## 1NC

### 1

Immigration reform is up—Obama has leverage—that’s key to overcome GOP obstructionism

Jeff Mason, Reuters, 10/19/13, Analysis: Despite budget win, Obama has weak hand with Congress , health.yahoo.net/news/s/nm/analysis-despite-budget-win-obama-has-weak-hand-with-congress

Democrats believe, however, that Obama's bargaining hand may be strengthened by the thrashing Republicans took in opinion polls over their handling of the shutdown.

"This shutdown re-emphasized the overwhelming public demand for compromise and negotiation. And that may open up a window," said Ben LaBolt, Obama's 2012 campaign spokesman and a former White House aide.

"There's no doubt that some Republican members (of Congress) are going to oppose policies just because the president's for it. **But the hand of those members was** significantly weakened."

If he does have an upper hand, Obama is likely to apply it to immigration reform. The White House had hoped to have a bill concluded by the end of the summer. A Senate version passed with bipartisan support earlier this year but has languished in the Republican-controlled House.

"It will be hard to move anything forward, unless the Republicans find the political pain of obstructionism too much to bear," said Doug Hattaway, a Democratic strategist and an adviser to Hillary Clinton's 2008 presidential campaign.

"That may be the case with immigration - they'll face pressure from business and Latinos to advance immigration reform," he said.

Plan crushes Obama---huge controversy

NYT, 9

(Chinese Inmates at Guantánamo Pose a Dilemma, www.nytimes.com/2009/04/01/us/politics/01gitmo.html?pagewanted=all&\_r=0)

The Uighurs have become something of a Guantánamo Rorschach test: hapless refugees to some, dangerous plotters to others. For the Obama administration, the task of determining which of those portraits is correct and whether the men can be released inside the United States has raised the stakes for the president’s plan to close the Guantánamo prison. Either choice **is likely to provoke intense reaction**. The dilemma has taken on new urgency because the plan to close the prison depends on other countries’ accepting some of the remaining 241 detainees Diplomats say that with President Obama embarking on Tuesday on a European trip, the effort could falter unless this country signals it is willing to take some of the Guantánamo prisoners. At home, though, Mr. Obama faces the prospect of a storm of protest from some quarters if he admits detainees the Bush administration labeled terrorists and barred from this country. Already, word of the men’s possible release has brought denunciations and anxiety from military groups, families of Sept. 11 victims **and political figures. “I don’t think people want people that could potentially be terrorists in** the United States,” said Representative J. Randy Forbes, Republican of Virginia.

Immigration reform necessary to sustain the economy and competitiveness

Javier Palomarez, Forbes, 3/6/13, The Pent Up Entrepreneurship That Immigration Reform Would Unleash, www.forbes.com/sites/realspin/2013/03/06/the-pent-up-entrepreneurship-that-immigration-reform-would-unleash/print/

The main difference between now and 2007 is that today the role of immigrants and their many contributions to the American economy have been central in the country’s national conversation on the issue. Never before have Latinos been so central to the election of a U.S. President as in 2012. New evidence about the economic importance of immigration reform, coupled with the new political realities presented by the election, have given reform a higher likelihood of passing. As the President & CEO of the country’s largest Hispanic business association, the U.S. Hispanic Chamber of Commerce (USHCC), which advocates for the interests of over 3 million Hispanic owned businesses, I have noticed that nearly every meeting I hold with corporate leaders now involves a discussion of how and when immigration reform will pass. The USHCC has long seen comprehensive immigration reform as an economic imperative, and now the wider business community seems to be sharing our approach. It is no longer a question of whether it will pass. Out of countless conversations with business leaders in virtually every sector and every state, a consensus has emerged: our broken and outdated immigration system hinders our economy’s growth and puts America’s global leadership in jeopardy. Innovation drives the American economy, and without good ideas and skilled workers, our country won’t be able to transform industries or to lead world markets as effectively as it has done for decades. Consider some figures: Immigrant-owned firms generate an estimated $775 billion in annual revenue, $125 billion in payroll and about $100 billion in income. A study conducted by the New American Economy found that over 40 percent of Fortune 500 companies were started by immigrants or children of immigrants. Leading brands, like Google, Kohls, eBay, Pfizer, and AT&T, were founded by immigrants. Researchers at the Kauffman Foundation released a study late last year showing that from 2006 to 2012, one in four engineering and technology companies started in the U.S. had at least one foreign-born founder — in Silicon Valley it was almost half of new companies. There are an estimated 11 million undocumented workers currently in the U.S. Imagine what small business growth in the U.S. would look like if they were provided legal status, if they had an opportunity for citizenship. Without fear of deportation or prosecution, imagine the pent up entrepreneurship that could be unleashed. After all, these are people who are clearly entrepreneurial in spirit to have come here and risk all in the first place. Immigrants are twice as likely to start businesses as native-born Americans, and statistics show that most job growth comes from small businesses. While immigrants are both critically-important consumers and producers, they boost the economic well-being of native-born Americans as well. Scholars at the Brookings Institution recently described the relationship of these two groups of workers as complementary. This is because lower-skilled immigrants largely take farming and other manual, low-paid jobs that native-born workers don’t usually want. For example, when Alabama passed HB 56, an immigration law in 2012 aimed at forcing self-deportation, the state lost roughly $11 billion in economic productivity as crops were left to wither and jobs were lost. Immigration reform would also address another important angle in the debate – the need to entice high-skilled immigrants. Higher-skilled immigrants provide talent that high-tech companies often cannot locate domestically. High-tech leaders recently organized a nationwide “virtual march for immigration reform” to pressure policymakers to remove barriers that prevent them from recruiting the workers they need. Finally, and perhaps most importantly, fixing immigration makes sound fiscal sense. Economist Raul Hinojosa-Ojeda calculated in 2010 that comprehensive immigration reform would add $1.5 trillion to the country’s GDP over 10 years and add $66 billion in tax revenue – enough to fully fund the Small Business Administration and the Departments of the Treasury and Commerce for over two years. As Congress continues to wring its hands and debate the issue, lawmakers must understand what both businesses and workers already know: The American economy needs comprehensive immigration reform.

Extinction

**Auslin 9**

(Michael, Resident Scholar – American Enterprise Institute, and Desmond Lachman – Resident Fellow – American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187)

What do these trends mean in the short and medium term? The Great Depression showed how social and **global chaos** followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would **dramatically raise tensions** inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in **all regions of the globe** and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce **into a big bang**.

### 2

The plan undermines the effectiveness of overseas operations—perverse incentive for premature release

White, 10

(Counsel-Baker Botts LLP, Brief for Foundation for Defense of Democracies, Kyemba v. Obama, http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_RespondentAmCuFDD.authcheckdam.pdf)

Petitioners are not entitled to release into the United States. They are aliens whose admission is prohibited by federal law. The fact that petitioners are not “enemy combatants” does not affect the applicability and enforceability of other federal laws barring their entry and release into the United States. The federal immigration statutes squarely prohibit entry by persons who, like petitioners, may have received military-type training from terrorists. See infra pp. 6-11. Those prohibitions constitute the corporate judgment of the American people through the Government’s political Branches, and that judgment is rooted in the Nation’s continuing experience in matters of national security. II. **Petitioners demand an unprecedented right of entry** into the United States that would, **if granted to them, frustrate the conduct of U.S. military operations overseas.** The possibility of detained aliens obtaining direct access to the Nation’s civilian population would encourage U.S. military and other counterterrorism officials to consider, among other unsatisfactory options, **releasing dangerous persons to suboptimal locations** or rendering them to foreign governments.

Nuclear war

Frederick Kagan and Michael O’Hanlon 7, Fred’s a resident scholar at AEI, Michael is a senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April, <http://www.aei.org/files/2007/04/24/20070424_Kagan20070424.pdf>

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, SinoTaiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

### 3

The judiciary adheres to political question deference now—but doctrinal repudiation would reverse that

Franck ‘12

Thomas, Murray and Ida Becker Professor of Law, New York University School of Law Wolfgang Friedmann Memorial Award 1999, *Political Questions/Judicial Answers*

Sensitive to this historical perspective, many scholars, but few judges, have openly decried the judiciary’s tendency to suspend at the water’s edge their jealous defense of the power to say what the law is. Professor Richard Falk, for example, has criticized judges’ “ad hoc subordinations to executive policy”5 and urged that if the object of judicial deference is to ensure a single coherent American foreign po1icy, then that objective is far more likely to be secured if the policy is made in accordance with rules “that are themselves not subject to political manipulation.”6 Moreover, as a nation publicly proclaiming its adherence to the rule of law, Falk notes, it is unedifying for America to refuse to subject to that rule the very aspect of its governance that is most important and apparent to the rest of the world.7 Professor Michael Tigar too has argued that the deference courts show to the political organs, when it becomes abdication, defeats the basic scheme of the Constitution because when judges speak of “the people” as “the ultimate guardian of principle” in political-question cases, they overlook the fact that “the people” are the “same undifferentiated mass” that “historically, unmistakably and, at times, militantly insisted that when executive power immediately threatens personal liberty, a judicial remedy must be available.” Professor Louis Henkin, while acknowledging that certain foreign relations questions are assigned by the Constitution to the discretion of the political branches, also rejects the notion that the judiciary can evade responsibility for deciding the appropriate limits to that discretion, particularly when its exercise comes into conflict with other rights or powers rooted in the Constitution or laws enacted in accordance with its strictures.9 His views echo earlier ones espoused by Professor Louis Jaffe, who argued that while the courts should listen to advice tendered by the political branches on matters of foreign pol icy and national security, “[t]his should not mean that the court must follow such advice, but that without it the court should not prostrate itself before the fancied needs of diplomacy and foreign policy. The claim of policy should be made concrete in the particular instance. Only so may its weight, its content, and its value be appreciated. The claims of diplomacy are not absolute; to question their compulsion is not treason.”° There has been little outright support from the judiciary for such open calls to repudiate the practice of refusing to adjudicate foreign affairs cases on their merits. While some judges do refuse to apply the doctrine, holding it inapplicable in the specific situation or passing over it in silence, virtually none have hitherto felt able to repudiate it frontally. On the other side, some judges continue to argue vigorously for the continued validity of judicial abdication in cases implicating foreign policy or national security. These proponents still rely occasion ally on the early shards of dicta and more rarely on archaic British precedents that run counter to the American constitutional ethos. More frequently today, their arguments rely primarily on a theory of constitutionalism—separation of powers—and several prudential reasons.

Denied cert on PQD—plan destroys that

Feith ‘12

Daniel, Yale Law, Restraining Habeas: Boumediene, Kiyemba, and the Limits of Remedial Authority

The Uighurs’ odyssey then took another twist. The Government appealed Judge Urbina’s ruling to the D.C. Circuit, and while the appeal was pending, each of the Uighurs received an offer of resettlement from a foreign country, which the government communicated to the D.C. Circuit.[14] The D.C. Circuit reversed Judge Urbina’s decision.[15] His order, it held, trenched upon “the exclusive power of the political branches to decide which aliens may, and which aliens may, enter the United States, and on what terms.”[16] A court may only review a decision by the political branches to exclude an alien if “‘expressly authorized by law.’”[17] Since the district court “cited no statute or treaty authorizing its order,”[18] the D.C. Circuit held that it lacks the authority to review, let alone reverse, the government’s decision to deny the Uighurs admission to the United States.[19] That holding suggested an important corollary: that judicial remedial authority in habeas cases is not absolute.[20] The D.C. Circuit reaffirmed its decision in its entirety one year later,[21] after the Supreme Court vacated and remanded Kiyemba I in light of new factual developments.[22] That ruling leaves the Uighurs only two options: accept an offer of resettlement or remain at Guantanamo.

PQD key to Sonar training

Gartland ‘12

Maj. Charles, B.A., University of Alaska - Anchorage; J.D., cum laude, Gonzaga University School of Law; LL.M., George Washington University Law School) is a United States Air Force judge advocate currently serving as the Environmental Liaison Officer for the Air Force Materiel Command, “ARTICLE: AT WAR AND PEACE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT: WHEN POLITICAL QUESTIONS AND THE ENVIRONMENT COLLIDE,” 68 A.F. L. Rev. 27

The public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs" (emphasis added). n407 At least two Supreme Court Justices disagreed n408 with Chief Justice Roberts' characterization in Winter, and, arguably, four of them disagreed (depending on how the partial concurrence/dissent by Justice Breyer, partially joined by Justice Stevens, is construed). n409 Certainly the Ninth Circuit disagreed, n410 and that highlights a significant rub, namely, that the drastic remedy of an injunction appears to have no predictability whatsoever. In one nuclear detonation case, Committee for Nuclear Responsibility v. Schlesinger, the test goes forward; n411 another two years later, Enewetak, a different test is enjoined. n412 In one training case, Barcelo v. Brown, military training exercises are allowed to proceed, n413 whereas in others, Evans and Winter (until the Supreme Court phase) they are enjoined. n414 Such uncertainty is a natural outcome of the process unfolding in all these cases: a judicial decision to grant an injunction under NEPA against a national defense activity is--by the very nature of the four part injunction test--a policy decision; and people (and judges) disagree about what constitutes good public policy. Policy decisions lie with the legislative and executive branches, and in the case of national defense, the policy decision has already been settled by statute and the Constitution--both of which provide for a national defense establishment that, in protecting the Republic, allows statutes like NEPA to exist in the first place.

**That’s key to overall Naval power and anti-submarine warfare.**

Popeo et al ‘8

Daniel, Paul Kamenar, Washington Legal Foundation, Andrew McBride, Thomas McCarthy, Andrew Miller, William R. Dailey, Wiley Rein LLP, “Brief for Amici Curiae The Washington Legal Foundation, Rear Admiral James J. Carey, U.S. Navy (Ret.), National Defense Committee, and Allied Educational Foundation in Support of Petitioners,” http://www.wlf.org/upload/07-1239winter.pdf

Throughout our Nation's history, the Navy has played a vital role in major world events occurring during both times of war and peace. As a maritime Nation, the United States relies on the "Navy's ability to operate freely at sea to guarantee access, sustain trade and commerce, and partner with other nations to ensure not only regional security but defense of our own homeland." App. 314a (statement of Rear Admiral Ted N. Branch). For this reason, it has been recognized that this ability "to operate freely at sea is one of the most important enablers of national power- diplomatic, information, military and economic." App. 315a-316a (statement of Rear Admiral Ted N. Branch). The only way to ensure our Nation's ability to so operate at sea is through naval training. Indeed, it is a Navy maxim that "We train as we will fight so that we will fight as we have trained." J.A. 576 (statement of Captain Martin N. May). Antisubmarine warfare has long been a key component of naval warfare. Because submarine detection and antisubmarine warfare require the coordinated efforts of vast numbers of Navy personnel, repeated training in battle conditions is essential to naval readiness. And, in our modern era, advanced technologies enable our enemies to deploy submarines that are capable of carrying long-range weapons while operating in virtual silence, nearly wholly undetectable except through the use of MFA sonar. Thus, antisubmarine warfare training utilizing MFA sonar is an absolute necessity in preparing our Navy to detect and combat enemy submarines. It goes without saying that, in a time of armed conflict, naval training and readiness are indispensable. Indeed, with American troops currently deployed throughout the world and, specifically, engaged in war in Afghanistan and Iraq, the Navy's role in our national security has never been more important than at the present. Maintaining an effective and proficient Navy, therefore, is of the utmost importance to the United States' national defense and homeland security. It is for this reason that the President determined that "the COMPTUEX and JTFEX, including the use of mid-frequency active sonar in these exercises, are in the paramount interest of the United States." App. 232a. A. A Well-Trained Navy Has Always Been A Cornerstone Of Our National Defense. Naval training has undoubtedly been at the center of the U.S. Navy's prior wartime and peacetime successes. Only a well-trained navy could have successfully fought in both the Atlantic and Pacific oceans simultaneously, as the U.S. Navy demonstrated in World War II. During World War II, the U.S. Navy's antisubmarine training was largely responsible for defeating the German submarines that were dangerously close to securing victory in the Battle of the Atlantic. See THEODORE ROSCOE & RICHARD G. VOGE, UNITED STATES SUBMARINE OPERATIONS IN WORLD WAR II xviii (Naval Institute Press 1949). It was also the joint training exercises of Operation Tiger that prepared the U.S. Navy and Army for the Normandy Invasion. See Operational Archives, Naval Historical Center, Operation Tiger, available at http-//www.history. navy.mil/faqs/faq20-l.htm (last visited July 23, 2008). Without this preparation, one of the most important battles in world history, D-Day, may have resulted in devastating failure for the United States and its allies. The Cuban Missile Crisis presented another major world event in which the Navy's readiness was of critical importance to our national security. In 1962, naval forces under U.S. Atlantic Command maintained a month-long naval "quarantine" of the island of Cuba in order to prevent the Soviet Union's deployment of ballistic missiles there. Cuban Missile Crisis, 1962, available at http '//www. history, navy. mil/faqs/faq90-l.htm (last visited July 23, 2008). The immediate readiness of the U.S. Navy in these circumstances defused a situation that came as close as the United States and Soviet Union ever came to global nuclear war. Id. At a minimum, the Navy blockade was a demonstration of the United States' strength. Naturally, the beneficial effects of naval training did not end with World War II or even the Cold War. Naval training exercises have continued to adequately prepare the Navy for effective and safe military campaigns and have continued to symbolize a strong Nation at the ready to protect its interests at home and abroad. That a well-trained Navy indicates and symbolizes American strength is not a creation of fantasy. It is a theme well-recognized by our Nation's prior and current enemies. Indeed, the importance of the U.S. Navy was not overlooked by the Japanese in their bombing of Pearl Harbor, nor was the symbolism of a U.S. Navy destroyer lost in al-Qaeda's suicide bombing attack against the USS Cole. That the Navy has been a target of strategic and symbolic attacks from our Nation's enemies further demonstrates the need for proper training to ensure the safety and success of the Navy in its vital role of defending the homeland. Undoubtedly, thorough training is a requisite to an effective Navy. **On-the-job** **training in combat**, it follows, "is the worst possible way of training personnel" and can place the success of military missions "at significant risk." App. 278a (statement of Rear Admiral John M. Bird). Consequently, naval training should be performed prior to actual combat to ensure the preparedness and eventual success in our Navy's military missions. This seemingly obvious statement is, quite possibly, even more relevant to the Navy's mission of defending against enemy submarines. B. Training For Anti-Submarine Warfare Is A Critical Component Of Naval Readiness. The Navy is the only service—military or otherwise—that can address the threat from submarines, and any curtailment of its ability to train for this mission would decrease the Navy's ability to handle that threat. App. 315a (statement of Rear Admiral Ted N. Branch). For years, the Navy has employed SONAR to "identify and track submarines, determine water depth, locate mines, and provide for vessel safety." App. 266a (statement of Rear Admiral John M. Bird). The Navy started using SONAR after World War I, and every naval vessel engaged in antisubmarine activity was equipped with sonar systems by the start of World War II. App. 268a. Indeed, as indicated above, antisubmarine warfare was integral to the Navy's successful campaigns against German submarines in World War II. Antisubmarine warfare is a science in which considerable effort goes into making and maintaining contact with the submarine. App. 354a~356a; see also App. 278a ("ASW occurs over many hours or days. Unlike an aerial dogfight, over in minutes and even seconds, ASW is a cat and mouse game that requires large teams of personnel working in shifts around the clock to work through an ASW scenario.") This fact is even more applicable when quiet, diesel-electric submarines—submarines increasingly utilized by hostile nations—are involved; modern diesel-electric submarines are capable of defeating the best available passive sonar technology by "suppress[ing] emitted noise levels." App. 274a. In addition, the far-reaching range of weapons found on modern submarines make it possible for those submarines to avoid placing themselves within range of passive sonar. App. 274a. As a result, active sonar is necessary to detect the presence of diesel-electric submarines. App. 269a\_270a. The Nation's top naval officers agree that the Navy must be able to freely utilize MFAS during antisubmarine warfare training in order to properly defend against the threats posed by diesel-electric submarines. See, e.g., App. 311a-325a, 338a-347a, 350a-357a.. If the Navy were prevented from training with MFAS or other active sonar, and were limited to using passive sonar in certain situations, the survivability of the Navy's antisubmarine missions would ultimately be placed at "great risk." App. 269a (statement of Rear Admiral John M. Bird). "[Rlealistic and repetitive [antisubmarine warfare] training with active SONAR is necessary for our forces to be confident and knowledgeable in the Navy's plans, tactics, and procedures to perform and **survive** in situations leading up to hostilities as well as combat." App. 277a. Therefore, blanket mitigation measures on MFAS training "would dramatically reduce the realism of [antisubmarine warfare] training" and would be fraught with "severe national security consequences." App. 273a (statement of Rear Admiral John M. Bird). C. The Navy's Use Of MFA Sonar In The Challenged Military Exercises Is Indispensable To Our National Security In This Time Of Armed Hostilities Across the Globe. It is clear that the COMPTUEX and JTFEX training exercises are the only way the Navy's Pacific Fleet can gain the realistic training that is necessary, especially during a time of war. These exercises represent the singular opportunity for 6,000-plus Sailors and Marines to train together in a realistic environment prior to deployment and to gain proficiency in MFAS. App. 270a-271a; App. 343a. Anytime a strike group is prevented from becoming fully proficient in MFAS, and therefore cannot be certified as combat ready, national security is negatively affected. App. 271a (statement of Rear Admiral John M. Bird). And, considering the heightened sensibilities in a time of war, any interference creates a severe impact on training and certification of readiness to perform realistic antisubmarine warfare. Because the stakes of antisubmarine warfare are so high, contact with an enemy submarine is not surrendered unless there is an order to do so. App. 355a. Even a few minutes of MFAS shutdown "would be potentially fatal in combat." App. 355a-356a (statement of Vice Admiral Samuel J. Locklear, III). As a result, a single lost contact with the submarine "cripples certification for the units involved" in the exercises. App. 356a>\* see also id. ("It may take days to get to the pivotal attack in antisubmarine warfare, but only minutes to confound the results upon which certification is based."). For these reasons, the Chief of Naval Operations, who is specifically responsible for organizing, training, equipping, preparing and maintaining the readiness of Navy forces, described COMPTUEX and JTFEX as "indispensable" training exercises. App. 342a (statement of Admiral Gary Roughead). Unsuccessful naval training in the area of antisubmarine warfare can have far-reaching consequences. As Rear Admiral Ted N. Branch recognized Any restriction or disadvantage imposed on our [antisubmarine warfare] capability that impedes the U.S. Navy's ability to retain control of the sea or project naval forces may . . . result in nothing less than a breakdown of the global system, a significant change in our international standing, and an alteration in our established way of life.

