early fission blows the material apart," and **f**iguring out some way to deliver the thing. And it emphasizes that these merely constitute "the minimum requirements." If each is not fully met, the result is not simply a less powerful weapon, but one that can't produce any significant nuclear yield at all or can't be delivered (Gilmore 1999, 31, emphasis in the original). Following this perspective, an approach that seems appropriate is to catalogue **the barriers that must be overcome** by a terrorist group in order to carry out the task of producing, transporting, and then successfully detonating Allison's "large, cumbersome, unsafe, unreliable, unpredictable, and inefficient" improvised nuclear device. Table 1 attempts to do this, and it **arrays some 20** of these--all of which must be surmounted by the atomic aspirant. Actually, it would be quite possible to come up with a longer list: in the interests of keeping the catalogue of hurdles down to a reasonable number, some of the entries are actually collections of tasks and could be divided into two or three or more. For example, number 5 on the list requires that heisted highly-enriched uranium be neither a scam nor part of a sting nor of inadequate quality due to insider incompetence; but this hurdle could as readily be rendered as three separate ones. In assembling the list, I sought to make the various barriers independent, or effectively independent, from each other, although they are, of course, related in the sense that they are sequential. However, while the terrorists must locate an inadequately-secured supply of HEU to even begin the project, this discovery will have little bearing on whether they will be successful at securing an adequate quantity of the material, even though, obviously, they can't do the second task before accomplishing the first. Similarly, assembling and supplying an adequately equipped machine shop is effectively an independent task from the job of recruiting a team of scientists and technicians to work within it. Moreover, members of this group must display two qualities that, although combined in hurdle 9, are essentially independent of each other: they must be both technically skilled and absolutely loyal to the project. Assessing the probabilities. In seeking to carry out their task, would-be atomic terrorists effectively must go though an exercise that looks much like this. If and when they do so, they are likely to find their prospects daunting and accordingly uninspiring or even dispiriting. **To bias the case in their favor**, one might begin by assuming that they have a fighting chance of 50 percent of overcoming each of these obstacles even though for many barriers, probably almost all, the odds against them are much worse than that. Even with that generous bias, the chances they could successfully pull off the mission come out to be worse than one in a million, specifically they are one in 1,048,567. Indeed, the odds of surmounting even seven of the twenty hurdles at that unrealistically, even absurdly, high presumptive success rate is considerably less than one in a hundred. **If one assumes**, somewhat **more realistically**, that their chances at each barrier are one in three**,** the cumulative oddsthey will be able to pull off the deed drop to one in well over three billion--specifically 3,486,784,401. What they would be at the (entirely realistic) level one in ten boggles the mind. One could also make specific estimates for each of the hurdles, but the cumulative probability statistics are likely to come out pretty much the same--or even smaller. For example there may be a few barriers, such as number 13, where one might plausibly conclude the terrorists' chances are better than 50/50. However, there are many in which the likelihood of success is almost certainly going to be exceedingly small--for example, numbers 4, 5, 9, and 12, and, increasingly, the (obviously) crucial number 1. Those would be the odds for a single attempt by a single group, and there could be multiple attempts by multiple groups, of course. Although Allison considers al-Qaeda to be "the most probable perpetrator" on the nuclear front (2004, 29), he is also concerned about the potential atomic exploits of other organizations such as Indonesia's Jemaah Islamiyah, Chechen gangsters, Lebanon's Hezbollah, and various doomsday cults (2004, 29-42).21 Putting aside the observation that few, if any, of these appear to have interest in hitting the United States except for al-Qaeda (to be discussed more fully below), the odds would remain long even with multiple attempts. If there were a hundred determined efforts over a period of time, the chance at least one of these would be successful comes in at less than one one-hundredth of one percent at the one chance in two level. At the far more realistic level of one chance in three it would be about one in 50 million. If there were 1000 dedicated attempts, presumably over several decades, the chance of success would be less than one percent at the 50/50 level and about one in 50,000 at the one in three level.22

#### Plan’s reforms result in catastrophic terrorism---kills intel gathering, turning case.

Goldsmith 09

Jack, 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.