That unleashes a laundry list of nuclear conflicts

Eaglen ‘11

(Mackenzie research fellow for national security – Heritage, and Bryan McGrath, former naval officer and director – Delex Consulting, Studies and Analysis, “Thinking About a Day Without Sea Power: Implications for U.S. Defense Policy,” Heritage Foundation

Global Implications. Under a scenario of dramatically reduced naval power, **the** **U**nited **S**tates **would cease to be active in any international alliances.** While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today’s levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. China’s claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively **turning the region into a “Chinese lake.”** China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. Korea, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. Japan is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan’s historical animus remains strong. China’s entente with Russia leaves the Eurasian landmass dominated by Russia looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other’s sphere. Worldwide, trade in foodstuffs collapses. Expanding populations in the Middle East increase pressure on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia’s claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran’s orbit. Russia supplies Iran with a steady flow of military technology and nuclear industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the “protection” provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq attacks Israel. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive “refugee” camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance is shattered. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America’s retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity. Implications for America’s Economy. If the United States slashed its Navy and ended its mission as a guarantor of the free flow of transoceanic goods and trade, globalized world trade would decrease substantially. As early as 1890, noted U.S. naval officer and historian Alfred Thayer Mahan described the world’s oceans as a “great highway…a wide common,” underscoring the long-running importance of the seas to trade.[12] Geographically organized trading blocs develop as the maritime highways suffer from insecurity and rising fuel prices. Asia prospers thanks to internal trade and Middle Eastern oil, Europe muddles along on the largesse of Russia and Iran, and the Western Hemisphere declines to a “new normal” with the exception of energy-independent Brazil. For America, Venezuelan oil grows in importance as other supplies decline. Mexico runs out of oil—as predicted—when it fails to take advantage of Western oil technology and investment. Nigerian output, which for five years had been secured through a partnership of the U.S. Navy and Nigerian maritime forces, is decimated by the bloody civil war of 2021. Canadian exports, which a decade earlier had been strong as a result of the oil shale industry, decline as a result of environmental concerns in Canada and elsewhere about the “fracking” (hydraulic fracturing) process used to free oil from shale. State and non-state actors increase the hazards to seaborne shipping, which are compounded by the necessity of traversing key chokepoints that are easily targeted by those who wish to restrict trade. These chokepoints include the Strait of Hormuz, which Iran could quickly close to trade if it wishes. **More than half of the world’s oil is transported by sea.** “From 1970 to 2006, the amount of goods transported via the oceans of the world…increased from 2.6 billion tons to 7.4 billion tons, an increase of over 284%.”[13] In 2010, “$40 billion dollars [sic] worth of oil passes through the world’s geographic ‘chokepoints’ on a daily basis…not to mention $3.2 trillion…annually in commerce that moves underwater on transoceanic cables.”[14] These quantities of goods simply cannot be moved by any other means. Thus, a reduction of sea trade reduces overall international trade. U.S. consumers face a greatly diminished selection of goods because domestic production largely disappeared in the decades before the global depression. As countries increasingly focus on regional rather than global trade, costs rise and Americans are forced to accept a much lower standard of living. Some domestic manufacturing improves, but at significant cost. In addition, shippers avoid U.S. ports due to the onerous container inspection regime implemented after investigators discover that the second dirty bomb was smuggled into the U.S. in a shipping container on an innocuous Panamanian-flagged freighter. As a result, American consumers bear higher shipping costs. The market also constrains the variety of goods available to the U.S. consumer and increases their cost. A Congressional Budget Office (CBO) report makes this abundantly clear. A one-week shutdown of the Los Angeles and Long Beach ports would lead to production losses of $65 million to $150 million (in 2006 dollars) per day. A three-year closure would cost $45 billion to $70 billion per year ($125 million to $200 million per day). Perhaps even more shocking, the simulation estimated that employment would shrink by approximately 1 million jobs.[15] These estimates demonstrate the effects of closing only the Los Angeles and Long Beach ports. On a national scale, such a shutdown would be catastrophic. The Government Accountability Office notes that: [O]ver 95 percent of U.S. international trade is transported by water[;] thus, the safety and economic security of the United States depends in large part on the secure use of the world’s seaports and waterways. A successful attack on a major seaport could potentially result in a dramatic slowdown in the international supply chain with impacts in the billions of dollars.[16]

### 4

#### The plan decimates plenary powers over immigration

Kagan, 10

(Former US Solicitor General, Kiyemba v. Obama, Brief of Respondent to US Supreme Court, Feb. 5, No. 08-1234, Lexis)

Further, this Court has recognized in Boumediene, as well as in Munaf v. Geren, 128 S. Ct. 2207 (2008), that habeas is an equitable remedy that takes account of relevant practical and legal constraints on the disposition of habeas petitioners. Here, **legal constraints prevent the courts from ordering that petitioners be** brought to and **released** in the United States. To permit the habeas court to grant such extraordinary relief would be inconsistent with constitutional principles governing control over the Nation’s borders. As this Court has long affirmed, **the power to admit or exclude aliens is a sovereign prerogative vested in the political Branches, and “it is not within the province of any court, unless expressly authorized by law, to review [that] determination**.” United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 543 (1950). Congress has exercised that power by imposing detailed restrictions on the entry of aliens under the immigration laws, as well as specific restrictions on the transfer of individuals detained at Guantanamo Bay to the United States. In light of these statutes and constitutional principles, **neither Boumediene nor the law of habeas corpus justifies granting petitioners the relief they seek**. And the Due Process Clause does not confer a substantive right to enter the United States in these circumstances. Finally, even assuming arguendo that a judicial order compelling the Executive to bring an alien into the United States were justified in some circumstances, the government’s sustained and successful efforts to resettle petitioners should preclude such an order in this case. Indeed, in light of the government’s success in resettling most of the Uighurs and in obtaining offers to resettle the rest, the Court may wish to dismiss the writ of certiorari as improvidently granted.

#### Plenary power over immigration key to cooperation with Mexico

Saslaw, 12

(Poli Sci-Claremont McKenna, “One People, One Nation, One Power? Re-Evaluating the Role of the Federal Plenary Power in Immigration,” http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1432&context=cmc\_theses)

On the other hand, Mexico has also responded to the United States as a whole. In an amicus curiae brief submitted to the Ninth Circuit Court of Appeals in United States v. Arizona, one of Mexico’s major concerns was that “SB 1070 dangerously leads to a patchwork of immigration laws that **impede effective and consistent diplomatic relations**.” 66 The brief expresses concern that **Mexican-American “sovereign-to- sovereign” relations will be damaged by inconsistent American immigration policy**. 67 It even quotes James Madison in Federalist 42, saying “[i]f we are to be one nation in any respect, it clearly ought to be in respect to other nations.”68 While Mexico may be able to adapt its policies in response to a single state law like SB 1070, **the country appears unwilling to embrace the resulting patchwork throughout the entire U**nited **S**tates. Other countries with weaker ties to the United States are even less likely to regard each state as a sovereign in regards to immigration policy. Beyond concerns about the actions of a single state, **the federal government should also worry about the consequences of several states acting in concert**. If five states pass anti- alien legislation, national consequences may be small. But if over 50 percent of the country enacts a law, it may begin to appear that the nation is speaking with one voice – just not the voice of the President. **Given the potential for foreign policy consequences, the national security rationale behind the plenary power still stands and the President and Congress should continue to control entrance and abode.**

#### Stops drug cartels which collapse Mexico

Rozental, former deputy foreign minister of Mexico, senior fellow @ Brookings, 2/12/’1

(Andrés, chair of the U.S.-Mexico Migration Panel, convened by the Carnegie Endowment for International Peace and the Instituto Tecnológico Autónomo de México, “Mexico-U.S. Migration: A Shared Responsibility,” <http://www.carnegieendowment.org/pdf/files/M%20exicoReport2001.pdf>)

Simply put, the Panel recognizes that organized criminal activities have a deeply corrosive effect on the institutions of both countries and cooperation in their relentless pursuit should be as seamless as efforts are in other areas where there is an identifiable common threat, much as communicable diseases are in the public health arena. The additional incentives that the United States can put on the table in the form of much greater access to its labor markets, can reinforce the Fox Government’s determination to do much betterthan its predecessor. Showing measurable progress on this issue can change the deeply-held overall impression in the United States that Mexico has only a weak commitment to and, as a result, has been ineffective in attacking the organized criminal networks that have plagued the U.S.-Mexico relationship in recent years.

#### Causes global war

Haddick, MBA – U. Illinois, managing editor – Small Wars Journal, ‘8

(Robert, <http://westhawk.blogspot.com/2008/12/now-that-would-change-everything.html>)

There is one dynamic in the literature of weak and failing states that has received relatively little attention, namely the phenomenon of “rapid collapse.” For the most part, weak and failing states represent chronic, long-term problems that allow for management over sustained periods. The collapse of a state usually comes as a surprise, has a rapid onset, and poses acute problems. The collapse of Yugoslavia into a chaotic tangle of warring nationalities in 1990 suggests how suddenly and catastrophically state collapse can happen - in this case, a state which had hosted the 1984 Winter Olympics at Sarajevo, and which then quickly became the epicenter of the ensuing civil war. In terms of worst-case scenarios for the Joint Force and indeed the world, two large and important states bear consideration for a rapid and sudden collapse: Pakistan and Mexico. Some forms of collapse in Pakistan would carry with it the likelihood of a sustained violent and bloody civil and sectarian war, an even bigger haven for violent extremists, and the question of what would happen to its nuclear weapons. That “perfect storm” of uncertainty alone might require the engagement of U.S. and coalition forces into a situation of immense complexity and danger with no guarantee they could gain control of the weapons and with the real possibility that a nuclear weapon might be used. The Mexican possibility may seem less likely, but the government, its politicians, police, and judicial infrastructure are all under sustained assault and pressure by criminal gangs and drug cartels. How that internal conflict turns out over the next several years will have a major impact on the stability of the Mexican state. Any descent by the Mexico into chaos would demand an American response based on the serious implications for homeland security alone. Yes, the “rapid collapse” of Mexico would change everything with respect to the global security environment. Such a collapse would have enormous humanitarian, constitutional, economic, cultural, and security implications for the U.S. It would seem the U.S. federal government, indeed American society at large, would have little ability to focus serious attention on much else in the world. The hypothetical collapse of Pakistan is a scenario that has already been well discussed. In the worst case, the U.S. would be able to isolate itself from most effects emanating from south Asia. However, there would be no running from a Mexican collapse.

### 5

The President should release individuals in military detention who have won their habeas corpus hearing.

**The United States federal judiciary should rule that individuals in military detention who have won their habeas corpus hearing are entitled to financial and repatriation compensation, including but not limited to reparations, once the administration has found a suitable location for their release.**

CP sends the most powerful signal (while avoiding Congressional confrontation)

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America.

To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America.

This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

Reparations the case—improves US credibility and addresses the legal wrong of detention

Fees, 4 (Major-US Army & M.A., Webster University, “Regaining the Moral High Ground on Gitmo…Is There a Basis for Released Guantanamo Detainees to Receive Reparations,” http://www.dtic.mil/dtic/tr/fulltext/u2/a512385.pdf)

The purpose for reparations is to make public society or governments or both responsible for their action and liable for the wrongs committed against a group or individuals. This objective should be obvious now with the background provided in chapter 6 on U.S. policy and redress from Japanese American and resident alien internment during World War II. Furthermore, it is a basic maxim of law that harms should be remedied and every legal system actually insists on it in some form or another.1 The UN views remedies for violations of human rights as a distinct state obligation.2 They can consist of monetary payments for loss of livelihood, property, an pain and suffering. They can also be symbolic in nature consisting of public statements and apologies, official acknowledgements, actions that denounce or condemn publicly the violations committed, or provide education and understanding so to prevent duplication in the future. Moreover, there are four basic forms of reparations under international law. They are restitution, compensation, rehabilitation, and satisfaction and guarantees of nonreoccurrence.3 Pablo De Greiff, a native of Colombia, and Research Director at the International Center for Transitional Justice edited The Handbook of Reparations and authored an article within entitled, “Justice and Reparations.” This article defines the terms outlined above. Restitution reestablishes the victims status quo ante (i.e. citizenship, liberty, job, benefits, and property). Compensation makes up for the harms suffered beyond mere economic loss including physical, mental, and moral injury. Rehabilitation provides social, medical, and psychological care and legal services to the victim(s). The last category is very broad consisting of those actions stopping the activity, verifying the facts, issuing apologies and statements, allowing public disclosure, reestablishing the dignity and reputation of the victim(s), searching for and turning over remains, judicial sanctions, and institutional reform.4 Keep in mind, these are forms of reparations and examples not a checklist that must be accomplished in totality. Additionally, most experts distinguish between collective reconciliation and individual. In the most basic terms, collective programs are those like the Civil Liberties Act which applies broadly to a large group of people, therefore the compensation may actually be less than that which would be given on a case by case basis. Individual reconciliation is usually specific to a small group and includes individualized awards, perhaps through the judicial system and psychological or physical treatment, for example. 99 Other experts such as Brandon Hamber, author of another article in The Handbook of Reparations, entitled “Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition,” define reparations more narrowly. Although this article does focus on societies in transition rather than nations such as the U.S., which have a stable governments, Hamber’s opinion should remains valid in the larger sense of reparations programs. He maintains that the general aim of a program of reparations is the understanding of the psychological process at work for the victims (individual level) verses the broader aim of institutional reform and, or both symbolic reparations, which is much more of a political project (collective).5 Hamber draws a distinction between collective and individual programs to bring attention to the fact that victims have an extremely deep rooted sense of the relationship between what is granted to them and what it is they desire for reparations to achieve and this may be at odds with what can be accomplished at the collective level.6 The meaning here is that reparations are difficult to measure and implement as well as to achieve intended goals because they can be interpreted so many different ways at both the collective and individual levels. Moreover, this is just from the prospective of the victim, not the implementer. More pointedly, even Pablo de Greiff cautions, there is no transitional or post conflict reparations program that has managed to compensate victims proportionally “to the harm they suffered [and that] the very quantification of these harm is problematic [because] even the idea . . . might generate unfulfilled expectations.”7100 Taking Responsibility Why then are reparation and reconciliation important? Despite the limitation and obstacles, responsible state cannot simply ignore the claims of victims with arguments that it is too difficult to make everyone satisfied or there are no resources to cover the cost. De Greiff argues this would be “tantamount to acknowledging that the [state] is in no position to sustain a fair regime.”8 Similarly, David A. Crocker, a senior research scholar at the Institute for Philosophy and Public Policy and the School of Public Policy at the University of Maryland who specializes in development ethics and transitional justice, contends that a democratic society must realize that “consensus may not and probably will not happen.”9 However, adherence to the best package of tools available should be used to achieve goals.10 Crocker is explaining reparations here with respect to non-democratic regimes transitioning to democratic ones. It seems reasonable then, if new democratic regimes should try to make reconciliation the best way they can for past wrongs, then stable democratic regimes such as the U.S. should as well; and in fact it does–sort of. Aside from the reparation program enacted with the 1988 Civil Liberties Act, the U.S. government does have compensation programs for some wrongfully imprisoned citizens through state statues. According to the Innocence Project, a national litigation and public policy organization dedicated to exoneration of wrongfully convicted people, the federal government, the District of Columbia, and 27 states have compensation statues of some form for the wrongfully convicted and exonerated.11 It is noteworthy that the average length of imprisonment is 12 years for these people. At any rate, the Innocence Project justifies compensation programs by stating, 101 Despite their proven innocence, the difficulty of reentering society is profound for the wrongfully convicted; the failure to compensate them adds insult to injury. Society had an obligation to promptly provide compassionate assistance to the wrongfully convicted in the following ways: 1. monetary compensation based on the amount of time served; financial support for basic necessities such as subsistence funds, food, and transportation; 2. help secure affordable housing; provisional medical, dental, psychological services; 3. assistances with development of workforce skills; legal services to obtain public benefits, expunge criminal records and regain custody of children; and 4. official acknowledgement of wrongful conviction.12 Still, there is no federal standard for the compensation of the wrongly convicted and 23 States in the U.S. remain without compensation statutes. These wrongfully convicted persons have no recourse to seek compensation for their loss of life and liberty once released. It should be of no surprise then, that there is also no compensation program for Guantanamo detainees who were not even charged, let alone convicted, once they are released from detention. It is important to note though, that while interned, GITMO detainees have the same access to medical and psychological care as the U.S. Soldiers guarding them,13 which in almost all cases is far more advance and improved from that received prior to internment. Also, since 2004, although not rehabilitative in nature, detainees enjoy access to intellectual stimulation such as library material, art classes, language training, and Sudoku puzzles.14 Unfortunately, once released this care and stimulation are also terminated, leaving detainees alone to struggle with the physical and psychological ramification of reentering society. This was also the case for released evacuees from Japanese Internment camps at the end of World War II and is one of the primary justifications for redress forty years later. Since the inception of the Guantanamo Bay internment facility, released detainees have received nothing upon release. After years, some released after as much as seven, are without charges, conviction, or apology 102 let alone a conciliation package of support. Instead, detainees leave with their personal belongings, a Koran, and their personal mail.15 The Linkage to Human Rights and GITMO It is now necessary to develop the linkage between programs and humanitarian rights in order to understand further if there is a basis for released GITMO detainees to receive reparations. First, understand that human rights and humanitarian right violations are just a part of reparations. Reparations are about righting a wrong, which may not include human rights violation. However, in recent years, human rights and humanitarian violations are becoming a central theme in reparation programs. Take for example previous regime mass atrocities in the emerging democracies of South America over the last 30 years. In Latin America, several countries have implemented significant reparations programs and others have made more token efforts. Chili, Argentina, and Brazil instituted programs for victims of human right abuses due to dictatorships in the 1970s and 1980s. They consisted of lump sum pension payments, scholarships for children of victims, and the creation of a legal figure (“absent due to forced disappearance”) allowing families to collect inheritance and spouses to remarry without admitting death.16 Token efforts include releases of official statements and memorials.17 According to Richard Falk, author of the article, “Reparations, International Law and Global Justice,” found in The Handbook of Reparations, the emergence of a linkage between human rights and reparations is actually new to our society, but it is essential to answering the research question presented in this thesis. Nevertheless, it is only with the evolution of the Universal Declaration of Human Rights and subsequent UN documents, that it was first politically feasible to implement remedies for victims seeking reparations. 103 Even now, the authoritative and sovereign natures of the majority of governments oppose defined legal international structure to implement reparations associated with respect to individual rights.18 This is because in customary international law, only states themselves are subjects within the international legal order, meaning that claims are viewed as harms against the state not against an individual.19 However, this interpretation has been questioned in recent years with the emergence non-state actors and stateless individuals due to war, natural disaster, or refugee activity. Still, every sovereign nation has varying access to resources to compensate victims. This is in part why the UN issued General Comment 31 in 2004 mandating a nation’s obligation to remedy human rights violations without further defining what that actually means. Moreover, reparation programs cost money and poor or emerging nations likely would not possess the means to carry out specified programs and would rely more on the token efforts mentioned earlier. Falk’s main point is that moral and political pressures rather than actual law drive the very process of reparations and compensation. A central theme in this thesis also focuses on this point. Domestic political pressure and moral guilt for the treatment of Japanese American during World War II lead to redress. Although there is ample international pressure with respect to GITMO and detention policies, domestic political pressure eludes the mainstream debate, for the most part. However, the purpose of this thesis is to determine whether there is a basis for reparations. There certainly seems to be a moral and ethical basis, but the political basis is centered on international perception. The author argues that as a world leader and example of democracy, international pressure should play an equal role as domestic pressure. Regardless, Falk also admits that although reparation efforts receive less attention than efforts to criminalize the perpetrators, they still are “a significant aspect of attempts for rectification.”20 It makes sense then that with the negative fallout that Guantanamo Bay and its policies have brought against the U.S., reparations of some type for released detainees follows as a natural consequence. However, all abuses including those of power and liberty as well as human rights in a more traditional view of reparations would likely be warranted.