## Judicial activism

#### Detention cases haven’t derailed deference

(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., “WAR POWERS, FOREIGN AFFAIRS, AND THE COURTS: SOME INSTITUTIONAL CONSIDERATIONS” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW - VOL. 45 2012, <http://heinonline.org.proxy.library.umkc.edu/HOL/Page?collection=journals&handle=hein.journals/cwrint45&type=Text&id=451>

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,' which is best known for Justice Holmes's 58. Id. (citing U.S. CONST. art. I, § 7, cl. 2 ("If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which Case it shall not be a Law. 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.""4 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."@6 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 effort6 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.7 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.71 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.5 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." 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 1 to the legality of the Vietnam War consistently rejected those challenges. 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" 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 Force" and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. citizens.' 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," 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," whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief."6 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," 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.9 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.' 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," 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." 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 15 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.9" About a month after this symposium took place, in Hamdan v. United States" 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.'01 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,'02 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.,"'0 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.' Unlike Arar, in which the defendants were federal officials,'o this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture.10 Although at least four judges on the en banc courts dissented from both rulings,0 the Supreme Court declined to review either case.109

# 2nc

#### Extinction

Toon, chair – Department of Atmospheric and Oceanic Sciences – Colorado University, 4/19/’7

(Owen B, climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf)

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

#### Most probable

James A. **Russell,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, **‘9** (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

### Uq

#### [2.] high now-XO’s on DREAMers, DOMA, gun violence research, climate change

Roff 2013

[Pete Roff, march 27th, 2013, Executive-Orderer-In-Chief?, <http://www.usnews.com/opinion/blogs/peter-roff/2013/03/27/president-or-king-obama-rules-by-executive-power>, uwyo//amp]

Among the actions he's taken unilaterally, Obama has delayed the deportation of young illegal immigrants when Congress wouldn't agree; ordered the Centers for Disease Control and Prevention to research gun violence, which Congress halted nearly 15 years ago; told the Justice Department to stop defending the Defense of Marriage Act, deciding that the 1996 law defining marriage as between a man and a woman was unconstitutional; and he's "vowed to act on his own if Congress didn't pass policies to prepare for climate change," wrote Kumar. [Read the U.S. News Debate: Has Obama Exercised Enough Leadership in Dealing With Republicans in Congress?] He's also taken it upon himself to decide when Congress was in recess for the purpose of making temporary appointments to the executive branch and independent agencies—which the federal courts have ruled he does not have the power to do—while agencies run by his appointees have moved forward on policy changes that Congress has expressly prohibited, like Net neutrality. The irony here is not that Obama is expanding the power of the presidency through his use of executive orders, but that he is doing so after having been harshly critical of similar efforts undertaken by George W. Bush.

#### [3.] claims of Article II powers

Reuters 2013

[Reuters, May 31st, 2013, Obama’s counterterror contradiction, <http://bangordailynews.com/2013/05/31/opinion/other-voices/obamas-counterterror-contradiction/>, uwyo//amp]

Obama didn't delve into legal details in his speech. But the top legal advisers at the State and Defense departments during his first term have publicly argued that if the AUMF no longer applies, military attacks on terrorists can still be carried out under Article II of the Constitution, which grants the president power to defend the country against imminent attack. Most legal experts agree with that view. But as Harvard professor Jack Goldsmith argued in a recent blog post, for Obama or future presidents to conduct military operations on the scale of those now underway outside Afghanistan under Article II — as opposed to an act of Congress — "would be an unprecedented expansion of presidential authority.

#### Executive war power primacy now – Syria debate proves.

Posner, Kirkland & Ellis Professor, University of Chicago Law School, 9-3

[Eric, 9/3/13, 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](http://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.

**2NC Iran Link Extensions**

**Strong Obama key to check nuclear Iran**

**Kristol & Fly 2012**

[William Kristol, editor of the Weekly Standard, & Jamie Fly, writer for the Weekly Standard,, July 2nd, 2012, It’s time for Congress to seriously explore an AUMF to halt Iran’s nuclear program, says FPI's William Kristol and Jamie Fly, <http://www.foreignpolicyi.org/content/it%E2%80%99s-time-congress-seriously-explore-aumf-halt-iran%E2%80%99s-nuclear-program-says-fpis-william-kristol#sthash.IPc1SQML.dpuf>, uwyo//amp]

Last week, we wrote on this page that given **the Obama administration’s lack of leadership on Iran** in this “period of consequences,” Congress should step in to fill the void. As our editorial went to press, a bipartisan group of 44 senators began to do just that. In a letter organized by Senators Robert Menendez and Roy Blunt, the group outlined a series of steps Iran would have needed to take at the June 18-19 Moscow talks to justify further negotiations. These included shutting its previously covert enrichment facility near Qom, freezing enrichment above 5 percent, and shipping its stockpile of uranium enriched above that point out of the country. The letter noted, “Absent these steps, we must conclude that **Tehran is using the talks as a cover to buy time as it advances toward nuclear weapons** capability.” And t**he senators called on the president to “reevaluate the utility of further talks** at this time and instead **focus on** significantly **increasing the pressure** on the Iranian government **through** sanctions and **making clear that a credible military option exists**.” With the subsequent failure of the Moscow talks, President **Obama should heed this** sensible advice from nearly half the Senate. At this point, the futility of further talks is pretty clear to any honest observer. The United States and our allies have made proposal after proposal, imposed sanction upon sanction, and even apparently deployed covert tools which we learn about on an almost daily basis as administration officials desperate to burnish the president’s image leak sensitive national security information. Despite all of this**, the centrifuges continue to spin, the stockpile of enriched uranium grows, and Iran gets closer and closer to a nuclear weapons capability**. As “technical experts” meet in the coming weeks, and **the Obama administration clings to a “process” that is going nowhere, Iran will undoubtedly use the intervening period to create additional facts on the ground, install more centrifuges, enrich more uranium, and continue to wreak havoc in Syria and plot attacks against U.S. interests** and those of our allies. **Iran’s strategic calculus remains unaffected**. Stephen Rademaker, one of the witnesses at a House Armed Services Committee hearing on June 20, testified that **Iran has not been “sufficiently persuaded that military force really is in prospect should they fail to come to an acceptable agreement to the problem.”** **The key to changing that is a serious debate about the military option**. But even in the wake of the collapse of the talks, far too many otherwise serious people continue to hold out hope for a negotiated settlement brought about by increased economic pressure. All additional sanctions should be explored and enacted as soon as possible, but what the track record of more than a decade of negotiations with Iran tells us is that this is not a country about to concede. This is not a regime on the ropes or on the cusp of compromise, as many would have us believe. **This is a regime committed to developing nuclear weapons,** despite the cost to the Iranian economy and the toll on the Iranian people. **Time is running out and the consequences of inaction for the United States, Israel, and the free world will only increase** in the weeks and months ahead**. It’s time** for Congress **to seriously explore an Authorization of Military Force to halt Iran’s nuclear program.**

**Strong presidency key to check Iranian nuclear ambitions**

**Bolton 2011**

[John Bolton, How Obama Bungled the War in Libya, http://www.thedailybeast.com/articles/2011/06/27/john-bolton-on-how-obama-s-blunders-in-libya-could-keep-gaddafi-in-power.html, uwyo//amp]

Given the duration of the war in Afghanistan, its 2012 political implications, and the extent of American casualties, it was understandable last week that much of the media’s attention was focused on President Barack Obama’s announcement of withdrawing troops from the war-torn country. Yet that focus seemed to mask **the growing problems in Libya, where thanks to presidential incompetence** and congressional confusion, our **policy remains in utter disarray**. Last week, **when asked to support U.S. military activities in the oil-rich nation, the House of Representatives voted “present.” The House** overwhelmingly **rejected an explicit authorization of force**, but also rejected an effort to prohibit its funding**. If anyone needed evidence as to why the founding fathers did not give Congress the authority to “make war,” this was** surely **it**. If we consider what to do next, the answer seems to be not much. **The House’s contradictory signals left our allies in dismay**, and seemed to encourage Muammar Gaddafi, the Libyan strongman, to continue to hold out. The end result could be negotiations, followed by a stalemate or the country’s partition, and the eventual empowerment of Islamist elements within the Libyan opposition. With the prospects for Congressional action now remote**, what we need is leadership from our president,**