### 6

#### The United States federal judiciary should rule that authority for individuals in military detention who have won their habeas corpus hearings be transferred to the United Nations High Commissioner on Refugees.

#### US should delegate detainees that have won habeas to the UNCHR---solves the entire case

Melissa J. Durkee 11, Associate, Cleary Gottlieb Steen & Hamilton LLP. Yale Law School J.D., “beyond the guantánamo bind: pragmatic multilateralism in refugee resettlement”, <http://www3.law.columbia.edu/hrlr/hrlr_journal/42.3/Durkee.pdf>

This Article proposes a third way, which charts the territory between the current U.S. approach and full compliance with domestic and international law. According to this third way, **the United States should solicit and obtain assistance from the UNHCR**.180 It is within the mandate of the UNHCR to perform refugee status determinations for Guantánamo detainees and to broker agreements with foreign states to secure asylum for those who are refugees. UNHCR participation would be effective in resolving many of the Guantánamo refugee resettlement problems outlined in Part III. Specifically, **UNHCR assistance would help the United States out of the bind that its current policies and legal strategies cannot easily resolve** and would also help protect the moral and political goods threatened by the current U.S. approach.

Because the United States has resettled many Guantánamo refugee detainees through its arduous peddling process, it has missed the opportunity to capture the benefits that UNHCR participation from an earlier stage would have afforded. Nonetheless, several dozen refugees remain detained, and as one commentator has noted, **the final refugee cases are likely to be the most intractable**.181 The UNHCR could assist the United States to resolve these cases.

#### The CP’s key to the success of global refugee resettlement

Melissa J. Durkee 11, Associate, Cleary Gottlieb Steen & Hamilton LLP. Yale Law School J.D., “beyond the guantánamo bind: pragmatic multilateralism in refugee resettlement”, <http://www3.law.columbia.edu/hrlr/hrlr_journal/42.3/Durkee.pdf>

As the two hypothetical situations show, **relying on assistance from the UNHCR** in more contexts would not only assist the states involved, but **would** also **promote the worldwide refugee protection system**. Many current academic debates surround strategies to accommodate the increased refugee burdens and to prevent erosion of Refugee Convention norms.243 Among these are suggestions to make better use of enforcement mechanisms or institute new ones, draft supplemental international conventions, or recognize and regulate extra-legal approaches in a more formalized regime.244 Turning to the UNHCR in a wider variety of contexts should take a place among these strategies. 245 In current practice, the poorest states frequently request UNHCR assistance in order to diminish refugee burdens, while economically advantaged states do not. 246 At the same time, economically advantaged states control refugee flows by exploiting real or invented Convention exceptions and by manipulating definitions to exclude some refugees from Convention protection. 247 **Encouraging economically advantaged states to use the UNHCR when it would be in their interests to do so would support the development of international refugee law and strengthen the UNHCR as an institution**. First, UNHCR management of a refugee crisis facilitates state compliance with international refugee law, which furthers the legitimacy and global acceptance of that law.248 In the case of the non-refoulement principle, compliance serves to maintain the principle’s status as jus cogens. 249 UNHCR participation also supports the development of domestic refugee laws that express international refugee law norms: If a state entrusts a refugee problem to the UNHCR, it is less likely to take the approach modeled by the U.S. Supreme Court in Sale—solving the problem by creating narrow interpretations of the Refugee Convention or new exceptions to it that will outlive the crisis at hand and shape domestic law for years to come. 250 UNHCR participation in managing a refugee crisis ensures that the fundamental purposes of the refugee law are carried out. As the Guantánamo refugee resettlement saga shows, when refugees are in the hands of an unwilling state, they are at risk of abuses such as prolonged detention without a refugee status determination—causing uncertainty and fear—and refoulement. 251 Allowing the UNHCR to take responsibility when a state is unwilling to do so ensures that the refugees will be afforded basic protections and resettlement advocacy. Second, there are multilateral benefits to a UNHCRfacilitated approach to refugee resettlement. The proposition is somewhat counterintuitive: **States seeking to avoid refugee burdens have an opportunity to improve refugee law and policy by inviting the UNHCR to assume responsibility**. Kathleen Newland notes that, as a historical matter, reliance by powerful states on multilateral institutions like the UNHCR for assistance in times of crisis boosts the legitimacy and competence of those institutions, particularly when reliance is accompanied by increased financial assistance.252 Newland argues that such reliance builds the knowledge and legitimacy of those institutions because it allows them to develop competence in new areas and to borrow political authority from the delegating state.253 These effects endure after the immediate crisis ends.254

#### Key to solve state collapse and global war

Loescher, 94

(Senior Fellow for Forced Displacement and International Security for the International Institute for Strategic Studies, and Loescher, Professional Writer and Instructor, “The Global Refugee Crisis,” pg. 24-6)

The refugee crises in ex-Yugoslavia, Somalia, Haiti, and numerous other places and the **reluctance of states to open their borders to people** who are **forcibly driven from their homes and subjected to murder, physical abuse, and starvation illustrate the vital importance of maintaining the principle of asylum.** The major lesson we can learn from past efforts to deal with refugee problems is that **building walls is no answer to those who feel compelled to move. The need to assure asylum to refugee is critical to maintaining human rights protection worldwide.** The capacity of Western countries to improve prospects for granting asylum in the Third World depends on the fairness and generosity of their own policies in the heart of Europe and in the Caribbean and on the assistance they provide to others. **A generous commitment to asylum is not simply a matter of charity or burden sharing; it is also a matter of regularizing and controlling large numbers of people whose irregular situation creates interstate tensions and regional instability**. The success of economic liberalism and political pluralism in the new democracies of Africa, Latin America, Eastern Europe, and the former Soviet Union is of decisive importance, not only in averting future refugee and migrant flows but also in the political realm. **Unduly restrictionist Western policies would leads to more isolation and deprivation in those countries forced to play host to rejected refugees and migrants.** Liberalizing domestic regimes and economic systems is scarcely possible without free movement of people, goods, and ideas. No single international development is likely to be more successful in improving economic growth in developing countries and Eastern Europe (thereby reducing economic incentives for emigration) than trade liberalization aimed at reducing economic disparities between countries in the South and North and the East and West. **An angry, excluded world outside the West would inevitably give rise to conditions in which extremist and aggressive groups and governments can emerge and pose new political and security threats. Dealing effectively with refugee movements** both at home and abroad **through** a combination of **generous asylum policies** and preventive programs in aid, trade, and human rights diplomacy is, therefore, in the interest of the industrialized states and **coincides with their search for long-term** global stability. Never before has it been so appropriate to launch a series of bold initiatives to deal with national and international policies and practices toward refugees. Although the leadership of the UNHCR is crucial, it is not enough. The president of the United States and crucial, it is not enough. The president of the United States and other political leaders also hold key assets in any serious effort to strengthen the UN refugee system, and UN Secretary-General Boutros Boutros-Ghali must be prepared to proceed with imagination and political courage to invigorate multilateral mechanisms. These initiatives would draw attention to the serious deterioration in norms and proper conduct that has occurred in some states in normal and proper conduct that has occurred in some states with respect to the treatment of citizens and refugees. They would attempt to deal with the causes of refugee flows rather than with the consequences. The United Nations is still the only body capable of managing many of the complex global problems of the post-Cold War era. The international community needs to take advantage of both the structural and technical reforms that have occurred within the UN system and the higher expectations for the United Nations that now exist. Events in Iraq, in ex-Yugoslavia, and in Somalia, however, have demonstrated that the United Nations is not a separate entity capable of imposing order by itself, nor is it capable of achieving success in every endeavor. The United Nations is the sum of its member states, and U.S. and Western leadership in invigorating multilateral programs is a key factor if the United Nations is to achieve optimum results. **The United State is still the only nation whose leadership most other nations are willing to follow, and it is the country most capable of setting up all sorts of measures to direct international efforts toward a constructive goal.** Therefore, **American leadership is vital in galvanizing collective efforts to resolve many of the complex humanitarian problems of the post-Cold War era.** Without active U.S. involvement, the international community would be limited to reactive damage control measures in the event of humanitarian crises. **A failure by the United States** and its allies to increase the capacities of the United Nations at this time **would almost inevitably lead to a breakdown in international security, to costly military interventions to restore order, and to further needless drains on aid programs to deal with war-caused famines or refugee movements in the future**. Not since 1945 has the United States and the international community been presented with such an opportunity to make substantial progress on many political and humanitarian issues. That opportunity should now be seized.

### Courts

#### No one models American courts – Canada is the model

Law, Professor of Law and Professor of Political Science, Washington University in St. Louis, and Versteeg, Associate Professor, University of Virginia School of Law, June 2012

(David S. and Mila, “THE DECLINING INFLUENCE OF THE UNITED STATES CONSTITUTION,” 87 N.Y.U.L. Rev. 762, Lexis)

In 1987, to mark the bicentennial of the U.S. Constitution, Time magazine released a special issue in which it called the Constitution "a gift to all nations" and proclaimed proudly that 160 of the 170 nations then in existence had modeled their constitutions upon our own. n2 As boastful as the claim may be, the editors of Time were not entirely without reason. Over its two centuries of history, the U.S. Constitution has had an immense impact on the development of constitutionalism around the world. n3 Constitutional law has been called [\*765] one of the "great exports" of the United States. n4 In a number of countries, constitutional drafters have copied extensively, and at times verbatim, from the text of the U.S. Constitution. n5 Countless more foreign constitutions have been characterized as this country's "constitutional offspring." n6

It is widely assumed among scholars and the general public alike that the United States remains "the hegemonic model" for constitutionalism in other countries. n7 The U.S. Constitution in particular continues to be described as "the essential prototype of a written, single-document constitution." n8 There can be no denying the popularity of [\*766] the Constitution's most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism. n9 Today, almost 90% of all countries possess written constitutional documents backed by some kind of judicial enforcement. n10 As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state. n11

There are growing suspicions, however, that America's days as a constitutional hegemon are coming to an end. n12 It has been said that [\*767] the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights. n13 Indeed, to the extent that other countries still look to the United States as an example, their goal may be less to imitate American constitutionalism than to avoid its perceived flaws and mistakes. n14 Scholarly and popular attention has focused in particular upon the influence of American constitutional jurisprudence. The reluctance of the U.S. Supreme Court to pay "decent respect to the opinions of mankind" n15 by participating in an ongoing "global judicial dialogue" n16 is supposedly diminishing the global appeal and influence of American constitutional jurisprudence. n17 **Studies conducted by** [\*768] **scholars in other countries** have begun to **yield empirical evidence that citation to U.S. Supreme Court decisions by foreign courts is** in fact **on the decline**. n18 By contrast, however, the extent to which the U.S. Constitution itself continues to influence the adoption and revision of constitutions in other countries remains a matter of speculation and anecdotal impression.

**With** the help of **an extensive data set** of our own creation **that spans all national constitutions over the last six decades**, this Article explores the extent to which various prominent constitutions - including the U.S. Constitution - epitomize generic rights constitutionalism or are, instead, increasingly out of sync with evolving global practice. **A stark contrast can be drawn between the declining attraction of the U.S. Constitution as a model for other countries and the increasing attraction of the model provided by America's neighbor to the north**, **Canada**. We also address the possibility that today's constitution makers look for inspiration not only to other national constitutions, but also to regional and international human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Our findings do little to assuage American fears of diminished influence in the constitutional sphere.

Part I introduces the data and methods used in this Article to quantify constitutional content and measure constitutional similarity. Part II describes the global mainstream of rights constitutionalism, in the form of a set of rights that can be found in the vast majority of the [\*769] world's constitutions. From this core set of rights, we construct a hypothetical generic bill of rights that exemplifies current trends in rights constitutionalism. We then identify the most and least generic constitutions in the world, measured by their similarity to this generic bill of rights, and we pinpoint the ways in which the rights-related provisions of the U.S. Constitution depart from this generic model.

Part III documents the growing divergence of the U.S. Constitution from the global mainstream of written constitutionalism. Whether the analysis is global in scope or focuses more specifically upon countries that share historical, legal, political, or geographic ties to the United States, the conclusion remains the same: **The U.S. Constitution has become an increasingly unpopular model for constitutional framers elsewhere**. Possible explanations include the sheer brevity of the Constitution, its imperviousness to formal amendment, its omission of some of the world's generic constitutional rights, and its inclusion of certain rights that are increasingly rare by global standards.

Parts IV and V tackle the question of whether a prominent constitution from some other country has supplanted the U.S. Constitution as a model for global constitutionalism. Part IV contrasts the growing deviance of the U.S. Constitution from global constitutional practice with the increasing popularity of the Canadian approach to rights constitutionalism. Unlike its American counterpart, the Canadian Constitution has remained squarely within the constitutional mainstream. Indeed, **when Canada departed from the mainstream by adopting a new constitution**, **other countries followed its lead**. Closer examination reveals, however, that the popularity of the Canadian model is largely confined to countries with an Anglo-American legal tradition. In other words, our analysis suggests that Canada is in the vanguard of what might be called a Commonwealth model of rights constitutionalism, but not necessarily of global constitutionalism as a whole.

Part V considers whether the widely celebrated constitutions of Germany, South Africa, or India might instead be leading the way for global constitutionalism. **Although all** three are currently **more mainstream than the U.S. Constitution**, we find little evidence that global constitution-writing practices have been strongly shaped by any of the three.

Part VI explores the possibility that transnational human rights instruments have begun to shape the practice of formal constitutionalism at the national level. The evidence that international and regional human rights treaties may be serving as models for domestic constitutions varies significantly from treaty to treaty. In particular, [\*770] we find that the average constitution has increasingly grown to resemble the International Covenant on Civil and Political Rights and the European Convention on Human Rights, as well as the African Charter on Human and Peoples' Rights and the Charter of Civil Society for the Caribbean Community. There is little evidence, however, that any of these treaties is actually responsible for generating global consensus as to what rights demand formal constitutional protection. Although these treaties may express and reinforce preexisting global constitutional trends, they do not appear to define those trends in the first place.

Finally, the Conclusion discusses **possible explanations for the declining influence of American constitutionalism**. These **include a broad decline in American hegemony** across a range of spheres, **a judicial aversion to constitutional comparativism**, **a historical and normative commitment to American exceptionalism**, **and sheer constitutional obsolescence**.

One ruling doesn’t solve

Rex Glensy, Associate Professor, Drexel University College of Law, 11 [“THE USE OF INTERNATIONAL LAW IN U.S. CONSTITUTIONAL ADJUDICATION,” International Law in U.S. Constitutional Adjudication, Vol. 25, 2011]

The other side of the coin is represented by the consequences for the United¶ States if it decides to forego the increasing judicial conversation that is taking¶ place between courts of different countries. The failure of U.S. courts to¶ engage in this enterprise “weakens Amer¶ ica’s voice as a principled defender of¶ human rights around the world and diminishes America’s moral influence and¶ stature.”¶ 182¶ In fact, because of the raised profile of the United States in the¶ world, its actions are routinely more heavily scrutinized than those of other¶ nations, and **any notion** of the United States disengaging from international¶ dialogue, or behaving in a manner that is considered inappropriate by the¶ international community, results in a greater diminution of influence than if¶ those same actions were to be performed by another nation.¶ 183¶ This diminution¶ of influence is already beginning to take its course, in large part due to the¶ current **Supreme Court’s predominantly regressive jurisprudence that has¶ shown hostility to ideas and authority that originate from abroad**.¶ 184¶ Thus, even¶ though historically the Un¶ ited States has provided, through its Constitution,¶ inspiration to many fledgling democracies,¶ 185¶ “the recent direction of United¶ States constitutional jurisprudence has led most constitution-makers to seek¶ alternative models.”¶ 186¶ Unfortunately, the United Stat¶ es is increasingly used by courts of other nations as a “c¶ ounter-example” because “as a global¶ constitutionalism begins to flourish, this failure to engage [by the United States¶ Supreme Court (in particular)] threat¶ ens increasingly to marginalize the¶ experience of the constantly evolving United States Constitution that was once¶ the inspiration of all constitutionalists.”¶ 187¶ Concerns about the reputation of the United States’s legal system similarly¶ motivate an integration of comparative law within American jurisprudence.¶ Reputation is an important component¶ of a nation’s ability to function on the¶ international stage, and historically, the United States, through its international¶ leadership and its “commitment to the rule of law and to the betterment of the¶ human situation,” obtained a reputation that drew other nations towards¶ adopting its values and outlook.¶ 188¶ But **reputation is a characteristic that needs¶** constant feeding**, and resting on its past laurels**, or worse, showing disinterest¶ or contempt for the international stage,¶ 189¶ will result in long-term damage to¶ the United States’s reputation (which ta¶ kes a long time to rebuild), with the¶ consequent diminution of its ability to impact other nations.¶ 190¶ By showing¶ willingness to consult legal ideas derive¶ d from international law principles,¶ courts in the United States can go some way towards increasing their clout on¶ the international stage, with the consequent improvement of the United States’s¶ international reputation on the whole. Ultimately, it is in the interest of the¶ United States to do so.¶ Nevertheless, the “pursuit of self-interest is tempered by recognition of the¶ legitimate interests of other players and a desire to encourage reciprocal¶ behavior.”¶ 191¶ That is, because of the assured interaction between the United¶ States (either through its institutions or its citizens) and foreign countries in the¶ future, the United States would want to guarantee itself a modicum of¶ treatment equal to the level of treatment such foreign countries (or their citizens) would receive in the United States.¶ 192¶ Thus, reciprocity, assisted by¶ “transjudicial communication,”¶ 193¶ gives a regime a “longer shelf life”¶ 194¶ as it is¶ helped along by international cooperation (or non-interference) of foreign¶ nations.¶ Many scholars have noted that the current lack of reciprocity (personified¶ by the reticence of U.S. courts to participate in the comparative enterprise) is¶ not going unnoticed in international bodies and foreign countries.¶ 195¶ International judges too have noticed this retrenchment by the U.S. Supreme¶ Court and its failure to cite interna¶ tional sources, particularly from those¶ international tribunals that referred, or used to refer, to the U.S. Supreme¶ Court’s own decisions, thereby noting that (through reciprocity) **those same¶ international tribunals are going to rely on the U.S. Supreme Court’s decision¶ with less and less frequency.**¶ 196¶ This attitude is exemplified by a Canadian¶ Supreme Court decision preventing the extradition from Canada to the United¶ States of two defendants who faced the death penalty.¶ 197¶ It cited, among other¶ international authorities, Justice Breyer’s dissent in¶ Knight v. Florida¶ in¶ concluding that the death penalty was being phased out.¶ 198¶ The need to provide reciprocal treatment to other nations of the world has¶ been exacerbated by the fact that the world has become more interconnected,¶ and consequently, domestic law and activity increasingly have international consequences, and vice versa.¶ 199¶ As a result of this interconnection, the United¶ States has demonstrated that it holds no reservations to imposing laws and¶ regulations over activities occurring abroad that supposedly have effect within¶ its territory.¶ 200¶ It seems inconsistent to advocate a one-way ratchet approach to¶ the effects of globalization that allows for exports but is resistant to imports,¶ particularly when imports serve the same interests as do the exports. In fact,¶ this excessive nation-centric view of the world, with the premise that any legal¶ thought of any importance can only originate from the United States, seems¶ largely obsolete in the new world order,¶ and has already been rejected by the¶ United States in areas such as international trade.¶ 201¶ Like recent developments¶ in the area of international trade, the use of international law as persuasive¶ authority for domestic cases merely acknowledges today’s global reality and¶ serves the United States by offering reciprocity to other nations, thus¶ enhancing its stature on the international legal stage.