but Obama has little credibility. Critics have savaged him for his military intervention—from his basic rationale and laughable interpretation of the War Powers Act, to the constraints he imposed on our military and his refusal to directly target Gaddafi. These criticisms are essentially correct. Obama’s rationale for intervening--protecting Libyan civilians--tugs at the heart strings, but conveys no strategic U.S. interest. In fact, Obama undercut his own logic last week, saying in his Afghanistan speech that it was now “time to focus on nation building here at home.” Going forward, I’m certain he will rue that cheap and irresponsible line, which his opponents will surely use against him in the lead up to the 2012 election. Of course, there is a strategic interest in toppling Gaddafi, as the Libyan leader has threatened to re-engage in international terrorism and resume his quest for nuclear weapons. But Obama missed it. After months of dithering, NATO is now clearly targeting Gaddafi, yet Obama is unwilling to say so, even though killing the brutish dictator is precisely the way to protect Libyan civilians. Instead, Obama seems more interested in pursuing an ideological abstraction, the gauzy “responsibility to protect” doctrine, rather than concrete U.S. interests. And we are now paying for this ideological frolic. Gaddafi Supporters in Tripoli, Libya Ivan Sekretarev / AP Photo From the beginning, Obama erred initially in his failure to get congressional authorization for the use of force. There was a compelling case, but he seemed more interested in getting the approval of both the Arab League and the United Nations Security Council. He could have even gained congressional approval after prevailing at the U.N., as George H.W. Bush did in 1990 when Saddam Hussein invaded Kuwait, but Obama chose to pass entirely. Getting Congress onboard is not constitutionally required, but it would have been politically prudent. When things get rough, as they have, it’s always good to have an insurance policy. Inexplicably, Obama didn’t, as his political instincts seemed to vanish. Even worse, before the House voted last week, the White House did precious little lobbying to salvage its position. Adding insult to injury, Obama tried to address the War Powers Act by twisting words beyond comprehension. Arguing that the United States was not engaged in “hostilities” ruffled nearly every feather on Capitol Hill that he had not already ruffled to begin with. As Humpty Dumpty once said, per Lewis Carroll: “When I use a word, it means just what I choose it to mean, neither more nor less.” There is simply no reason for optimism here. Without a new president, America’s international position, especially in the Middle East, will only grow worse. Operationally, **Obama** also **erred by imposing self-defeating constraints on the U.S. military.** Although American forces dominated the initial attacks, they were later restricted to mainly intelligence, logistical and support functions, while our allies carried out the bulk of the subsequent strikes. This display of multilateralism has unquestionably extended what could have been a short, sharp encounter into one that has now lasted more than 100 days. Because of these missteps, Gaddafi still has control over parts of Libya. With no end in sight, **the President and Congress have sent our NATO allies, Gaddafi’s government and the Libyan opposition a clear message in their confusion: That our resolve is weak, our commitment is uncertain, and our willingness to establish a pro-Western regime is minimal**. In turn, Gaddafi will likely remain determined to fight, and NATO will grow wobbly and negotiate a settlement that leaves the Libyan leader with at least partial control. And while the Libyan opposition undoubtedly contains more desirable alternatives to Gaddafi, opposition leaders admit there is a substantial terrorist presence within their ranks, and our blunders have increased the possibility that Islamic extremists will take over. There is simply no reason for optimism here. Without a new president, **America’s international position,** especially **in the Middle East, will only grow worse**. **For those who do not believe national security is of much interest to the U.S. electorate, think again** when gasoline prices resume their inexorable rise, **when Iran’s nuclear weapons programs progress beyond the point of no return,** or if the United States suffers another terrorist attack.