The aff can’t solve rule of law and there’s no impact

Thomas Carothers is vice president for studies at the Carnegie Endowment for International Peace, 06 (“Promoting the Rule of Law Abroad: In Search of Knowledge,” Chapter 1, http://carnegieendowment.org/2006/01/01/promoting-rule-of-law-abroad-in-search-of-knowledge/35vq)

The effects of this burgeoning rule-of-law aid are generally positive,¶ though usually modest. After more than ten years and hundreds of millions¶ of dollars in aid, many judicial systems in Latin America still function¶ poorly. Russia is probably the single largest recipient of such aid,¶ but is not even clearly moving in the right direction. The numerous ruleof-¶ law programs carried out in Cambodia after the 1993 elections failed¶ to create values or structures strong enough to prevent last year’s coup.¶ Aid providers have helped rewrite laws around the globe, but they have¶ discovered that the mere enactment **of laws accomplishes little** **without**¶ considerable investment in **changing the conditions** for implementation¶ and enforcement. Many Western advisers involved in rule-of-law assistance¶ are new to the foreign aid world and have not learned that aid¶ must support domestically rooted processes of change, not attempt to¶ artificially reproduce preselected results.¶ **Efforts to strengthen basic legal institutions have proven slow and difficult.¶** Training for judges, technical consultancies, and other transfers of expert knowledge make sense on paper but often have only minor¶ impact. The desirability of embracing such values as efficiency, transparency,¶ accountability, and honesty seems self-evident to Western aid¶ providers, but for those targeted by training programs, such changes¶ may signal the loss of perquisites and security. Major U.S. judicial reform¶ efforts in Russia, El Salvador, Guatemala, and elsewhere have foundered¶ on the assumption that external aid can substitute for the internal¶ will to reform.¶ Rule-of-law aid has been concentrated on more easily attained type¶ one and type two reforms. Thus it has affected the most important elements¶ of the problem least. Helping transitional countries achieve type¶ three reform that brings real change in government obedience to law is¶ the hardest, slowest kind of assistance. It demands powerful tools that¶ aid providers are only beginning to develop, especially activities that¶ help bring pressure on the legal system from the citizenry and support¶ whatever pockets of reform may exist within an otherwise selfinterested¶ ruling system. It requires a level of interventionism, political¶ attention, and visibility that many donor governments and organizations¶ cannot or do not wish to apply. Above all, it calls for patient, sustained¶ attention, as breaking down entrenched political interests, transforming¶ values, and generating enlightened, consistent leadership will¶ take generations.¶ The experience to date with rule-of-law aid suggests that it is best to¶ proceed with caution. The widespread embrace of the rule-of-law imperative¶ **is heartening, but it represents only the first step** for most transitional¶ countries on what will be a long and rocky road. Although the¶ United States and other Western countries can and should foster the¶ rule of law, even large amounts of aid will not bring rapid or decisive¶ results. Thus, it is good that President Ernesto Zedillo of Mexico has¶ made rule-of-law development one of the central goals of his presidency,¶ but the pursuit of that goal is certain to be slow and difficult,¶ as highlighted by the recent massacre in the south of the country. Judging¶ from the experience of other Latin American countries, U.S. efforts¶ to lighten Mexico’s burden will at best be of secondary importance. Similarly,¶ Wild West capitalism in Russia should not be thought of as a brief¶ transitional phase. The deep shortcomings of the rule of law in Russia¶ **will take decades to fix**. The Asian financial crisis has shown observers¶ that without the rule of law the Asian miracle economies are unstable.¶ Although that realization was abrupt, remedying the situation will be a¶ long-term enterprise.

#### Democratization doesn’t solve war

Kupchan, Professor of International Affairs – Georgetown University, April ‘11

(Charles A, “Enmity into Amity: How Peace Breaks Out,” <http://library.fes.de/pdf-files/iez/07977.pdf>)

Second, contrary to conventional wisdom, democracy is not a necessary condition for stable peace. Although liberal democracies appear to be better equipped to fashion zones of peace due to their readiness to institu­tionalize strategic restraint and their more open societies – an attribute that advantages societal integration and narrative/identity change – regime type is a poor predic­tor of the potential for enemies to become friends. The Concert of Europe was divided between two liberalizing countries (Britain and France) and three absolute monar­chies (Russia, Prussia, and Austria), but nevertheless pre­served peace in Europe for almost four decades. Gen-eral Suharto was a repressive leader at home, but after taking power in 1966 he nonetheless guided Indonesia toward peace with Malaysia and played a leading role in the founding of ASEAN. Brazil and Argentina embarked down the path to peace in 1979 – when both countries were ruled by military juntas. These findings indicate that non-democracies can be reliable partners in peace and make clear that the United States, the EU, and de­mocracies around the world should choose enemies and friends on the basis of other states’ foreign policy behav-ior, not the nature of their domestic institutions.

No incentive for Russia to strengthen its rule of law

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The First Alternative: Strong Rule of Law

First, Russia's current leaders **have few incentives** to make the dominance of formal

institutions their political goal. The existing legal framework of Russia is such that the

president's constitutional powers are almost unlimited, and he or she is not accountable to

any other actors and/or institutions. Having firm control over other political actors--both

chambers of parliament, major political parties, regional and business elites, as well as

military and security--the Kremlin has also increased its non-constitutional powers. In

these circumstances, there are few incentives for Russia's rulers to seek out and

implement policies that would curb the powers of their offices, **since this would**

**undermine their status as the dominant actors in Russian politics**. At the same time,

subordinated actors who are involved in bargaining with the Kremlin can gain more benefits (or lose fewer resources) through these informal deals, and thus no longer pursue

formal rules and norms as weapons in their struggle for political survival. In the absence

of visible opposition (both among elites and the masses), Russia's major political actors

**would rather agree on the very existence of a status quo than risk the uncertainty of**

**institutional changes**.

The other possible scenario of institutional reforms that could be used by the Kremlin

would be the installation of a biased set of formal institutions that serves as a facade for

arbitrary rule. The federal reform initiated by Putin immediately upon his election is a

typical example. As Putin himself noted during the parliamentary debates on these

proposals, his major goal here was the opportunity to impose sanctions against regional

governors, rather than the actual imposition. One would expect that the imposing of these

formal sanctions as a tool of the Kremlin's regional policy would depend upon informal

center-region relations. This kind of legal innovation has little in common with the

dominance of formal institutions; rather, it undermines the foundations of the rule of law

in Russia. In sum, **the rule of law can be established only within a competitive political**

environment. Since the degree of political contestation in Russia seems to be limited

(both on the national and regional level), we can hardly expect the dominance of formal

institutions.

Relations resilient – conflicts are inevitable but won’t escalate

Weitz 11 (Richard, senior fellow at the Hudson Institute and a World Politics Review senior editor 9/27/2011, “Global Insights: Putin not a Game-Changer for U.S.-Russia Ties,” <http://www.scribd.com/doc/66579517/Global-Insights-Putin-not-a-Game-Changer-for-U-S-Russia-Ties>)

Fifth, there will inevitably be areas of conflict between Russia and the United States regardless of who is in the Kremlin. Putin and his entourage can never be happy with having NATO be Europe's most powerful security institution, since Moscow is not a member and cannot become one. Similarly, the Russians will always object to NATO's missile defense efforts since they can neither match them nor join them in any meaningful way. In the case of Iran, Russian officials genuinely perceive less of a threat from Tehran than do most Americans, and Russia has more to lose from a cessation of economic ties with Iran -- as well as from an Iranian-Western reconciliation. On the other hand, these conflicts can be managed, since they will likely **remain limited and compartmentalized**. Russia and the West **do not have fundamentally conflicting vital interests of the kind countries would go to war over**. And as the Cold War demonstrated, nuclear weapons are a great pacifier under such conditions. Another novel development is that Russia is much more integrated into the international economy and global society than the Soviet Union was, and Putin's popularity depends heavily on his economic track record. Beyond that, there are objective criteria, such as the smaller size of the Russian population and economy as well as the difficulty of controlling modern means of social communication, that will constrain whoever is in charge of Russia.

### Soft power

#### The plan triggers terrorism

White, 10

(Counsel-Baker Botts LLP, Brief for Foundation for Defense of Democracies, Kyemba v. Obama, http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_RespondentAmCuFDD.authcheckdam.pdf)

Federal law bars the admission of aliens whom the Government reasonably suspects of engaging in certain terrorist or terrorism-related activities. Among the prohibited classes of aliens are those who have engaged in terrorist activity; those who are members of a terrorist organization; those whom the Secretary of Homeland Security or Attorney General “knows, or has reasonable ground to believe, [are] engaged in or [are] likely to engage after entry in any terrorist activity”; those who endorse terrorist activity; and those who received “military-type training” from terrorist organizations. Id. §1182(a)(3)(B). As explained in detail below, pp 12-20, petitioners’ records more than justify the Government’s conclusion that the terrorism-related prohibitions against entry apply to them. Petitioners casually dismiss not only these statutes, Pet. Br. 32, 42, 45, 46, but also appropriations bills (mere “post-hoc 2009 legislation”) directly prohibiting their release into the United States, id. at 49. Perfunctory treatment of this comprehensive body of law, passed by Congress and signed by the President, does ill service to both the statutory text and the historical national experience underlying the evolution of those statutes. Congress’ determination that the Government must prohibit entry by aliens whose records suggest a material threat to the Nation’s domestic civilian population is rooted in the history of our Nation’s self-defense, including the difficult lessons learned through catastrophic acts of terrorism. Aliens’ initial entry into the Nation is a core matter of national security, committed to the political Branches. The power to regulate aliens’ initial entry—and not, as petitioners propose (Br. 35), the power to expel aliens already inside the Nation’s borders—**is the primary guard against “unprotected spot[s] in the Nation’s armor**.” Kwong Hai Chew v. Colding, 344 U.S. 590, 602 (1953), quoted in Zadvydas, 533 U.S. at 695-96. For decades following the Nation’s Founding, immigration policy was fixed not by legislation but by the Executive Branch’s exercise of “inherent \* \* \* executive power to control the foreign affairs of the nation.” Knauff, 338 U.S. at 542. As early as 1875, however, Congress began to pass laws prohibiting entry by dangerous aliens. The Act of March 3, 1875 authorized the exclusion of criminal aliens. 18 Stat. 477. It codified what largely had been the status quo. “As to criminals, the power of exclusion has always been exercised, even in the absence of any statute on the subject.” Chae Chan Ping v. United States, 130 U.S. 581, 608 (1889). In the late twentieth century, as the Nation grew increasingly aware of the specific threat of terrorism, Congress began to address the threat directly through immigration laws. The Immigration Act of 1990, for instance, prohibited the admission of any alien who “has engaged in terrorist activity” or whom “a consular officer or the Attorney General knows, or has reasonable ground to believe, is likely to engage after entry in any terrorist activity.” Pub. L. No. 101-649, §601(a)(3)(B), 104 Stat. 4978, codified at 8 U.S.C. §1182(a)(3)(B)(i). The Act defined “terrorist activity” to include activities such as “[t]he use of any \* \* \* explosive, firearm, or other weapon or dangerous device \* \* \* with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.” Id. §601(a)(3)(B)(iii)(V)(b), codified at 8 U.S.C. §1182(a)(3)(B)(iii)(V)(b). The Nation grew more aware of the threat of terrorism after the 1993 bombing of the World Trade Center. Congress responded by passing the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214. That Act reinforced the Nation’s commitment to preventing terrorist-trained aliens from entering by expanding the list of inadmissible aliens to include not only those suspected of having personally engaged in terrorist activity, but also those who are representatives or members of terrorist organizations. Id. §411, codified as amended at 8 U.S.C. §1182(a)(3)(B)(i). In enacting this law, Congress stressed that “the prevention of alien terrorists from entering the United States in the first place \* \* \* present[s] among the most intractable problems of immigration enforcement. The stakes in such cases are compelling: protecting the very lives and safety of U.S. residents, and preserving the national security.” H.R. Rep. No. 383, 104th Cong., 1st Sess. 53 (1995). “The object of preventing terrorist aliens from entering the U.S. is equally important to the national interest as the removal of alien terrorists. On this question, the demands of due process are negligible, and Congress is free to set criteria for admission and screening procedures that it deems to be in the national interest.” Id. at 58.3 Five years later, in response to the catastrophic terrorist attacks of September 11, 2001, Congress further expanded the class of aliens whose entry is categorically prohibited on terrorism-related grounds. Congress amended the laws to exclude not only terrorists themselves and members or representatives of terrorist organizations, but also aliens suspected of having “associated” with a terrorist organization, or those suspected of intending to engage in activities that threaten public safety. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, §411(a)(2), 115 Stat. 272, codified at 8 U.S.C. §1182(a)(3)(F). That Act also broadened the definitions of “terrorist activity” and “engaged in terrorist activity,” and expanded the Attorney General’s authority to detain aliens whom he suspects of involvement in terrorism. Id. §§411(a)(1) & 412, codified at 8 U.S.C. §§1182(a)(3)(B) & 1226a. The next year, Congress transferred immigration authority to the newly-created Department of Homeland Security (“DHS”). See, e.g., Homeland Security Act of 2002, Pub. L. No. 107-296, §441, 116 Stat. 2135. The House Report described DHS’s fundamental mission as “preventing terrorist attacks within the United States, reducing the United States’ vulnerability to terrorism, minimizing the damages from attacks, and assisting in recovery from any attacks, should they occur.” H.R. Rep. No. 609(I), 107th Cong., 2d Sess. 63 (2002). A critical component of DHS’s mission is “securing U.S. borders” because, “as recent events have illustrated, the Nation’s democratic tradition of free and open borders is at once its greatest strength and most easily exploitable liability.” Id. at 63-64. In addition to conducting its own post-September 11 deliberations, Congress created the National Commission on Terrorist Attacks Upon the United States (“9/11 Commission”) to research the events responsible for that catastrophic breach of national security and to propose reforms. In 2004, the 9/11 Commission issued its public report, which stressed immigration law’s central role in national security. Nat’l Comm’n on Terrorist Attacks Upon the United States, The 9/11 Commission Report (2004) (“The 9/11 Commission Report”). The 9/11 Commission observed that “[t]he challenge for national security in an age of terrorism is to prevent the very few people who may pose overwhelming risks from entering or remaining in the United States undetected.” Id. at 383. It stressed that **“[t]he border and immigration system” must serve “as a vital element of counterterrorism**.” Id. at 387. In response to the 9/11 Commission’s recommendations, Congress acted. Recognizing that national security was threatened not only by active terrorists and members of terrorist organizations, but also by nonmembers who were trained by these groups, Congress prohibited admission of aliens who have received “military-type training” from terrorist organizations. REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, §103(a), 119 Stat. 231, codified at 8 U.S.C. §1182(a)(3)(B)(i)(VIII). That provision’s sponsor stressed that the goal of the REAL ID Act’s immigration provisions “is straightforward. It seeks to prevent another 9/11-type attack by disrupting terrorist travel.” 151 Cong. Rec. H454 (daily ed. Feb. 9, 2005) (Rep. Sensenbrenner). Quoting the 9/11 Commission, he stressed that “[a]buse of the immigration system and the lack of interior enforcement were working together to support terrorist activities.” Ibid. In sum, at no point in the history of federal immigration law have the political Branches evinced an intent to allow aliens—especially aliens with apparent ties to terrorism—to enter the United States simply because they are not “enemy combatants,” applicable immigration prohibitions notwithstanding. Instead, at every turn, Congress and the President have responded to the Nation’s national-security experience by barring terrorists, terrorist affiliates, and persons trained by terrorists from entering the country. Congress passed each of the aforementioned statutes to confirm and expand the President’s ability to protect the Nation’s domestic civilian population. And in administering those statutes, the President’s authority is at “its maximum” because he “acts pursuant to an express \* \* \* authorization of Congress[.]” Medellin v. Texas, 128 S. Ct. 1346, 1350 (2008) (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)). Finally, the immigration laws prohibiting petitioners’ release into the United States are not the result of hasty judgment or political partisanship. Rather, they embody the sustained bipartisan consensus of both Republican and Democratic Presidents and Republican- and Democratic-controlled Congresses—the epitome of sound federal governance. See The Federalist No. 10 (James Madison); cf. Daryl J. Levinson & Richard H. Pildes, Separation of Parties, Not Powers, 119 Harv. L. Rev. 2311, 2354 (2008).

Extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

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

Soft power is dead --

Snowden

Parisella 6/27/13

John Parisella is a contributing blogger to AQ Online. He is the former Québec delegate general in New York and currently an invited professor at University of Montréal’s International Relations Center, The Americas Quarterly, June 27, 2013, "The Effect of Edward Snowden-A Canadian Perspective", http://www.americasquarterly.org/content/effect-edward-snowden-canadian-perspective

To some, former CIA and National Security Administration (NSA) employee Edward Snowden is seen as a classic whistleblower, who divulged government secrets that contradict the U.S. Constitution and its 4th amendment. Many who espouse his view—on both the left and right—have applauded his courage and regard him as a hero. To others—especially within the U.S. political class—he is now considered a charged felon, who has willingly pursued a plan to embarrass his government, and in so doing, has breached matters of national security and made the United States less safe. His weekend flight from Hong Kong to Russia may lead some to go as far as to label him a “traitor”. Which is it—hero, felon or traitor? It is too early to answer this. But the longer the situation drags on, the more damage it will inflict on the reputation of the United States on the world stage. The 4th amendment of the U.S. Constitution sets guidelines to protect individual privacy. Even in matters of national security, we are told that due process must be followed. NSA programs, including the ones covering telephone records as well as internet activity that Snowden denounced, must be subjected to safeguards that protect the right to privacy. President Barack Obama has since justified these NSA programs as the necessary balance between privacy and security in this post-9-11 world. While his administration has been careful in its choice of vocabulary, it has decided to charge Snowden with contravening the Espionage Act. The spectacle of the strongest power on earth chasing Snowden around the globe is not reassuring to those who believe in the value of U.S. diplomacy, U.S. intelligence capacity or U.S. military might. The ease with which Snowden accessed sensitive material and subjected his government to this embarrassing game of “cat and mouse” is also not comforting to those who count on U.S. intelligence forces to keep them safe. Clearly, at the outset, the initial effect of Snowden’s action was to spark a legitimate debate about privacy, security and the importance of the 4th amendment. Libertarian politicians like Rand Paul did not condemn Snowden outright. Snowden also has significant support in progressive circles. Others, like influential Democratic Senator Diane Feinstein and Republican Congressman Mike Rogers—normally on opposite sides, argued that maintaining national security and keeping America safe requires measures that could affect some privacy issues. Together, however, they have vehemently condemned Snowden’s actions .The flight to Russia may have deviated what was becoming a necessary debate in a democracy from matters of substance to theatrics. Snowden detractors refer to another famous whistleblower incident: that of Daniel Ellsberg and the release of the Pentagon papers, which gradually led to the questioning of the Vietnam War. Unlike Snowden, they argue, Ellsberg stayed in the U.S. and faced the justice system. In contrast, Snowden’s behavior, which has been backed by some advocacy journalists such as Glen Greenwald of The Guardian and Wikileaks, seems set on evading the U.S. justice system. The polemics around Snowden’s whereabouts seem to confuse the nature of the conversation America should be having at this time in its history. In the meantime, The United States’ image is not improving around the world. Its government seems hesitant and vulnerable. The ‘soft power’ strengths of the U.S. are being questioned. Countries such as China and Russia, with poor human rights records, are openly defying the wishes of the world’s oldest and strongest democracy, and its rule of law. At the end of the day, the privacy versus security debate is rapidly becoming a secondary issue, and this entire episode is turning into a zero-sum game for the United States where no individual or principle wins the day. And this may well be the unintended consequence of Edward Snowden’s actions.

Credibility fails - empirics

Drezner 11

Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Foreign Affairs, July/August 2011, "Does Obama Have a Grand Strategy?", <http://www.foreignaffairs.com/print/67869>

What went wrong? The administration, and many others, erred in believing that improved standing would give the United States greater policy leverage. The United States' standing among foreign publics and elites did rebound. But this shift did not translate into an appreciable increase in the United States' soft power. Bargaining in the G-20 and the UN Security Council did not get any easier. Soft power, it turns out, cannot accomplish much in the absence of a willingness to use hard power. The other problem was that China, Russia, and other aspiring great powers did not view themselves as partners of the United States. Even allies saw the Obama administration's supposed modesty as a cover for shifting the burden of providing global public goods from the United States to the rest of the world. The administration's grand strategy was therefore perceived as promoting narrow U.S. interests rather than global public goods.