### A2 link

#### Detention cases haven’t derailed deference

(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., “WAR POWERS, FOREIGN AFFAIRS, AND THE COURTS: SOME INSTITUTIONAL CONSIDERATIONS” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW - VOL. 45 2012, <http://heinonline.org.proxy.library.umkc.edu/HOL/Page?collection=journals&handle=hein.journals/cwrint45&type=Text&id=451>

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,' which is best known for Justice Holmes's 58. Id. (citing U.S. CONST. art. I, § 7, cl. 2 ("If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which Case it shall not be a Law. 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.""4 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."@6 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 effort6 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.7 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.71 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.5 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." 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 1 to the legality of the Vietnam War consistently rejected those challenges. 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" 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 Force" and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. citizens.' 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," 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," whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief."6 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," 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.9 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.' 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," 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." 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 15 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.9" About a month after this symposium took place, in Hamdan v. United States" 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.'01 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,'02 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.,"'0 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.' Unlike Arar, in which the defendants were federal officials,'o this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture.10 Although at least four judges on the en banc courts dissented from both rulings,0 the Supreme Court declined to review either case.109

#### Due process in squo

Groves and Walsh, 07

([Steven Groves](http://www.heritage.org/about/staff/stevengroves.cfm) is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, and [Brian W. Walsh](http://www.heritage.org/about/staff/BrianWalsh.cfm)is Senior Legal Research Fellow in the Center for Legal and Judicial Studies, at The Heritage Foundation, "Dispelling Misconceptions: Guantanamo Bay Detainee ProceduresExceed the Requirements of the U.S. Constitution, U.S. Law, andCustomary International Law", July 13, [www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law) NL)

Misconception #2: The Guantanamo Bay detainees received inadequate due process when they were designated enemy combatants. In violation of the Geneva Conventions and the customary laws of war, Taliban and al-Qaeda fighters in Afghanistan wear no uniforms or insignia. Unlike the soldiers of every nation that seeks the protections of the Geneva Conventions and other laws of war, Taliban and al-Qaeda fighters refuse to carry their arms openly. Such choices drastically increase the dangers of war to the civilians among whom Taliban and al-Qaeda forces hide. These choices also make it more difficult for U.S. military personnel to determine whether, upon a combatant's capture, the combatant is in fact a member of the enemy force. To address the problem, the U.S. military established a system to screen each detainee to determine whether he is an enemy combatant. The result is that detainees at Guantanamo Bay have received more procedural protections ensuring the fairness of their detention than any foreign enemy combatant in any armed conflict in the history of warfare. Under the Geneva Conventions, enemy combatants who have committed a belligerent act but whose detainee status is in question are entitled to have their status determined by a "competent tribunal."[[12]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law" \l "_ftn12" \o ")In accordance with that provision of the Geneva Conventions, prior to the September 11 attacks the U.S. military established Army Regulation 190-8, Section 1-6, setting forth procedures for the operation of tribunals to make such determinations-that is, whether a combatant may be held as a prisoner of war.[[13]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law" \l "_ftn13" \o ") The U.S. Supreme Court recently cited Army Regulation 190-8 as an example of a procedure which would satisfy the due process requirements for determining the status of the Guantanamo Bay detainees.[[14]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law" \l "_ftn14" \o ") In response, the Department of Defense established special tribunals modeled on Army Regulation 190-8-Combatant Status Review Tribunals (CSRTs)-to determine the status of detainees at Guantanamo Bay. Consistent with Army Regulation 190-8, the CSRT hearing provides each detainee with a hearing before a neutral panel composed of three commissioned military officers. The tribunals make their decisions on the detainee's status by majority vote, based on the preponderance of the evidence. The detainee has the right to attend all open portions of the CSRT proceedings, the opportunity to call witnesses on his behalf, the right to cross-examine witnesses called by the tribunal, and the right to testify on his own behalf.[[15]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law" \l "_ftn15" \o ") These procedures go far beyond what most nations provide and what the Geneva Conventions require. Because unlawful enemy combatants violate the laws of war by employing deception to hide or confuse their identities and affiliations, the CSRT hearings were designed not just to meet but to exceed the due process protections provided by hearings conducted pursuant to Army Regulation 190-8. Specifically, Guantanamo Bay detainees are given the following rights as part of their CSRT hearings: A military officer is appointed to serve as the detainee's personal representative and explains the CSRT process to the detainee, assists in the collection of relevant information, and helps prepare for the hearing. In advance of the hearing, the detainee is given a summary of the evidence supporting his designation as an enemy combatant

A member of the tribunal is required to search government files for any evidence suggesting the detainee is not an enemy combatant. The decision of every CSRT hearing is automatically reviewed by a higher authority in the Department of Defense who is empowered to order further proceedings.[[16]](http://www.heritage.org/research/reports/2007/07/dispelling-misconceptions-guantanamo-bay-detainee-procedures-exceed-the-requirements-of-the-us-constitution-us-law-and-customary-international-law" \l "_ftn16" \o ") There would be little or no doubt whether detainees are members of the Taliban or al-Qaeda if such forces simply followed the Geneva Conventions and wore uniforms, displayed insignias, and carried their arms openly. The resulting irony is that unlawful enemy combatants detained at Guantanamo Bay have been given heightened due process despite, and as a direct result of, their repudiation of the laws of war.

#### **And plan can’t solve, doesn’t create due process**

Fisher 9

[ William, “Special ‘Terror’ Courts Worry Legal Experts, by William Fisher,” May 21, 2009, <http://original.antiwar.com/fisher/2009/05/20/special-terror-courts/> //uwyo-baj]

He told IPS that these new courts "would institutionalize many of the worst features of Bush administration policies, perpetuating both indefinite detention and trial of terrorism suspects outside the established federal criminal courts." He added, "National security court proposals are riddled with constitutional flaws including reliance on secret evidence, elimination of core constitutional safeguards like the right to confront one’s accusers, and the absence of protections against the use of evidence obtained by coercion."

"While they might be sold as a reform measure, national security courts are part of an agenda to continue the failed Guantanamo system rather than to end it," he said.

**2NC: Courts**

**[2.] encroaches upon presidential power-lack of standing**

**Kaplan 2013**

[Lewis A. Kaplan, District Judge, 07/17/2013, Hedges v. Obama, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Hedges.2d-Circuit-Opinion.pdf>, uwyo//amp]

Consequently, **there is a world of difference between assuming that a state executive will enforce a statute imposing civil penalties fo**r certain campaign **finance violations180**—or even that the executive branch will enforce a federal criminal statute barring provision of material support to terrorists181—**and assuming that the President will detain any non-citizen abroad that Congress authorizes him to detain under the AUMF**. Clapper further supports this understanding, as it made clear that plaintiffs cannot establish standing on the basis of speculation about how the government may choose to utilize its authority to engage in foreign surveillance.182 In short, while it generally may be appropriate to presume for standing purposes that the government will enforce the law against a plaintiff covered by a traditional punitive statute, such a presumption carries less force with regard to a statute concerned entirely with the President’s authority to use military force against noncitizens abroad.183 Thus, in the circumstances of this case, Jonsdottir and Wargalla must show more than that the statute covers their conduct to establish preenforcement standing.180 Vt. Right to Life, 221 F.3d 376. 181 HLP, 130 S. Ct. 2705. 182 See 133 S. Ct. at 1148–49. 183 **We do not rely on any notion that Article III standing rules are different just because this case implicates national security and foreign affairs**. Rather, we note only that **plaintiffs in the circumstances presented need to show more to establish a sufficiently imminent threat of enforcement**; **Congress and the Constitution provide the President with broad discretion in these areas and thus a presumption of enforcement may be less apt. This is consistent with the Supreme Court’s observation that it has “often found a lack of standing in cases in which the Judiciary has been requested to review actions of the politicalbranches in the fields of intelligence gathering and foreign affairs.” Id. at 1147.**

**1NC: Congress-Statutory Restrictions**

**Padilla reversal proves-restrictions on indefinite detention encroach on presidential power**

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2. Padilla **Padilla,** also an American citizen, was apprehended at Chicago’s O’Hare International Airport in May 2002 after allegedly receiving training from al-Qaeda in Afghanistan, becoming involved in a plan to detonate a “dirty bomb” here, and returning to the United States to conduct reconnaissance and facilitate attacks by al-Qaeda.21 **In December 2003—prior to Hamdi—this Court held that because Padilla was an American citizen arrested on domestic so**il away from a zone of combat**, his military detention violated the Non-Detention Act and could not be justified by the President’s Article II war powers.22 The Supreme Court reversed our decision** on procedural grounds on **the day it decided Hamdi** butdid not reach the lawfulness of Padilla’s detention.23 Following the Supreme Court’s reversal of our Padilla ruling, a new habeas petition was filed on his behalf. **The Fourth Circuit in 2005 concluded that Padilla was lawfully detained u**