#### Detention restrictions increases rendition and drone strikes—comparatively worse and turns cred

Goldsmith, 12

(Law Prof-Harvard, 6/29, Proxy Detention in Somalia, and the Detention-Drone Tradeoff, www.lawfareblog.com/2012/06/proxy-detention-in-somalia-and-the-detention-drone-tradeoff/

There has been speculation about the effect of the Obama administration’s pinched detention policy – i.e. no new detainees brought to GTMO, and no new detainees to Parwan (Afghanistan) from outside Afghanistan – on its other counterterrorism policies. I have long believed there must be some tradeoff between narrowing U.S. detention capabilities and other counterterrorism options, at least implicitly, and not necessarily for the better. As I wrote three years ago, in response to news reports that the Obama administration’s cutback on USG detentions resulted in more USG drone strikes and more outsourcing of rendition, detention, and interrogation: There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries. The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse. The main response to this argument – especially as it applies to the detention-drone tradeoff – has been to deny any such tradeoff on the ground that there are no terrorists outside of Afghanistan (a) whom the United States is in a position to capture on the ground (as opposed to kill from the sky), and (b) whom the USG would like to detain and interrogate. Dan Klaidman’s book provides some counter-evidence, but I will save my analysis of that for a review I am writing. Here I would like to point to an important story by Eli Lake that reveals that the “United States soldiers have been hunting down al Qaeda affiliates in Somalia”; that U.S. military and CIA advisers work closely with the Puntland Security Force in Somalia, in part to redress piracy threats but mainly to redress threats from al-Shabab; that the Americans have since 2009 captured and brought to the Bosaso Central Prison sixteen people (unclear how many are pirates and how many are al-Shabab); and that American interrogators are involved in questioning al-Shabab suspects. The thrust of Lake’s story is that the conditions of detention at the Bosaso Central Prison are atrocious. But the story is also important for showing that that the United States is involved outside of Afghanistan in capturing members of terrorists organizations that threaten the United States, and does have a national security need to incapacitate and interrogate them. It does not follow, of course, that the USG can or should be in the business of detaining every al-Shabab suspect currently detained in the Bosaso Central Prison. But the Lake story does show that the alternatives to U.S. detention are invariably worse from a human rights perspective. It portends (along with last month’s WPR Report and related DOD press release) that our creeping involvement on the ground in places like Somalia and Yemen mean that the USG will in fact be in a position to capture higher-level terrorists in al Qaeda affiliates. And that in turn suggests that the factual premise underlying the denial of a detention-drone tradeoff will become harder and harder to defend.

#### Executive will circumvent any legal challenges to detention

McNeal, 8

(Law Prof-Penn State, Northwestern University Law Review Colloquy, “BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” 103 Nw. U. L. Rev. Colloquy 29, August, Lexis)

. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also **incentivizes the Executive to use "lesser" forms of justice**--nonprosecution or prosecutions by military commission. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President. There are two primary concerns that executive actors face when selecting a forum: protecting intelligence and ensuring trial outcomes. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest. Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of due process and substantial justice. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

## 2NC

### CP

### Signal – 2NC

CP solves

#### Self-restraint creates a credible signal

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

#### No need for formal restrictions – CP’s signal is just as good

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

For presidents, credibility is power. **With credibility, the formal rules of the separation of powers system can be bargained around or** even **defied**, as Lincoln and FDR demonstrated. Without credibility, a nominally all-powerful president is a helpless giant. Even if legal and institutional constraints are loose and give the president broad powers, those powers cannot effectively be exercised if the public believes that the president lies or has nefarious motives.

But presidential credibility can benefit all relevant actors, not just presidents. The decline of congressional and judicial oversight has not merely increased the power of ill-motivated executives, the typical worry of civil libertarians. It also threatens to diminish the power of well-motivated presidents, with indirect harms to the public. Such presidents would, if credibly identified, receive even broader legal delegations and greater informal trust -from legislators, judges, and the public -than presidents as a class actually have. Absent other credibility-generating mechanisms, such as effective congressional oversight, **presidents must** bootstrap themselves into credibilitythrough the use of signaling mechanisms. In this Article, we suggest a range of such mechanisms, and suggest that under the conditions we have tried to identify, those mechanisms can make all concerned better off.

#### Outweighs legal restrictions

Bradley, professor of law at Duke, and Morrison, professor of law at Columbia, May 2013

(Curtis A. and Trevor W., PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, 113 Colum. L. Rev. 1097, Lexis)

To be sure, some executive branch actors involved in assessing the law of presidential power might themselves claim to focus on some version of legal correctness. As noted above and discussed in greater detail below, OLC is an example. n77 But OLC is not a typical executive legal office, and only a small fraction of all the legal questions arising within the executive branch go to OLC. Moreover, whatever the orientation of the executive actor in question, **relevant audiences** (whether **in Congress**, **the press**, or **the informed public more generally**) **might be more attuned to whether the President operates within the bounds of legal reasonableness** or plausibility than to whether he adheres to a single **"**correct**"** view of the law. If nothing else, it seems likely that the negative consequences to a President of appearing to exceed the boundaries of what is plausible would be more severe than the negative consequences of asserting a plausible but not ultimately persuasive view of the law.

### At: cong

#### Uighurs would fund it

UAA 8, Uyghur Association of America, Amended Brief Of Amicus Curiae Uyghur American Association In Support Of Appellees And In Support Of Affirmance Of The District Court, November 1, <http://ccrjustice.org/files/Uyghur%20American%20Association%20-%20Amicus%20Brief.pdf>

The petitioners should be released into the United States where the Uyghur American community is eager to provide the necessary support they will need to resettle here. **Uyghurs in America have followed closely the circumstances of petitioners**. Decl. of Rebiya Kadeer, President, UAA, In re: Guantanamo Bay Detainee Litig., Civ. Action No. 05-1509, ¶ 11 (RMU) (D.D.C. July 2008) (hereafter “Kadeer Decl.”). There is “widespread sympathy” throughout the American Uyghur community for petitioners. See Decl. of Alim Seytoff, Gen. Sec’y of the UAA, In re: Guantanamo Bay Detainee Litig., Civ. Action No. 051509 (RMU) (D.D.C. July 21, 2008) (hereafter “Setyoff Decl.”); Kadeer Decl. ¶ 13. This sympathy is shared by Uyghurs who live and work in Washington, D.C. See Steve Hendrix, D.C. Area Families Are Ready to Receive Uighur Detainees, WASHINGTON POST, Oct. 8, 2008, at A08 (hereafter “D.C. Area Families”), available at http://www.washingtonpost.com/wp-dyn/content/article/2008/10/07/ AR2008100702685.html. With approximately 300 Uyghur Americans living and working in the nation’s capital, the D.C. area has the largest concentration of Uyghurs in America. See Petitioner’s Proffer Re: Available Services and Support for Resettlement in the United States, In re: Guantanamo Bay Detainee Litig., Civ. Action No. 05-1509, (RMU) (Oct. 7, 2008) (Hereafter “Proffer”), J.A. 1471. The UAA is based in Washington, D.C. Like the United States, it believes that the Uyghur people, who are described as “staunchly pro-American, should be able to determine their political future through democratic means.

The Washington, D.C. Uyghur community first began in the 1980s when students settled in the area. See D.C. Area Families, at A08. In the mid1990s, coinciding with the collapse of the Soviet Union, the number of asylum seekers increased. Id. Most Uyghurs have settled in the Virginia suburbs of Washington, D.C., which is populated with several mosques, such as the Virginia Islamic Center. Today, most Uyghurs come to escape persecution or to pursue higher education. See Matthew Barakat, D.C. Uighurs Wait to Take in Gitmo Detainees, Associated Press (Oct. 10, 2008), available at http://www.npr.org/ templates/story/story.php?storyId=95590542 (hereafter “D.C. Uighurs”). The vocations pursued by the D.C. Uyghur community run the gamut, and includes chemical engineers, lawyers, small business entrepreneurs, tradesmen, and information technology specialists. See D.C. Area Families, at A08; see also D.C. Uighurs. Overall, Uyghur refugees who settle in the D.C. area tend to be college educated and are drawn to the area because of the ability to remain active in Uyghur human rights issues. See D.C. Area Families, at A08.

Many Uyghur expatriates are familiar with the logistical needs required by Uyghurs who have fled to the United States to escape persecution, including UAA President Ms. Kadeer. See Kadeer Decl. ¶ 14 (noting that she was “welcomed and supported by members of the Uyghur American community” upon her arrival). **The Uyghur American community has routinely helped refugees with those needs**. Id. Indeed, it is reported that Uyghurs have one of the highest U.S. approval rates for asylum seekers. See D.C. Uighurs. “The Uyghur American community is ready, willing, and able to provide support to any Uyghurs who are released from Guantanamo to America,” including “logistical support with regard to language, cultural, and religious matters.” See Seytoff Decl.; see also Kadeer Decl. ¶ 14. The community is also ready to provide services related to conditions of temporary release, such as “transportation, language, and the like, that may be necessary to meet reporting obligations to government officials and to interact with courts, government officials, and the world at large.” See Seytoff Decl. Indeed, seventeen Uyghur American families in the Washington, D.C. area have committed to providing immediate housing and support for the petitioners to help them meet any supervisory conditions imposed upon their release or as part of a bridge to more permanent resettlement arrangements that have been made. See Proffer, J.A. 1471, 1532.

Petitioners’ Proffer identified three individuals who were ready to testify regarding specific long-term resettlement services and support that have been arranged for petitioners upon release. See Proffer, J.A. 1469-1472. Kent Spriggs was one such person. An attorney experienced in working with Guantanamo detainees who have been released to their home country, Mr. Spriggs also is a member of a steering committee in Tallahassee, Florida faith-based communities that are experienced in resettling refugees in a variety of situations. Id. at 1470. The committee has committed to resettling three Uyghur detainees and developed a comprehensive plan to that effect. Id. at 1470, 1527-1531. The plan utilizes various religious organizations and covers issues such as monetary aide, spiritual services, housing and furnishings, vocational opportunities and legal issues concerning such, transportation, medical care, mental health care, language instruction, and general social integration. Id. at 1527-1531.

Another such person is Susan Krehbiel, Vice President of Lutheran Immigration and Refugee Services (“LIRS”) in Baltimore, Maryland. See Proffer, J.A. 1469. LIRS is a contractor with the United States Department of State’s Office of Refugee Settlement. Id. at 1470. It has provided services to refugees and immigrants for nearly 70 years and has helped to resettle more than 300,000, including more than 7,000 this year alone. Id.; LIRS, An Introduction From Our President (2008), at http://www.lirs.org/who/intro.htm. The LIRS Refugee CoSponsorship Manual was included as an Exhibit to the Proffer. Id. at 1474-1524. This 50-page manual details everything from navigating the immigration and refugee process to specific practical advice for how a co-sponsor should prepare their home and family for the arrival of a sponsee. Id

Finally, the Proffer explained that the Center for Constitutional Rights has identified a donor of substantial means who is willing to establish an appropriate 501(c)(3) account to provide funds for resettling the refugees. Id. at 1471-1472. The Government never challenged any aspect of the Proffer, nor sought to cross-examine any of the witnesses who were available to testify in connection with the Proffer. See Proffer Hearing, J.A. 1584.

#### The Uighur community in DC supports resettlement here

UAA 8, Uyghur Association of America, Amended Brief Of Amicus Curiae Uyghur American Association In Support Of Appellees And In Support Of Affirmance Of The District Court, November 1, <http://ccrjustice.org/files/Uyghur%20American%20Association%20-%20Amicus%20Brief.pdf>

The district court ordered the Government to bring petitioners to Washington, D.C. and release them into the care of 17 Uyghur families who committed themselves to providing them with immediate care and with assistance in complying with any supervisory conditions. These families are but a small segment of a larger Uyghur American community that has primarily established itself in the nation’s capital, where they have sought refuge from the PRC’s oppressive crusade against the Uyghur people. Uyghurs have suffered years of oppression at the hands of the Chinese government—a government that the United States believes has used the War on Terror as a pretext for continuing its oppressive crusade. **The Uyghur community in Washington, D.C. is dedicated and experienced in resettling Uyghur refugees, and has established a comprehensive, long-term plan for resettling petitioners in the United States**.

### 2nc link wall

Two links

--release of radicals into the US causes planning and execution fo attacks on the homeland

--release of detainees in the US is seen as the worst case option, so we won’t detain in the first place to avoid eventual habeas suit losses

Detention key to intel

Blum, 8

(Department of Homeland Security Office of General Counsel, October 2008, Homeland Security Affairs, “Preventive Detention in the War on Terror: A Comparison of How the United States, Britain, and Israel Detain and Incapacitate Terrorist Suspects,” Vol 4. No. 3, http://www.hsaj.org/?fullarticle=4.3.1)

After September 11, 2001, the Administration decided to detain certain individuals suspected of being members or agents of al Qaeda or the Taliban as enemy combatants and hold them indefinitely and incommunicado for the duration of the war on terror. The rationale behind this system of preventive detention is to incapacitate suspected terrorists, facilitate interrogation, and hold them when traditional criminal charges are not feasible for a variety of reasons. By employing an armed-conflict model that treats terrorists as “combatants,” the Bush Administration argues it can preventively detain terrorists until the end of hostilities, despite there being no foreseeable ending scenario to an amorphous war on terror. Furthermore, terrorists are automatically “unlawful” or “enemy” combatants and hence not entitled to protections as true prisoners of war; yet, under the Bush Administration’s approach, they also are not entitled to the legal protections afforded criminals. As law professor David Luban notes: “By selectively combining elements of the war model and elements of the law model, Washington is able to maximize its own ability to mobilize lethal force against terrorists while eliminating most traditional rights of a military adversary, as well as the rights of innocent bystanders caught in the crossfire.” Designating individuals as enemy combatants and holding them indefinitely for a war on terror that may never end raises serious legal and policy concerns. After 9/11, the Administration determined that the Geneva Conventions did not apply to the conflict with the Taliban and al Qaeda. 8 Hence, all Taliban and al Qaeda operatives were automatically unlawful “prisoners of war” and could be subjected to interrogation. 9 In August 2002, Jay Bybee, then-assistant attorney general in the Office of Legal Counsel, sent President Bush a memorandum stating: “As commander-in-chief, the President has constitutional authority to order interrogations of enemy combatants to gain intelligence information concerning the military plans of the enemy.” 10 According to John Yoo, former deputy assistant attorney general under the Bush Administration, “Information is the primary weapon in the conflict against this new kind of enemy, and intelligence gathered from captured operatives is perhaps the most effective means of preventing future terrorist attacks upon U.S. territory.” 11 As law professor Howard Ball observes, “the Administration has offered one fundamental rationale for such treatment [designations of enemy combatants]: the acquisition of actionable intelligence.” 12

Solves WMD terror

Yoo, 4

(Law Prof, UC-Berkeley “War, Responsibility, and the Age of Terrorism,” http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo)

Third, the nature of warfare against such unconventional enemies may well be different from the set-piece battlefield matches between nation-states. **Gathering intelligence**, from both electronic and human sources, about the future plans of terrorist groups **may be the only way to prevent** September 11-style **attacks** from occurring again. Covert action by the Central Intelligence Agency or unconventional measures by special forces may prove to be the **most effective tool for acting on that intelligence**. Similarly, the least dangerous means for preventing rogue nations from acquiring WMD may depend on **secret intelligence gathering** and covert action, rather than open military intervention. A **public revelation of the means of gathering intelligence, or the discussion of the nature of covert actions** taken to forestall the threat by terrorist organizations or rogue nations, **could render the use of force ineffectual or sources of information useless**. Suppose, for example, that American intelligence agencies detected through intercepted phone calls that a terrorist group had built headquarters and training facilities in Yemen. A public discussion in Congress about a resolution to use force against Yemeni territory and how Yemen was identified could tip-off the group, allowing terrorists to disperse and to prevent further interception of their communications.

#### Forced release risks terrorists attacks—leads to flood of claims

Popeo, 10

(Attorney-Washington Legal Foundation, Brief on Behalf of Retired Military Officers, National Defense Committee and Washington Legal Foundation, Kiyemba v. Obama, No. 08-1234, Lexis)

Petitioners are asking the Court to rule that every detainee now being held at Guantanamo Bay possesses a substantive due process liberty interest protected by the U.S. Constitution. They further ask the Court to [\*\*45] rule that any such detainee who succeeds in overturning his "enemy combatant" designation and who cannot be sent to his nation of citizenship must be released into the United States. They further ask for **adoption of a rule that would require such release without regard to whether the political branches of government believe that release poses national security concerns.** Amici respectfully submit, based on their considerable military experience, that recognition of the constitutional rights asserted by petitioners would raise serious national security concerns. Congress and the Executive Branch have determined that national security dictates that the seven Uighurs remaining at Guantanamo Bay should not be released into the United States. Simply because the Uighurs are no longer deemed "enemy combatants" does not mean there can be adequate assurance they will not be disruptive if allowed to enter the United States. Each of them attended a military training camp in Afghanistan and acquired weaponry skills. Each was at one time determined to be an "enemy combatant" by a CSRT. More than a few of the individuals released from [\*34] Guantanamo Bay have returned to the battlefield [\*\*46] to fight against the United States. Boumediene, 128 S. Ct. at 2295 (Scalia, J., dissenting). If the Executive Branch and Congress are sufficiently concerned about releasing the seven Uighurs into the United States to oppose such release, the courts -- which have vastly fewer resources than the political branches and far less expertise in national security matters -- should be extremely reluctant to second-guess that position. **The potential national security concerns at issue range far beyond how the Uighurs may conduct themselves once released into the United States.** For example, China has stated in no uncertain terms that it wants the Uighurs returned to China and opposes permitting them to live freely in some other country. See, e.g., Peter Spiegel and Barbara Demick, "Uighur Detainees at Guantanamo Pose a Problem for Obama," Los Angeles Times (Feb. 18, 2009) ("China is insisting that the Uighurs be sent home to face trial for separatist activities. It has further intimated that any country that offers them political asylum will in effect be harboring dangerous terrorists."); Bradley S. Klapper, "China to Swiss: Don't Take Uighurs from Guantanamo," Miami [\*\*47] Herald (Jan. 8, 2010) ("China warned the Swiss government Friday against accepting two Guantanamo inmates as part of President Barack Obama's effort to close the detention center, calling them terrorist suspects who should face Chinese justice."). Releasing the seven Uighurs into the United States undoubtedly would have adverse effects on U.S. relations with China. Amici submit that the Executive Branch and Congress are better equipped than is the Court to weigh the costs of those effects against [\*35] whatever benefits might come from the Uighurs' release into the United States. Moreover, every Guantanamo detainee, including some of the most dangerous terrorists in the world, has filed a habeas petition in the District of Columbia and will reap the benefits of a decision extending due process rights to nonresident aliens at Guantanamo Bay. Given the well-known difficulty that the military has experienced in handling the massive amounts of evidence relevant to each of the pending habeas petitions, it is within the realm of possibility that at least some of the most highly dangerous detainees will prevail in their habeas petitions. If that occurs and the detainee [\*\*48] reasonably fears persecution in his home country, a decision favoring Petitioners in this matter **could well lead to the release of dangerous terrorists into the United States**. It would also compound the significant disruptions already being experienced by the military as it is forced to divert large amounts of its resources to defending against the habeas petitions filed by so many of its military detainees. See Gen. Thomas L. Hemingway, Wartime Detention of Enemy Combatants: What if There Were a War and No One Could Be Detained Without an Attorney?, 34 DENV. J. INT'L L. & POL'Y 63 (2006). The district court ruled that release into the United States was required because the Uighurs are no longer deemed "enemy combatants" and have nowhere else to go. Under the district court's "all or nothing" standard, the political branches' considered views that the Uighurs could pose a threat to national security if released into the United States count for nothing -- [\*36] because their evidence does not at present rise to the level necessary to support an "enemy combatant" designation. That decision is a sharp break from 220 years of constitutional history, during [\*\*49] which the courts deferred considerably to the political branches' foreign affairs decisions, and raises serious national security concerns.

#### Mandating release spills-over to broader detention power

Popeo, 10

(Attorney-Washington Legal Foundation, Brief on Behalf of Retired Military Officers, National Defense Committee and Washington Legal Foundation, Kiyemba v. Obama, No. 08-1234, Lexis)

Boumediene indicated that a "habeas court must have the power to order the conditional release of an individual unlawfully detained." 128 S. Ct. at 2266. Based on that statement, Petitioners erroneously conclude that the decision below, by denying them a remedy, must conflict with Boumediene. Petitioners' conclusion overlooks Boumediene's admonition that the power to release arises only after the court determines that a petitioner is being "unlawfully detained." The United States has explained why Petitioners, although no longer deemed enemy combatants, are stuck in Guantanamo Bay: it has determined that permitting their entry into the United States is against the national interest, and no nation in which Petitioners are willing to resettle has agreed to accept them. To win release, Petitioners must demonstrate that they are being held "in custody in violation of the Constitution or laws or treaties of the United States." They have failed to make such a demonstration. In particular, Petitioners have failed to demonstrate that detention violates their rights to [\*8] substantive due process under the Fifth Amendment. Indeed, [\*\*11] federal courts throughout our history have decisively rejected claims that nonresident aliens possess any substantive due process rights. Moreover, courts and legal scholars at the Founding and at all times thereafter have agreed that when a sovereign nation denies entry to an alien, he is not entitled to appeal to some higher authority as a basis for overruling that denial. Finally, amici are concerned that recognition of the constitutional rights asserted by Petitioners would raise serious national security concerns. If Petitioners are entitled to substantive due process protections, than so are all the other detainees being held at Guantanamo Bay, including some of the most dangerous terrorists in the world. If those avowed enemies of the U.S. are afforded full Fifth Amendment protections, **the military's power to continue to detain them could be placed in serious jeopardy.**

### AT: They Aren’t Terrorists

#### Petitioners trained with Al Qaeda—huge risk

White, 10

(Counsel-Baker Botts LLP, Brief for Foundation for Defense of Democracies, Kyemba v. Obama, http://www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_RespondentAmCuFDD.authcheckdam.pdf)

Petitioners are among the categories of aliens prohibited from entering the United States on terrorism-related grounds. Gov’t Br. 29-31. They downplay the nature of their activities in Afghanistan: they claim that they merely “had been living in Afghanistan,” Pet. Br. 5, and that their weapons training merely was of the sort received by “[m]illions of American civilians, and hundreds and thousands of servicemen and women,” Br. of Appellees at 4, Bush v. Kiyemba, D.C. Cir. Nos. 08 5424 et al. (filed Nov. 3, 2008). But their account does not withstand scrutiny. Publicly-available documents establish that petitioners received “military-type training” from al Qaida operatives, rendering them categorically inadmissible. 8 U.S.C. §1182(a)(3)(B)(i)(VIII). 1. The ETIM For a complete account of Petitioners’ pre-detention activities, one must consider the context in which they were captured and detained. Petitioners’ choice of location speaks for itself. As early as 2000, in the days preceding al Qaida’s attack on New York and Washington, petitioners were trained by a designated al Qaida affiliate at camps run by senior terrorists. Petitioners primarily were at a camp in Afghanistan’s Tora Bora Mountains, a known stronghold for al Qaida and the Taliban. United States Special Operations Command, History 93 (2007). The camp was run by two notorious terror chieftains, Hassan Mahsum and Abdul Haq, central figures in the history of the East Turkistan Islamic Movement (“ETIM”).4 According to a recent ETIM propaganda video, Mahsum founded the ETIM and moved its base of operations to the Taliban’s Afghanistan in the late 1990s to train its members for jihad against the Chinese government.5 The ETIM returned the Taliban’s hospitality in kind, as ETIM members “fought alongside” al Qaida and Taliban forces during Operation Enduring Freedom in late 2001.6

### AT: Recruiting Turn

#### Studies prove detention irrelevant to recruiting

Joscelyn, 10

(Sr. Fellow-Foundation for Defense of Democracies, 12/27, “Gitmo is not Al Qaeda’s Number One Recruitment Tool,” http://www.weeklystandard.com/blogs/gitmo-not-al-qaedas-number-one-recruitment-tool\_524997.html)

During a press conference on December 22, President Obama was asked about the difficulties his administration has encountered in trying to close Guantanamo. The president explained (emphasis added): Obviously, we haven’t gotten it closed. And let me just step back and explain that the reason for wanting to close Guantanamo was because my number one priority is keeping the American people safe. One of the most powerful tools we have to keep the American people safe is not providing al Qaeda and jihadists recruiting tools for fledgling terrorists. And Guantanamo is probably the number one recruitment tool that is used by these jihadist organizations. And we see it in the websites that they put up. We see it in the messages that they're delivering. President Obama and his surrogates have made this argument before, but they have provided no real evidence that it is true. In fact, al Qaeda’s top leaders rarely mention Guantanamo in their messages to the West, Muslims and the world at large. No journalist in attendance had the opportunity to challenge President Obama’s assertion. The president should have been asked: If Guantanamo is such a valuable recruiting tool, then why do al Qaeda’s leaders rarely mention it? THE WEEKLY STANDARD has reviewed translations of 34 messages and interviews delivered by top al Qaeda leaders operating in Pakistan and Afghanistan (“Al Qaeda Central”), including Osama bin Laden and Ayman al Zawahiri, since January 2009. The translations were published online by the NEFA Foundation. Guantanamo is mentioned in only 3 of the 34 messages. The other 31 messages contain no reference to Guantanamo. And even in the three messages in which al Qaeda mentions the detention facility it is not a prominent theme. Instead, al Qaeda’s leaders repeatedly focus on a narrative that has dominated their propaganda for the better part of two decades. According to bin Laden, Zawahiri, and other al Qaeda chieftains, there is a Zionist-Crusader conspiracy against Muslims. Relying on this deeply paranoid and conspiratorial worldview, al Qaeda routinely calls upon Muslims to take up arms against Jews and Christians, as well as any Muslims rulers who refuse to fight this imaginary coalition. This theme forms the backbone of al Qaeda’s messaging – not Guantanamo. To illustrate this point, consider the results of some basic keyword searches. Guantanamo is mentioned a mere 7 times in the 34 messages we reviewed. (Again, all 7 of those references appear in just 3 of the 34 messages.) By way of comparison, all of the following keywords are mentioned far more frequently: Israel/Israeli/Israelis (98 mentions), Jew/Jews (129), Zionist(s) (94), Palestine/Palestinian (200), Gaza (131), and Crusader(s) (322). (Note: Zionist is often paired with Crusader in al Qaeda’s rhetoric.) Naturally, al Qaeda’s leaders also focus on the wars in Afghanistan (333 mentions) and Iraq (157). Pakistan (331), which is home to the jihadist hydra, is featured prominently, too. Al Qaeda has designs on each of these three nations and implores willing recruits to fight America and her allies there. Keywords related to other jihadist hotspots also feature more prominently than Gitmo, including Somalia (67 mentions), Yemen (18) and Chechnya (15). Simply put, there is no evidence in the 34 messages we reviewed that al Qaeda’s leaders are using Guantanamo as a recruiting tool. Undoubtedly, “Al Qaeda Central” has released other messages during the past two years that are not included in our sample. Some of those messages may refer to Guantanamo. And some of the al Qaeda messages provided by NEFA, which does a remarkable job collecting and translating al Qaeda’s statements and interviews, may be only partial translations of longer texts. However, the messages we reviewed also surely include most of what al Qaeda’s honchos have said publicly since January 2009. These messages do not support the president’s claim.

### D---Their cards

Boudmedine sufficient---[[[READ THE GREEN]]]

Knowles 9 [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

The Bush Administration's detainee policy made clear that - due to America's power - the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation - the United States. n412 As an institution of that same government, the courts are well-positioned to understand and interpret international law that has been incorporated into U.S. law. Because the courts have the capacity to track international legal norms, there was no longer a justification for exceptional deference to the Administration's interpretation of the Geneva Conventions as applied to the detainees. Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions. n413 But the Guantanamo litigation demonstrated that American hegemony has altered this classic assumption as well. The [\*154] transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it. The Kuwaiti government hired American attorneys to represent their citizens held at Guantanamo. n414 In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees. n415 Other nations learned about the treatment of their citizens through the information obtained by attorneys. n416 Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly - and Congress, in fact, acted twice to limit detainees' access to the courts n417 - this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically-charged issues. n418 Even "rogue states" such as Myanmar have their lobbyists in Washington. n419 In addition, foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels. n420 The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America's strategic interests. n421 In the Guantanamo litigation, the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations. The hegemonic model also reduces the need for executive branch flexibility,

and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438 At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head.

In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate

than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449

#### The conclusion agrees – their article is describing what the court did in Boumediene – going farther links causes nuclear terror

Knowles, assistant professor at the New York University school of law, Spring 2009

(Robert, “American Hegemony and the Foreign Affairs Constitution,” 41 Ariz. St. L.J. 87, Lexis)

The hegemonic model generally values courts' institutional competences more than the anarchic realist model. The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy. This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap. And the dilemma caused by the need to weigh different functional considerations - liberty, accountability, and effectiveness - against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.

[End of Cal’s “key to U.S. leadership” card]

The domestic deference doctrines - such as Chevron and Skidmore - are hardly models of clarity, but they are applied and discussed by the courts much more often than foreign affairs deference doctrines, and can be usefully applied to foreign affairs cases as well. n387 The domestic deference doctrines are a recognition that legal interpretation often depends on politics, just as it does in the international realm. n388 Most of the same functional rationales - expertise, accountability, flexibility, and uniformity - that are advanced in support of exceptional foreign affairs deference also undergird Chevron. Accordingly, Chevron deference provides considerable latitude for the executive branch to change its interpretation of the law to adjust to foreign policy requirements. Once courts determine that a statute is ambiguous, the reasonableness threshold is [\*149] easy for the agency to meet; that is why Chevron is "strong medicine." n389 At the same time, Chevron's limited application ensures that agency interpretations result from a full and fair process. Without such process, the courts should look skeptically on altered interpretations of the law.

Returning to domestic deference standards as a baseline clarifies the ways in which foreign affairs are truly "special." The best response to the special nature of foreign affairs matters does not lie simply in adopting domestic deference on steroids. Instead, accurate analysis must also take into account the ways in which the constitutional separation of powers already accommodates the uniqueness of foreign affairs. Many of the differences between domestic and foreign affairs play out not in legal doctrine, but in the relationship between the President and Congress. Under the hegemonic model, courts would still wind up deferring to executive branch interpretations much more often in foreign affairs matters because Congress is more likely to delegate law-making to the executive branch in those areas. n390

Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. n391 It is true that the stable nature of American hegemony will prevent truly destabilizing events from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. n392 Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations, for example, which depend on adjusting positions quickly.

The need for speed is particularly acute in crises. Threats from transnational terrorist groups and loose nuclear weapons are among the most serious problems facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," n393 but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs crises without the deliberation and opportunities for review that are essential aspects of their institutional competence. Therefore, courts should grant a higher level of deference to executive branch determinations in deciding whether to grant a temporary restraining order or a preliminary injunction in foreign affairs matters. Under the super-strong Curtiss-Wright deference scheme, the court should accept the executive branch interpretation unless Congress has specifically addressed the matter and the issue does not fall within the President's textually-specified Article I powers.

But there are limits. Although speed matters a great deal during crises, its importance diminishes over time and other institutional competences assume greater importance. When decisions made in response to emergencies are cemented into policy over the course of years, the courts' institutional capabilities - information-forcing and stabilizing characteristics - serve an important role in evaluating those policies. n394 Once a sufficient amount of time has passed, the amount of deference given to executive branch determinations should be reduced so that it matches domestic deference standards.

One of the core realist arguments for deference, the risk of collateral consequences, carries far less weight under a hegemonic model. Court decisions have consequences for third parties in the domestic realm all of the time. Given the hierarchical nature of U.S. hegemony, the response from other nations is likely to be more similar to the response by domestic parties than in the past. A typical example invoked by deferentialists involves a court decision - for example, recognizing the government of Taiwan - that angers the Chinese government. n395 Although such a scenario is not out of the question, there are several reasons why the consequences would not be as dire as often predicted by deferentialists. American military dominance [\*151] makes it highly unlikely that war would result from such an incident. n396 Moreover, China, too, cares about legitimacy and is far more likely to retaliate in some other way, possibly harming the United States' interests, but through means that would capture attention in the U.S. domestic realm, leading to accountability opportunities. Assuming that the decision is non-constitutional, the Chinese government could seek to have its preferred interpretation enacted into law.

Indeed, it is entirely possible that other nations would be content with conflicting decisions from different branches of the U.S. government. Suppose that the President roundly condemns the offensive court decision and declares the judge to be an "activist." If the damage done by the court decision was largely dignitary, an angry denouncement from the executive branch may be all that is needed. Past empires relied on multi-vocal signaling to maintain imperial rule. n397 But with the advent of globalization, intra-executive branch multi-vocality is much more difficult because advances in communication permit various parts of the "rim" to communicate with one another. n398 The American separation-of-powers system provides a way around this problem, allowing the U.S. government to "speak in different voices" at once.

C. Applying the Hegemonic Model: The Enemy Combatant Cases

In the wake of 9/11, the United States invaded Afghanistan and toppled the Taliban government. n399 Thousands of men, most captured by our allies in Pakistan and Afghanistan (but also many other places around the world), were transferred to U.S. custody and detained in a network of prisons stretching from Afghanistan to Eastern Europe to Asia to Guantanamo Bay, Cuba. n400 The President made an executive determination that all detainees held at Guantanamo were "enemy combatants," and that the law of armed conflict - specifically, the Geneva Conventions - did not apply to them. n401 [\*152] The detainees were deliberately held in places where they were thought to have no rights under the U.S. Constitution or any other domestic law. n402 In 2003, the United States invaded Iraq, disrupting relationships with allies and leading to a decline in support around the world for U.S. foreign policy. n403 Theories of American Empire became a hot topic of discussion in the time leading up to, and following, the Iraq invasion. n404 Meanwhile, the Guantanamo detainees began to file habeas claims and the litigation wound its way up to the Supreme Court. n405 The Abu Ghraib prison abuse scandal broke in May 2004, n406 a month before the Court decided Rasul, n407 which was the first enemy combatant case and appeared to herald a shift in the Court's approach to special deference.

The Court may be finally adjusting to the reality of American power. The U.S. has been a global hegemon since 1991 and has used military means to enforce international law norms: for example, the U.S.-led bombing of Serbia in 1998 halted ethnic cleansing in Kosovo. n408 But the scope and impact of America's projection of power since 9/11 has underscored the significance of its unique status. The classic realist view of the world - with great powers achieving a consensus that preserves a precarious balance of power - no longer fits. n409 Accordingly, the institutional competences most valued for achieving governmental effectiveness in foreign affairs in the classic realist world (with the exception of speed) have become less important, and other competences have become more important.

[\*153] Nonetheless, since 9/11, deferentialists have argued that the classic realist justifications for special deference apply with even more force to the war on terror. n410 This is the constitutional equivalent of a problem that has hobbled U.S. foreign policy in the twenty-first century - the persistence of Cold War paradigms in strategic thinking. Administration officials, in the early days after 9/11, tended to lump together terrorist groups such as al Qaeda and rogue states such as Iraq into one common existential enemy to occupy the position of the former Soviet Union. n411 The threat posed by al Qaeda is different because it cannot hope to remove the U.S. from its position as global hegemon - only another great power could do that. Instead, the terrorist threat presents a challenge of hegemonic management that can only be met by the combined effort of all branches of the U.S. government. In the enemy combatant cases, the Court seems to have recognized this shift and asserted its authority. But whether or not the enemy combatant cases were decided with these sorts of broad geopolitical concerns in mind, the changed hegemonic order justifies the jurisprudence.

The Bush Administration's detainee policy made clear that - due to America's power - the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation - the United States. n412 As an institution of that same government, the courts are well-positioned to understand and interpret international law that has been incorporated into U.S. law. Because the courts have the capacity to track international legal norms, there was no longer a justification for exceptional deference to the Administration's interpretation of the Geneva Conventions as applied to the detainees.

Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions. n413 But the Guantanamo litigation demonstrated that American hegemony has altered this classic assumption as well. The [\*154] transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it. The Kuwaiti government hired American attorneys to represent their citizens held at Guantanamo. n414 In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees. n415 Other nations learned about the treatment of their citizens through the information obtained by attorneys. n416

Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly - and Congress, in fact, acted twice to limit detainees' access to the courts n417 - this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically-charged issues. n418 Even "rogue states" such as Myanmar have their lobbyists in Washington. n419 In addition, foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels. n420 The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America's strategic interests. n421 In the Guantanamo litigation, the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations.

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

The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429

In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.

The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436

Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438

At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440

The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige.

Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449

Conclusion

When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

### 2nc fails

Soft power fails - improved popular reputation doesn't translate into international policy leverage - empirics prove - that's Drezner

Legitimacy doesn’t impact overall power

Fettweis 10

Christopher J. Fettweis is an assistant professor of political science at Tulane University, August 2010, Paper prepared for the 2010 meeting of the American Political Science Association, Washington, DC, September 1-4, "The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1657460

Both theoretical logic and empirical evidence suggest that actions taken in the present will likely not have a predictable effect on the crises of the future, for better or for worse. The almost overwhelming tendency to try to send messages through national actions increases the odds of policy mishaps and outright folly, for at least two reasons. First, and most basically, an eye toward the future prevents complete focus on the present. During a crisis, the national interest cannot be correctly ascertained unless policymakers de-link present concerns from future expectations. Second, as unsettling as it may be, the future is not subject to our control. There is much that can and will occur between the current crisis and the next, and the international environment will change in quite unpredictable ways. Target actors – whether they be superpowers or terrorist groups or vaguely-defined “threats” – are not likely to believe that the actions of a state give clues to its future actions. In other words, they believe that our actions are independent, and there is little that can be done to change that.81 Generally speaking, therefore, policymakers are wise to fight the natural temptation to look beyond the current crisis when deciding on action.

Honor is a socially determined good, in the sense that the community is the ultimate arbiter of whether any individual possesses it. Likewise, the status of its credibility is beyond the control of the United States. Neither people nor states own their reputation, which can be affected by the actions to some extent but ultimately exist primarily in the minds of others. “Credibility exists,” noted the recent U.S. politician perhaps most obsessed with its maintenance, “only in the eye of the beholder.”82 Try as they might, states cannot exert complete control over their reputations or level of credibility; target adversaries and allies will ultimately form their own perceptions, ones that will be affected by their needs and goals. Even if states were to take what appeared to be the logical actions to protect their credibility, it is possible (perhaps likely) that others will not receive the messages in the way they were intended.83 Sending messages for their consideration in future crises, therefore, is all but futile.

### Courts Adv

### 2nc no modeling

1. Our no modeling arguments are specifically true for SOP and war powers

Law, Professor of Law and Professor of Political Science, Washington University in St. Louis, and Versteeg, Associate Professor, University of Virginia School of Law, June 2012

(David S. and Mila, “THE DECLINING INFLUENCE OF THE UNITED STATES CONSTITUTION,” 87 N.Y.U.L. Rev. 762, Lexis)

Our analysis thus far offers strong evidence that the U.S. Constitution is losing popularity as a model for constitution makers, at least as far as the enumeration of rights is concerned. But what of the structural and institutional innovations for which the U.S. Constitution is also renowned? There are three features of what has come to be known as the "structural constitution" n50 that are closely associated with American constitutionalism: federalism, n51 presidentialism, n52 and judicial review. n53 Is it merely the rights guarantees found in the U.S. Constitution that fail to inspire today's constitution makers, or is the global popularity of the structural constitution also in decline? The answer appears to be that the most distinctive and celebrated structural features of the U.S. Constitution have also fallen out of vogue.

1. Federalism

Federalism held considerable appeal to constitution makers in the early nineteenth century, and nowhere more so than in Latin America, where it was embraced by Argentina, Brazil, Chile, Uruguay, Venezuela, and Mexico, among others. n54 Even at the peak of its popularity in the early twentieth century, however, only 22% of [\*786] the world's nations employed some form of federalism. n55 Since that time, federalism has diminished in popularity. n56 Following a significant decline in the inter-war period, the proportion of countries with a federal system recovered somewhat to about 18% in the immediate aftermath of World War II but has since stabilized at a mere 12%. These developments are depicted in Figure 7, which graphs the proportion of countries with a federal system over the last two centuries. n57

[\*787] Figure 3. Similarity to the U.S. Constitution in 1946 [\*788] Figure 4. Similarity to the U.S. Constitution in 1966 [\*789] Figure 5. Similarity to the U.S. Constitution in 1986 [\*790] Figure 6. Similarity to the U.S. Constitution in 2006 [\*791] Figure 7. Percentage of Countries with Federal Systems

2. Presidentialism

A similar fate has befallen another famous American constitutional innovation, that of presidentialism. Like federalism, presidentialism enjoyed early popularity in Latin America. n58 Many of these early Latin American experiments with presidentialism degenerated into dictatorial rule, n59 however, **and these failures helped to give presidentialism itself a bad name** n60 **and to discourage other nations from adopting similar systems**. n61 Figure 8 depicts the prevalence of presidential, semi-presidential (or mixed), and parliamentary systems [\*792] among the world's democracies over the last six decades. n62 In absolute terms, the parliamentary model has consistently been the most popular of the three and is at present the choice of roughly half of the world's democracies. By contrast, although presidentialism has enjoyed a slight resurgence since its nadir in the 1970s, it remains less widespread now than it was in the immediate aftermath of World War II. What has gained popularity over time, mainly at the expense of parliamentarism, is the mixed or semi-presidential model, which was widely adopted among the former Soviet bloc countries that emerged from communism in the 1990s. n63

[\*793]

Figure 8. Popularity of Presidential, Parliamentary, and Mixed Systems

3. Judicial Review

It is perhaps ironic that the most popular innovation of American constitutionalism has been judicial review, n64 given that this celebrated institution is nowhere mentioned in the U.S. Constitution itself. Today, the majority of the world's constitutions mandate judicial review in some form, as shown in Figure 9. n65 In 1946, only 25% of all constitutions explicitly provided for judicial review; by 2006, that proportion had increased to 82%.