**nder the reasoning of Hamdi because it became known that he had been “armed and present in a combat zone during armed conflict between al Qaeda/Taliban forces and the armed forces of the United States**” while in Afghanistan prior to his return to the United States.24 Although Padilla had been apprehended in the United States, the Fourth Circuit concluded that Hamdi had not relied on the place of capture.**25 The government subsequently indicted Padilla and transferred him to civilian criminal custody. His petition for certiorari was denied.26**

### Judicial activism

#### No impact to china drones – far behind

Zhou 2013 [Dillon columnist for PolicyMic, January, 2013, “China Drones Prompt Fears of a Drone Race With the US,” PolicyMic, http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us]

There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge

to the American drone program.¶ First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present.¶ Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years.¶ Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.

# 1nr

#### And Mutually Exclusive

#### Strong president key to solve wars and avoid existential threats- Congressional deliberation takes too long, relies on inexpert advice, and divulges too much sensitive information

Weinberger 09

[Seth Weinberger is Assistant Professor in the Department of Politics and Government at the University of Puget Sound. , 2009, Balancing War Powers in an Age of Terror, The Good Society, Vol. 18, Issue 2, Project Muse, uwyo//amp]

When the president wants to take, pursuant to his powers as commander-in-chief of the armed forces, an action that is inherently legislative in nature, he must have explicit permission from "an Act of Congress or from the Constitution itself."24 Since, as Justice Black notes, the Constitution refutes the idea that the president can have legislative powers, the permission must come from an Act of Congress. Without such permission, a president is not allowed to seize steel mills to ensure that the supply of war-essential materiel is not threatened, conduct warrantless wiretapping of American citizens, indefinitely detain without challenge those suspected of involvement in international terrorist organizations, or change the rules governing the procedures for military commissions. In wartime, however, it may be neither expedient nor strategically sound for the president to be forced to come before Congress for permission for each and every legislative action deemed necessary for the war effort. Circumstances in war are fluid and unpredictable, and legislation passed at one time may quickly become irrelevant or obsolete. The deliberation and compromise that are the hallmarks of congressional legislation may be ill-suited to war, which demands swift and decisive action to keep on top of rapidly shifting military situations. As one scholar puts it, "Congress at war is not a pretty sight. The legislative branch can be questioning and judgmental, impatient for victories yet free with inexpert advice, slow to provide the men and material for combat, reluctant to vote the taxes needed to pay for the war, critical of generals, and careless with secrets."25 In times in which the country faces an existential, or otherwise exceedingly dangerous, threat, it may not behoove the president, the military, or the nation as a whole to require the president to ask Congress time and time again to enact laws to advance the war effort.

#### Obama’s war powers destroys American credibility abroad – answers their cred DA

Bolton 2011

[John R. Bolt a former U.S. ambassador to the United Nations, is a senior fellow at the American Enterprise Institute, 2011, BOLTON: War-powers crisis, <http://www.washingtontimes.com/news/2011/jun/6/war-powers-crisis-866092872/>, uwyo//amp]