[\*794]

Figure 9. Percentage of Constitutions That Provided Explicity for Judicial Review

**The** particular **form of judicial review that has proven most popular**, however, **is not the form** that was **pioneered by the U**nited **S**tates. n66 Under the American model, the power of judicial review is vested in courts of general jurisdiction, which rule upon the constitutionality of government action as the need arises in the course of ordinary litigation. n67 Under the European model, by contrast, the power to decide constitutional questions is exercised exclusively by a specialized constitutional court that stands apart from the regular [\*795] judiciary. n68 The prototypical examples of this model are the constitutional courts that Hans Kelsen devised for Austria. n69 A further distinction is routinely drawn between concrete review, which characterizes the American model, and abstract review, which typifies the European model. In a system of concrete review, courts decide constitutional questions in the course of ordinary litigation, as part of what Americans would call a case or controversy, n70 whereas in a system of abstract review, the constitutionality of a law can be decided in the absence of a concrete, adversarial dispute and, indeed, before the law has even gone into effect. n71

**Over the last six decades**, **a growing proportion** of constitutions **have adopted the European model of abstract review by specialized courts**, **as opposed to the American model** of concrete review by [\*796] ordinary courts. At the close of World War II, the American model enjoyed a commanding lead over the European model as the choice of over 80% of constitution makers, but its popularity began to erode in the 1970s. By the mid-1990s, the European model had overtaken the American model as the choice of over half the world's constitutions. Figure 10 illustrates these global trends. The creation of specialized constitutional courts of the European variety has proven especially popular among newly democratic states, where distrust of existing judicial institutions associated with the old regime is often widespread. n72 Thus, **although the U.S. Constitution may have pioneered the idea of binding judicial enforcement** of individual rights - an idea that now enjoys nearly universal acceptance - **it is no longer the leading source of inspiration for how such enforcement is to be institutionalized**. America's long and successful experience with judicial review may be responsible for encouraging other countries to adopt the practice, but the form of judicial review that other countries actually choose to adopt has a more European than American flavor.

#### Their Scharf card is good but it’s from a Kiyemba brief—only our cards cite objective data

Liptak, Supreme Court correspondent for the New York Times, 2/6/2012

(Adam, “‘We the People’ Loses Appeal With People Around the World,” http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?\_r=2&&pagewanted=all&gwh=B9B981531CEC01DEE5DB44FD26D5D5CE)

A quarter-century later, the picture looks very different. “The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere,” according to a new study by David S. Law of Washington University in St. Louis and Mila Versteeg of the University of Virginia.

The study, to be published in June in The New York University Law Review, bristles with data. Its authors coded and analyzed the provisions of 729 constitutions adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them.

“Among the world’s democracies,” Professors Law and Versteeg concluded, “constitutional similarity to the United States has clearly gone into free fall. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, only to reverse course in the 1980s and 1990s.”

We’ve become irrelevant

Mila Versteeg, Associate Professor at the University of Virginia School of Law, 13 (“Model, Resource, or Outlier? What Effect Has the U.S. Constitution Had on the Recently Adopted Constitutions of Other Nations?” 5-29-13, http://www.heritage.org/research/lecture/2013/05/model-resource-or-outlier-what-effect-has-the-us-constitution-had-on-the-recently-adopted-constitutions-of-other-nations)

For some time, both scholars and the public have considered the U.S. Constitution the world’s dominant model. Those beliefs are not without foundation: Fundamental structures like judicial review, as well as the very notion of a written constitution, are American inventions which have long shaped global constitution-making. But a growing number of voices are questioning this notion of American constitutional hegemony, with much of this attention focusing on the reportedly **declining importance of U.S. Supreme Court precedent in foreign judicial decisions** and others, like Justice Ginsburg, suggesting that the Constitution itself is flagging as a model for foreign constitutional drafters.¶ Methodology¶ In this article,[10] David Law and I seek to reconcile these viewpoints empirically. One of the article’s primary goals is to document the similarity between the American Constitution and evolving global constitutional practices over the past 60 years. As I describe in more detail below, we find evidence that the U.S. Constitution’s typicality in the world and, it seems, its sway as a global model are dwindling.¶ The basis for this analysis was a data set of world constitutions that I compiled between 2007 and 2008. The data set quantifies the rights-related provisions of all of the world’s constitutions from 1946 to 2006—729 constitutional versions of 188 countries—on 237 variables. From these 237 variables, my co-author and I aggregated and condensed them into 60 variables that we believe capture the full substantive range of global constitutional rights. We also included two provisions that are not strictly rights-related: judicial review and a national ombudsman.¶ Using this data, we compared each constitution in the data set to every other constitution, yielding a similarity index that ranges from 1 (perfect similarity) to –1 (perfect dissimilarity) between any two documents.¶ Globally Generic Rights¶ Before describing the results of the analysis with regard to the U.S. Constitution, it is worthwhile to explore one of the notions that underlies the question we attempt to answer. That is, how similar are the constitutional rights provisions among the world’s constitutions? And if there exists a high degree of similarity—i.e., an international template of rights (as has been previously documented)—what specific rights does it include?¶ To answer those questions, we created a table ranking all of the 60 identified rights by their world popularity in 2006. At the top of that ranking are rights such as freedom of religion, freedom of expression, the right to private property, equality guarantees, and the right to privacy, each of which appeared in at least 95 percent of constitutions in 2006. At the bottom of the list were provisions such as protection of fetus rights and the right to bear arms, which in 2006 appeared in just 8 percent and 2 percent of constitutions, respectively.¶ Other themes emerged from the data. For instance, almost all of the 60 constitutional components are increasing in similarity; even most of the unpopular ones (such as protection of fetuses) are becoming more popular. In fact, only two provisions, the right to bear arms and the recognition of an official state religion, are less popular now than they were just after World War II.¶ Having assembled the world’s most popular constitutional provisions, we engaged in a thought experiment. It so happens that the 25 most popular rights in 2006 appeared in at least 70 percent of constitutions. By coincidence, the average constitution over the entire 61-year period contained exactly 25 rights. We therefore compiled a theoretical “generic bill of rights” containing those 25 most popular rights. We then compared all of the world’s constitutions over time to the generic bill of rights, finding that similarity has been increasing steadily since 1946 (an unsurprising finding, given that the generic bill of rights is crafted from rights popular in 2006).¶ We also found that although constitutions are becoming more generic, not all constitutions are equally so. On one end of the spectrum, the constitutions of Djibouti, St. Lucia, Botswana, and Grenada are the world’s most generic, with similarity indexes to the generic bill of rights above 0.70. On the other end, constitutions with very few rights, such as those of Saudi Arabia, Brunei, and Australia, are the most unusual, with similarity indexes at or below 0.12.¶ The United States Constitution’s Declining Similarity¶ The existence of this generic set of rights begs the question of whether certain countries have led the way in adopting these generic rights and, if so, to what extent these rights pioneers have impacted the subsequent constitutional practices of other countries. As the article’s title suggests, we focused first and foremost on the U.S. Constitution and whether the conventional wisdom of its status as a constitutional pioneer was supported by the data.[11]¶ Unsurprisingly, attempting to gauge one constitution’s “influence” on another involves various conceptual and methodological challenges. To illustrate, a highly generic constitution may be generic because others have followed its lead, because it has modeled others, or simply by coincidence. That said, if two constitutions are becoming increasingly dissimilar, by definition, one cannot be following the other. That is, neither is exerting influence on the other (at least not in a positive way).¶ This is the phenomenon we observed in comparing the U.S. Constitution to the rest of the world; based on the rights index, the U.S. has become less similar to the world since 1946 and, with a current index of 0.30, is less similar now than at any point during the studied period. This phenomenon has occurred even among current American allies; among countries in regions with close cultural and historic ties to the U.S. (namely, Latin America and Western Europe); and among democracies. Only among common law countries is constitutional similarity higher than it was after World War II, but even that similarity has decreased since the 1960s.¶ Rights provisions are not the only constitutional elements that have lost favor with the rest of the world; structural provisions pioneered by American constitutionalism—such as federalism, presidentialism, and judicial review—have also been losing their global appeal.¶ For instance, in the early 20th century, 22 percent of constitutions provided for federalistic systems, while today, just 12 percent do.¶ A similar trend has occurred for presidentialism, another American innovation. Since the end of World War II, the percentage of countries employing purely presidential systems has declined, mainly in favor of mixed systems, which were a favorite of former Soviet bloc countries.¶ Finally, though judicial review is not mentioned in the U.S. Constitution, it has proved the most popular American structural innovation. But though the popularity of judicial review in general has exploded over the past six decades, most countries have opted for the European style of review (which designates a single, constitutional court which alone has the power to nullify laws inconsistent with the constitution) over the American model (in which all courts are empowered to strike unconstitutional laws). In 1946, over 80 percent of countries exercised American-style constitutional review; today, fewer than half do.¶ Reasons for the Decline¶ It appears that several factors are driving the U.S. Constitution’s increasing atypicality. First, while in 2006 the average national constitutions contained 34 rights (of the 60 we identify), the U.S. Constitution contains relatively few—just 21—and the rights it does contain are often themselves atypical.¶ Just one-third of constitutions provide for church and state separation, as does the U.S. Establishment Clause, and only 2 percent of constitutions (including, e.g., Mexico and Guatemala) contain a “right to bear arms.” Conversely, the U.S. Constitution omits some of the most globally popular rights, such as women’s rights, the right to social security, the right to food, and the right to health care.¶ These peculiarities, together with the fact that the U.S. Constitution is both old and particularly hard to amend, have led some to characterize the Constitution as simply antiquated or obsolete.¶ Thus, one reason why the Constitution is increasingly atypical may be that modern drafters in other countries prefer to look to modern legal innovations in crafting their own governing documents, and though American law may offer some such innovations, **the U.S. Constitution cannot**. In fact, foreign drafters may be attracted to provisions recognized in comparably modern U.S. statutory law, or even U.S. constitutional law—but not in the Constitution itself. Examples include the statutory innovations in the Civil Rights Act of 1964 and the Social Security Act, as well as the constitutional doctrines of substantive due process and judicial review.

#### Canada is the constitutional superpower

Liptak, Supreme Court correspondent for the New York Times, 2/6/2012

(Adam, “‘We the People’ Loses Appeal With People Around the World,” http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?\_r=2&&pagewanted=all&gwh=B9B981531CEC01DEE5DB44FD26D5D5CE)

The Constitution’s waning global stature is consistent with the diminished influence of the Supreme Court, which “is losing the central role it once had among courts in modern democracies,” Aharon Barak, then the president of the Supreme Court of Israel, wrote in The Harvard Law Review in 2002.

Many foreign judges say they have become less likely to cite decisions of the United States Supreme Court, in part because of what they consider its parochialism.

“America is in danger, I think, of becoming something of a legal backwater,” Justice Michael Kirby of the High Court of Australia said in a 2001 interview. He said that he looked instead to India, South Africa and New Zealand.

Mr. Barak, for his part, identified a new constitutional superpower: “Canadian law,” he wrote, “serves as a source of inspiration for many countries around the world.” The new study also suggests that the Canadian Charter of Rights and Freedoms, adopted in 1982, may now be more influential than its American counterpart.

### 2nc no spillover

Their conception of global judicial spillover has no empirical basis

David Law, Professor of Law and Professor of Political Science, Washington University, and Wen-Chen Chang, Associate Professor, National Taiwan University College of Law, 11 [“THE LIMITS OF GLOBAL JUDICIAL DIALOGUE,” Vol. 86:523, 2011]

INTRODUCTION: MUCH ADO ABOUT NOTHING?

No aspect of the globalization of constitutional law has thus far

attracted more attention or controversy than the use of foreign and

international legal materials by constitutional courts.1 Although judicial

citation of foreign law is hardly a new phenomenon, there is a

widespread sense that constitutional courts are turning more frequently

to foreign jurisprudence for guidance and inspiration.2 Moreover, the

manner in which courts and judges interact with one another has

changed in ways that are said to have systemic implications for the

global evolution of constitutional law. Prominent scholars and jurists

now speak in glowing terms of the emergence of a “global” or

“international” or “transnational judicial dialogue”3 that unites judges around the world in a “common global judicial enterprise.”4 It is said

that, by engaging in “open” and “self-conscious” debate with courts in

other countries over common questions of both substance and

methodology, constitutional courts not only “improve the quality of their

particular national decisions,” but also “contribute to a nascent global

jurisprudence,” most notably in the area of human rights.5

Several varieties of global judicial dialogue are said to exist. One

variety, which has already been mentioned, is comparative analysis of

the type found in judicial decisions. Although judicial citation of foreign

law is hardly a new phenomenon,6 it is increasingly suggested that the

manner in which constitutional courts analyze the work of their

counterparts in other countries is characterized by such a degree of

mutual engagement and substantive debate that it amounts to an ongoing

conversation conducted through the medium of judicial opinions.7 A

second variety of global judicial dialogue is dialogue in a literal sense, in

the form of “direct interactions”8 and networking among judges. This

type of dialogue has been fostered by technological advances, such as

the internet, that have lowered the barriers to international

communication, and by the deliberate efforts of academic institutions,

intergovernmental and international organizations, and constitutional

courts themselves to generate proliferating opportunities for face-to-face

interaction, in the form of conferences, visits, and the like.9

It is not the goal of this Article to contribute to the normative debate

over whether global judicial dialogue is cause for celebration or

consternation. Nor is it our purpose to evaluate the normative arguments

in favor of an interpretive posture of “engagement”10 or a “dialogical”

approach to comparative analysis.11 This Article aims, instead, to explain

as an empirical matter why the concept of “global judicial dialogue”

neither describes the actual practice of comparative analysis by judges

nor explains the emergence of a global constitutional jurisprudence. We

also demonstrate that the frequency with which a court cites foreign law

in its opinions is an extremely unreliable measure of the extent to which

the court actually makes use of foreign law. Scholars who wish to

understand or **measure a particular court’s usage of foreign law must**

**therefore be prepared to supplement quantitative research methods**, such

as statistical analysis of citations to foreign law, with qualitative

approaches that are capable of probing more deeply, such as interviews

with court personnel.

Part II of this Article argues that the notion of “**dialogue” is,** both

**conceptually and empirically, an inapt metaphor for the comparative**

**analysis performed by constitutional courts**. Part III takes advantage of a

natural experiment in judicial isolation to show that judge-to-judge

dialogue and “judicial networks,” as eye-catching as they may be, have

limited impact on constitutional adjudication and do little to explain the

frequency or sophistication with which constitutional judges resort to

foreign law. The natural experiment that we evaluate goes by the name

of Taiwan—a democratic country with an active constitutional court that

is nevertheless systematically deprived of opportunities to interact

directly with other courts for a combination of historical and political reasons. Our case study of Taiwan combines quantitative and qualitative

empirical research methods, in the form of statistical analysis of the

Taiwanese Constitutional Court’s decisions and numerous off-the-record

interviews with members of the Court and their law clerks. Although the

Court rarely cites foreign law, foreign legal research forms a routine and

indispensable part of its deliberations. Taiwan’s experience strongly

suggests that judicial interaction and networking play a much smaller

role in shaping a court’s utilization of foreign law than institutional

factors such as the rules and practices governing the composition and

staffing of the court and the extent to which the structure of legal

education and the legal profession incentivizes judges and academics to

possess expertise in foreign law. Comparison of the Taiwanese

Constitutional Court with the U.S. Supreme Court, which rarely looks to

foreign law for inspiration notwithstanding its extensive participation in

various forms of global judicial dialogue, only reinforces this

conclusion. This comparison is performed in Part IV. The Article

concludes by highlighting the role that American legal education must

play if the global influence of American constitutionalism is to be

revived, or if American courts are to engage in comparativism of their

own.

### DPT

Their research is biased towards optimistic predictions

#### Rosato 11

Sebastian, Dept of Political Science at Notre Dame. “The Handbook on the Political Economy of War”, Google Books

Given that there is good evidence contradicting democratic peace theory, how can we explain its prominence and durability in policymak¬ing circles and within the academy? The first reason is that it is a liberal theory of war and peace and, at least in America, liberalism is the domi¬nant framework of political discourse. Indeed, Louis Hartz (1991, pp. 3, 57) goes so far as to argue that liberalism is the only political tradition of any importance in the United States."4 This dominance derives from it’s fundamentally optimistic view of the world, a view that fits neatly with the optimism that pervades American society. As Mearsheimer (2001, p. 24) notes, "Americans are basically optimists. They regard progress in poli¬tics, whether at the national or international level, as both desirable and possible." This view dovetails neatly with liberal political thought, which Keith Shimko (1992, p. 2S3) describes as "ultimately dependent upon an optimistic assessment of man and his potential." It is this connection that gives democratic peace theory its staying power. After all, Shimko (1992, p. 285) notes, "Theoretical perspectives, particularly in the social sciences, thrive not merely because of their scientific superiority, but also because they are consonant with a society's prevailing values and beliefs." The second reason that the democratic peace continues to thrive is that the research program is considered to be an exemplar of "good" scientific inquiry. There is a growing consensus among students of inter¬national polities that, in order to be compelling, theories must meet two and only two criteria: their independent and dependent variables must be significantly correlated and their explanations must be logically consist¬ent (Slantchcv ct al. 2005, p. 462). Democratic peace theory appears to meet these criteria. For one thing, there seems to be abundant evidence meet these criteria. For one thing, there seems to be abundant evidence of a powerful association between joint democracy and peace. Moreover, there is nothing illogical, for example, about the claim that states that trust and respect one another will remain at peace or the claim that states with leaders accountable to pacific publics will remain at peace. Because they are wedded to this conception of scientific inquiry, pro¬ponents of the democratic peace dismiss most critiques of the theory [Google Books Preview Ends]

### 2nc JI

#### Alt Causes to Judicial Independence –

#### NAFTA tribunals

Tai-Heng Cheng, J.S.D. (Yale), LL.M. (Yale), M.A. (Oxon), American University International Law Review. Power, Authority and International Investment Law, 2005, 20 Am. U. Int'l L. Rev. 465

Click here to return to the footnote reference.n153. See Guillermo Aguilar Alvarez & William W. Park, The New Face of Investment Arbitration: NAFTA Chapter 11, 28 Yale J. Int'l L. 365, 383-86 (2003) (stating that after NAFTA Chapter 11 cases were filed against the United States, U.S. policy-makers complained that international arbitration infringes national prerogatives); Interview with James H. Carter, President, Am. Soc'y Int'l L., ASIL Newsletter May/July 2004 1, 10 (speculating that bodies such as NAFTA tribunals are causing a backlash because they require a relinquishment of sovereignty that destabilizes domestic political groups); Adam Liptak, Review of U.S. Rulings by NAFTA Tribunals Stirs Worries, N.Y. Times, Apr. 18, 2004, 1 at 20 (noting that Chief Justice Margaret Marshall of the Massachusetts Court stated in relation to international investment law's erosion of U.S. judicial authority, "to say I was surprised to hear that a judgment of this court was being subjected to further review [by a NAFTA tribunal] would be an understatement" and that a Georgetown University law school professor has described this phenomenon as "the biggest threat to United States judicial independence").