Certainly, Mr. Obama has ignored the War Powers Act, but so have all his predecessors since its enactment, and rightly so, given the statute’s manifest unconstitutionality. Undoubtedly, Mr. Obama’s approach in Libya has grown increasingly incoherent even as NATO slowly comes closer to achieving the one legitimate U.S. national security interest involved: overthrowing Col. Moammar Gadhafi. But what was most disturbing in the legislative maneuvering before Friday’s vote - and vastly underreported by the media - was the near total absence of Mr. Obama and his White House staff from the political field of battle. Not only is the president unable to conceal his general disinterest in national security policy, but neither could he be bothered to exercise leadership within his own party at a critical moment. Observers across the political spectrum concurred that the proposal offered by Rep. Dennis J. Kucinich, Ohio Democrat, harshly criticizing Mr. Obama’s handling of Libya was very likely to pass the House. To the growing dismay of the Republican House leadership, Mr. Kucinich was gathering support from an unusual coalition of members dissatisfied with the president’s Libya policy, questioning its underlying objectives, its absence of an intelligible American strategy and its flawed implementation. Some Republicans disagreed with the Libya intervention, and others sought to show that the disarray in Mr. Obama’s Libya strategy demonstrated his general foreign-policy ineptitude. But the more fundamental problem was that House Democrats were defecting in droves from the White House, which was doing little or nothing to bring them back into line to support their president. While passage of the Kucinich amendment would have had no operational effect because it surely would have died in the Senate, the political signal internationally would have been debilitating. Washington’s credibility and staying power would have been called immediately into question, and not just in Libya, but in Afghanistan, Iraq and elsewhere. That may be precisely what many congressional Democrats, increasingly vocal in their opposition to the war in Afghanistan, intended.House Speaker John A. Boehner recognized the national security implications of a Kucinich victory. To head it off, Mr. Boehner crafted an alternative amendment, highly critical of Mr. Obama’s actions in Libya, to be sure, but not a text that would call into question U.S. resolve in Libya or elsewhere. Mr. Boehner’s holding action succeeded, thus buying time for the administration to get its act together on Libya. Nonetheless, Mr. Kucinich’s near success has already caused significant damage. Mr. Obama’s incoherence on Libya exemplifies the failed approach to national security issues characterizing his administration from the outset. First, Mr. Obama’s objectives in Libya have been unclear and contradictory, and they have shifted over time. He started by declaring that the use of force was to protect Libyan civilians - not to topple Col. Gadhafi. Today, however, the obvious military objective is the removal of the Libyan leader but, apparently, not to admit it publicly, and to accomplish it slowly and ineffectively. Had Col. Gadhafi’s downfall been the initial, unambiguous objective and had Mr. Obama moved swiftly and decisively, our intervention likely would have been concluded successfully by now and we could be working to secure a pro-Western successor regime. Second, Mr. Obama’s aversion to U.S. leadership and his decision to retreat behind the facade of NATO and the U.N. Security Council was clearly mistaken. No one was fooled about America’s continuing central role militarily, but the charade has impeded finishing the job. Mr. Obama’s weakness and indecisiveness continue to risk having Libya descend into anarchy or split into two states and undercut our credibility and commitment elsewhere.

#### Intra-executive review solves independence, accountability, public scrutiny/transparency

Radsan & Murphy 2010

[Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law. Afsheen John Radsan is a Professor, William Mitchell College of Law. He was assistant general counsel at the Central Intelligence Agency from 2002-2004., MEASURE TWICE, SHOOT ONCE: HIGHER CARE FOR CIA TARGETED KILLINGhttp://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1625829, uwyo//amp]

The CIA’s Inspector General (IG) is charged with investigating the legality of CIA actions.182 He or she is experienced with protecting classified information. His or her independence is protected by a statute that permits only the president to remove the IG.183 And he or she has a dual reporting line to the CIA Director and to the congressional oversight committees.184 The CIA’s IG is thus our preferred candidate. The CIA’s IG should review all the CIA’s targeted killings for reasoned decision making. Based on this review, an IG could recommend internal discipline, compensation to unwarranted victims of a strike, or, in an extreme case of abuse, referral to the Department of Justice for criminal proceedings. The IG should also be involved in reviewing the CIA’s internal procedures on target selection and execution of attacks. IG’s due process, so to speak, substitutes for what otherwise might come from the courts. To enhance accountability, the IG could prepare public reports detailing as much information on strikes as reasonably consonant with national security. Such reports would need to balance the interests of accountability against the CIA’s need to enable foreign governments to keep their role in assisting U.S. intelligence a secret. They would also need to avoid excessive revelations of sensitive sources and methods. Given the limited number of CIA strikes, the dangers this program poses to peaceful civilians now and in the future, and the extensive data concerning each strike, it is feasible for the IG to conduct an investigation of all CIA drone strikes. These investigations will not guarantee perfection. Nothing can. But they will help ensure the accuracy and the legality of strikes, curb abuses, and provide a modicum of accountability for a shadow war. Because they are feasible under the laws of war, IHL requires them.