#### Politicized Elections

Nancy Marion, Professor of Political Science at the University of Akron, Rick Farmer is Director of Committee Staff at the Oklahoma House of Representatives, Todd Moore, B.A. in History and Political Science from Miami University, Oxford, Ohio, and a Master's of Applied Politics from the Ray C. Bliss Institute of Applied Politics, University of Akron, “Financing Ohio Supreme Court Elections 1992-2002: Campaign Finance and Judicial Selection”, Akron Law Review, 2005, 38 Akron L. Rev. 567

[\*570] [\*571] Numerous publications and policy discussions have focused on the perceived failures of Ohio's semi-partisan system and campaign finance law. 14 For example, Ohio State University's John Glenn Institute for Public Service and Public Policy, while not arguing explicitly that interest group contributions undermine the court, does support judicial selection reform due to fears that interest group issue-advocacy campaigns threaten judicial independence and impartiality. 15 In addition, The Brennan Center for Justice, Justice at Stake Campaign, Bliss Institute of Applied Politics, Ohio League of Women Voters, Ohio State Bar Association and Ohio Chief Justice Thomas Moyer assembled a judicial conference, "Judicial Impartiality: The Next Steps," addressing [\*572] options for regulating campaign contributions and judicial elections. 16 Recently, national attention addressing state judicial selection and campaign finance reform has criticized elections as a means of ensuring judicial independence. 17 The American Bar Association (ABA) Justice in Jeopardy report x elections as a means of judicial selection, arguing elections produce highly politicized political environments that are contrary to the nature of judicial office. 18 The ABA argues that courts are unique within the separate branches of government and that courts are assumed non-political institutions. 19 It supports replacing elections with a commission-based appointive method that removes the court from the political process. 20 Ohio lawmakers have noted the ABA proposals and have begun drafting legislation that will alter Ohio's semi-partisan system. 21

### Russia

They don’t solve their Russia internal link----[[READ THE BLUE]]

Mendelson 9, Director of Human Rights and Security Initiative @ CSIS

[2009, Sarah E. Mendelson, Director, Human Rights and Security Initiative, Center for Strategic and International Studies, “U.S.-Russian Relations and the Democracy and Rule of Law Deficit,” CENTURY FOUNDATION REPORT, p. 3-4]

Since the collapse of the Soviet Union in 1991, every U.S. administration has considered Russia’s political trajectory a national security concern. Based on campaign statements and President Barack Obama’s early personnel choices, this perspective likely will affect policy toward Russia in some way for the foreseeable future. **While** the **Obama** administration **plans to cooperate with** Moscow on a number of issues, it will find that Russia’s current deficit in the areas of democracy and the rule of law complicate the relationship and may, in some cases, undermine attempts at engagement**.** The organizers of the Century Foundation Russia Working Group have labeled this policy problem “coping with creeping authoritarianism.” Results from nearly a dozen large, random sample surveys in Russia since 2001 that examine the views and experiences of literally thousands of Russians, combined with other research and newspaper reporting, all suggest the current democracy and rule of law deficit is rather stark. The deficit does not diminish the importance of Russia in international affairs, nor is it meant to suggest the situation is unique to Russia. The internal conditions of many states have negative international security implications. As Europeans repeatedly pointed out during the administration of George W. Bush, **U.S. departures from the rule of law made the** **U**nited **S**tates **increasingly problematic as a global partner**, whether through the use of force in Iraq or the manner in which the United States pursued and handled terrorist suspects. In fact, coping with authoritarian trends in Russia (and elsewhere) will involve changes in U.S. policies that have, on the surface, nothing to do with Russia. Bush administration counterterrorism policies that authorized torture, indefinite detention of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo have had numerous negative unintended consequences for U.S. national security, including serving as a recruitment tool for al Qaeda and insurgents in Iraq. Less often recognized, **these policies also have** undercut whatever leverage the United States had, as well as limited the effectiveness of American decision-makers**, to push back on authoritarian policies adopted by,** among others, the **Putin** administration. At its worst, **American departures from the rule of law** may **have enabled abuse inside Russia**. These departures certainly left human rights defenders isolated. **Repairing the damage to U.S. soft power and reversing the departure from** human rights norms that characterized the Bush administration’s counterterrorism policies will provide the Obama administration strategic and moral authority and improve the ability of the United States to work with allies. It also **can have positive consequences for Obama’s Russia policy**. The **changes** that **need to be made in U.S**. counterterrorism policies, however politically sensitive, are somewhat more straightforward than the adjustments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian leaders and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power.

### Russia relations

Relations are useless

Ostapenko 9 (E. Ostapenko, Trend Daily News, 2009. “Normalization in U.S.-Russian relations not to change political situation in world: analyst at French studies institute,” p. Lexis)

Normalization of relations between the United States and Russia will not assume a global significance and will not change the situation in the world, since today Russia does not play the role it played formerly, Dominic Moisi, analyst on Russian-American relations, said. "There is a country that is essential for the future of the world, it is not Russia, but it is China," Moisi, founder and senior advisor at the French Institute for International Relations (IFRI), told Trend News in a telephone conversation from Paris. Speaking of the growing role of China, Moisi said that the Chinese are soon going to be the number two economy in the world. Russian economy can not compete. As another important aspect of the increasing weight of China in the world, Moisi considers the absence of problems with the aging of population, unlike European countries, including Russia. "China has still the largest population in the world and it is not being reduced. The population of Russia is reducing strikingly year after year," said Moisi, author of numerous reports on U.S.-Russian relations. He said China is not in the same category than Russia. "It is much more important today and the Americans are absolutely aware of that. But at the same time it is important for the United States to have a descent relationship with Russia and not totally antagonistic one," said Moisi.

### accidents

**No accidental launch**

**Williscroft 10** (Six patrols on the *John Marshall* as a Sonar Technician, and four on the *Von Steuben* as an officer – a total of twenty-two submerged months. Navigator and Ops Officer on *Ortolan* & *Pigeon* – Submarine Rescue & Saturation Diving ships. Watch and Diving Officer on *Oceanographer* and *Surveyor*. “Accidental Nuclear War” http://www.argee.net/Thrawn%20Rickle/Thrawn%20Rickle%2032.htm)

Is there a realistic chance that we could have a nuclear war by accident? Could a ballistic submarine commander launch his missiles without specific presidential authorization? Could a few men conspire and successfully bypass built-in safety systems to launch nuclear weapons? The key word here is “realistic.” In the strictest sense, yes, these things are possible. But are they realistically possible? This question can best be answered by examining two interrelated questions. Is there a way to launch a nuclear weapon by accident? Can a specific accidental series of events take place—no matter how remote—that will result in the inevitable launch or detonation of a nuclear weapon? Can one individual working by himself or several individuals working in collusion bring about the deliberate launch or detonation of a nuclear weapon? We are protected from accidental launching of nuclear weapons by mechanical safeguards, and by carefully structured and controlled mandatory procedures that are always employed when working around nuclear weapons. Launching a nuclear weapon takes the specific simultaneous action of several designated individuals. System designers ensured that conditions necessary for a launch could not happen accidentally. For example, to launch a missile from a ballistic missile submarine, two individuals must insert keys into separate slots on separate decks within a few seconds of each other. Barring this, the system cannot physically launch a missile. There are additional safeguards built into the system that control computer hardware and software, and personnel controls that we will discuss later, but—in the final analysis—without the keys inserted as described, there can be no launch—it’s not physically possible. Because the time window for key insertion is less than that required for one individual to accomplish, it is physically impossible for a missile to be launched accidentally by one individual. Any launch must be deliberate. One can postulate a scenario wherein a technician bypasses these safeguards in order to effect a launch by himself. Technically, this is possible, but such a launch would be deliberate, not accidental. We will examine measures designed to prevent this in a later column. Maintenance procedures on nuclear weapons are very tightly controlled. In effect always is the “two-man rule.” This rule prohibits any individual from accessing nuclear weapons or their launch vehicles alone. Aside from obvious qualification requirements, two individuals must be present. No matter how familiar the two technicians may be with a specific system, each step in a maintenance procedure is first read by one technician, repeated by the second, acknowledged by the first (or corrected, if necessary), performed by the second, examined by the first, checked off by the first, and acknowledged by the second. This makes maintenance slow, but absolutely assures that no errors happen. Exactly the same procedure is followed every time an access cover is removed, a screw is turned, a weapon is moved, or a controlling publication is updated. Nothing, absolutely nothing is done without following the written guides exactly, always under two-man control. This even applies to guards. Where nuclear weapons are concerned, a minimum of two guards—always fully in sight of each other—stand duty. There is no realistic scenario wherein a nuclear missile can be accidentally launched...ever...under any circumstances...period!

## 1NR

### troops

#### Mexico collapse causes U.S. to redeploy forces – massive overstretch

Custerd, Professor Emeritus – CSU, Association of Borderland Studies, ‘9

(Glynn, “Exclusive, Alternatives for the U.S. Should Mexico Face the ‘Worst Case Scenario’” Parts 1-5, <http://www.familysecuritymatters.org/publications/id.3961/pub_detail.asp>)TJ

*Worst Case Scenarios* The Joint Forces Command’s report expresses the fear of a possible “rapid and sudden collapse” of the Mexican state. This is a worst case scenario indeed. However, it need not go that far before presenting the United States with situations in which some “deed may be anticipated” in which cross border military action under the doctrine of anticipatory self-defense would be warranted. For example**,** Mexico City’s control in the north might become so tenuous that “ungoverned spaces” might appear “right next door,” in which “terrorist mafias” or powerful drug cartels might represent the only power in the zone, or if the local government was infiltrated, or even taken over by non-governmental forces. Ifunder such conditions facilities that, analogous to *maquiladoras*, were established that took advantage of conditions in Mexico and proximity to U.S. markets, or U.S. targets, then the United States could invoke anticipatory self defense and move militarily to eliminate those facilities. The latest case of American attacks across a border, and that of an allied state, is the use of predator air strikes by both the Bush and Obama administrations from American bases in the United States against terrorist bases in the tribal area of Pakistan.

### econ

#### Mexican collapse causes oil shocks that crash the global economy.

Moran, policy analyst – CFR, 7/31/’9

(Michael, “Six Crises, 2009: A Half-Dozen Ways Geopolitics Could Upset Global Recovery”)

Risk 2: Mexico Drug Violence: At Stake: Oil prices, refugee flows, NAFTA, U.S. economic stability A story receiving more attention in the American media than Iraq these days is the horrific drug-related violence across the northern states of Mexico, where Felipe Calderon has deployed the national army to combat two thriving drug cartels, which have compromised the national police beyond redemption. The tales of carnage are horrific, to be sure: 30 people were killed in a 48 hour period last week in Cuidad Juarez alone, a city located directly across the Rio Grande from El Paso, Texas. So far, the impact on the United States and beyond has been minimal. But there also isn’t much sign that the army is winning, either, and that raises a disturbing question: What if Calderon loses? The CIA’s worst nightmare during the Cold War (outside of an administration which forced transparency on it, of course) was the radicalization or collapse of Mexico. The template then was communism, but narco-capitalism doesn’t look much better. The prospect of a wholesale collapse that sent millions upon millions of Mexican refugees fleeing across the northern border so far seems remote. But Mexico’s army has its own problems with corruption, and a sizeable number of Mexicans regard Calderon’s razor-thin 2006 electoral victory over a leftist rival as illegitimate. With Mexico’s economy reeling and the traditional safety valve of illegal immigration to America dwindling, the potential for serious trouble exists. Meanwhile, Mexico ranks with Saudi Arabia and Canada as the three suppliers of oil the United States could not do without. Should things come unglued there and Pemex production shut down even temporarily, the shock on oil markets could be profound, again, sending its waves throughout the global economy. Long-term, PEMEX production has been sliding anyway, thanks to oil fields well-beyond their peak and restrictions on foreign investment. Domestically in the U.S., any trouble involving Mexico invariably will cause a bipartisan demand for more security on the southern border, inflame anti-immigrant sentiment and possibly force Obama to remember his campaign promise to “renegotiate NAFTA,” a pledge he deftly sidestepped once in office.

### link uq – zivotofsky

Lower courts have distinguished it – it wasn’t conclusive

Goldstein 9/18/13

Samantha Goldstein, JD from Harvard, National Security Law Review, September 18, 2013, Vol. 2, Issue 2, "The Real Meaning of Zivotofsky", http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2327411

d. Nevertheless, Post-Zivotofsky, Lower Courts Are Unlikely to Ignore the Prudential Approach to the Political Question Doctrine.

Zivotofsky’s relatively weak pro-justiciability signal is unlikely to tangibly affect the lower federal courts’ approach to the political question doctrine, where most political question cases are decided.106 On the one hand, the case seems to be having a modest impact: at least some litigants and lower courts have begun citing only the first two, classical factors from Baker.107 Lower courts more zealously apply the political question doctrine – that is, they are more likely to find cases non-justiciable – than is the Supreme Court.108 And, the political question doctrine has “become an increasingly prominent defense in post-September 11 national security cases.”109 Viewed against that backdrop, one might understand Zivotofsky as sending a responsive signal to the lower courts that they should resolve skirmishes between the political branches, even in the context of foreign affairs.110

Yet, given the prevalence of the doctrine in the lower courts, it seems more likely that the relatively weak signal in Zivotofsky will not have that much of an impact there after all. Certainly, there is reason to be skeptical about the likely impact of Zivotofsky. One district court asserted that the case in no way altered existing doctrine.111 And another cited Justice Breyer’s Zivotofsky dissent for the proposition that the political branches have indefatigable primacy over the judiciary in matters relating to foreign affairs.112 Moreover, several district court cases and appellate briefs have cited Justice Sotomayor’s concurrence (which emphasizes the need to apply all six Baker factors), rather than the majority’s opinion (which only references Baker’s two classical factors).113 Other district court cases exhibit even more confusion about the scope of the political question doctrine in the wake of Zivotofsky, namely by citing Zivotofsky’s majority opinion to support the two Baker factors it mentioned, yet then applying all six Baker factors.114 Litigants – though perhaps (if not most likely) doing so opportunistically – have asserted confusion in the doctrine too.115

### impact ov

Mexico tubes US global engagement and trades off with all other forms of engagement – that’s haddock

Plenary power indepdently collapses hege and turns their legitimacy impact

Feere, 9

(Legal Policy Analyst-Center for Immigration Studies, “Plenary Power: Should Judges Control U.S. Immigration Policy?,” http://www.cis.org/plenarypower)

Foreign Powers Controlling U.S. Immigration Policy? One of the arguments for the political branches’ plenary power over immigration involves a focus on foreign affairs. That issue was a factor in the Zadvydas decision. Under the Constitution, it is the executive and legislative branches that direct foreign policy matters. This ensures that the U.S. relations with other countries are consistent and reliable. As explained by the dissenting justices in Zadvydas: “**judicial orders requiring release of removable aliens, even on a temporary basis, have the potential to undermine the obvious necessity that the Nation speak with one voice on immigration and foreign affairs matters**.”90 The problem is that the majority effectively empowered foreign governments to control U.S. immigration policy. The dissenting justices in Zadvydas explained: “The result of the Court’s rule is that, by refusing to accept repatriation of their own nationals, other countries can effect the release of these individuals back into the American community. If their own nationals are now at large in the United States, the nation of origin may ignore or disclaim responsibility to accept their return. The interference with sensitive foreign relations becomes even more acute where hostility or tension characterizes the relationship, for other countries can use the fact of judicially mandated release to their strategic advantage, refusing the return of their nationals to force dangerous aliens upon us.”91 Certainly, such political considerations are not on the average judge’s radar, and they shouldn’t be. Political issues are to be debated and resolved within the political branches. But the decision in Zadvydas arguably requires judges to involve the judiciary in foreign affairs. According to the dissenting justices: “One of the more alarming aspects of the Court’s new venture into foreign affairs management is the suggestion that the district court can expand or contract the reasonable period of detention based on its own assessment of the course of negotiations with foreign powers. The Court says it will allow the Executive to perform its duties on its own for six months; after that, foreign relations go into judicially supervised receivership.”92 By **not adhering to the plenary power doctrine**, the Zadvydas majority **effectively relocates foreign policy considerations from experienced and accountable political actors to arguably less-politically astute judges while simultaneously politicizing the judiciary. The decision also puts foreign governments in the driver’s seat.**

State failure’s an extinction level risk

Manwaring, 5

(Max G., Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, venezuela’s hugo chávez, bolivarian socialism, and asymmetric warfare, October 2005, pg. PUB628.pdf)

President Chávez also understands that the process leading to state failure is the most dangerous long-term security challenge facing the global community today. The argument in general is that failing and failed state status is the breeding ground for instability, criminality, insurgency, regional conflict, and terrorism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as *Bolivarianismo.* More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. These means of coercion and persuasion can spawn further human rights violations, torture, poverty, starvation, disease, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking and proliferation of conventional weapons systems and WMD, genocide, ethnic cleansing, warlordism, and criminal anarchy. At the same time, these actions are usually unconfined and spill over into regional syndromes of poverty, destabilization, and conflict.62 Peru’s *Sendero Luminoso* calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.63 Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, instability and the threat of subverting or destroying such a government are real.64 But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, the longer dysfunctional, rogue, criminal, and narco-states and people’s democracies persist, the more they and their associated problems endanger global security, peace, and prosperity.65

### uq

New evidence matters because it assumes the way older precedent was applied

Plenary power doctrine strong now – even critics agree

Leak and Maltz 12

Deborah A. Leak, Rutgers University - Camden Earl Maltz, Rutgers University, 2012, "THE DEVIL MADE ME DO IT: THE PLENARY POWER DOCTRINE AND THE MYTH OF THE CHINESE EXCLUSION CASE", http://works.bepress.com/deborah\_leak/1/

Despite the best efforts of academic commentators, the plenary power doctrine–the idea that decisions related to immigration law should be immune from normal constitutional constraints—remains entrenched in the Supreme Court’s immigration law jurisprudence.1 The modern Court has not made any sustained effort to provide a principled defense of the plenary power doctrine. Instead the justices have defended their continued adherence to the doctrine primarily in terms of fidelity to precedent. Thus, in Kleindeinst v. Mandel,2 the Court conceded that "were we writing on a clean slate," "much could be said for the view” that the Constitution imposes significant substantive restraints on federal legislative authority over immigration. Nonetheless, citing a group of late nineteenth century cases, the Court also observed that

But the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history'. . . but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government.3

Despite their distaste for the plenary power doctrine itself, commentators have almost uniformly agreed with the Court’s description of the source of the doctrine. In particular, scholars–like the Court itself--have contended that the doctrine finds its origins in what might be described as an unholy trinity of cases decided between 1889 and 1893–Chae Chan Ping v. United States,4 Nishimura Ekiu v. United States,5 and Fong Yue Ting v. United States.6 They assert that these decisions were based on the principle that congressional regulation of immigration-related issues was entirely immune from ordinary constitutional constraints,7 and that the Court retreated from its earlier decisions in Yamataya v. Fisher,8 which held that the structure of deportation proceedings must be consistent with the requirements of procedural due process imposed by the Fifth Amendment.9

#### Arizona ruling earlier this year proves

Adams, 13

(Law Prof-UVA, Virginia Law Review, Vol. 99, No. 601, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2278341)

The Arizona opinion, however, may obscure as much as it illuminates. At first glance, it appears to contain a combination of a rhetorically powerful but doctrinally empty reaffirmation of federal power, coupled with field and conflict preemption analyses. After a short opening section describing the procedural posture of the case, Part II of the opinion launches into an ode to federal power. “The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens,” the majority opinion proclaims.4 This power, according to the Court, derives from two sources: the textual constitutional grant of the power to “‘establish an uniform Rule of Naturalization,’” and “its inherent power as sovereign to control and conduct relations with foreign nations.”5 Only then does the majority go on to strike down most of the disputed sections of Arizona’s statute, leaving only one section standing, and preserving even that section in a way that may seriously curtail the State’s ability to actually enforce it.6 The link between absolute federal sovereignty and preemption, however, is left quite unclear. In this Essay, I label the type of analysis used by the majority opinion “plenary power preemption.” **The plenary power doctrine is one of the oldest features of immigration law**.7 **Under this doctrine, courts give extraordinary deference to federal legislative and executive action in the immigration context, even where federal action abridges individuals’ constitutional rights**.8 The logic behind the plenary power doctrine is that national sovereignty requires broad federal control and discretion in fields touching on foreign affairs.9

### link uq – portmess

From someone who hasn’t even finished her JD

The paragraph right after concludes neg—it’s link uniqueness and says some questions are no longer administered under the doctrine—that’s question-begging of the link

Portmess 12

Junior Staff Member American University Law Review

(Jessica, UNTIL THE PLENARY POWER DO US PART: JUDICIAL SCRUTINY OF THE DEFENSE OF MARRIAGE ACT IN IMMIGRATION AFTER FLORES-VILLAR, www.aulawreview.org/pdfs/61/61-6/portmess.pdf

While plenary power precedent is formidable, it no longer serves as

a barrier to the distinctions in immigration law that may narrow its

scope and influence. In the formative years of the Supreme Court’s

plenary power jurisprudence, the Court interpreted the doctrine to

be a strict limitation on judicial review, often foreclosing thoughtful

analysis of constitutional questions in cases involving immigration.238

In Galvan v. Press, the Court acknowledged the due process

limitations on the plenary power’s reach,239 and later, in Zadvydas, the

Court explicitly recognized the constitutional limitations of the

plenary power doctrine in cases of removal.240 In the past two

decades, and with the recent decision to affirm Flores-Villar, the Court

has grappled with the possibility of distinctions in immigration

statutes involving naturalization that may further narrow the plenary

power’s scope.241 Thus, the Court could also apply the lessons of the

plenary power’s constitutional limitations and the distinctions

possible within immigration law to cases involving admission.242

**[cal’s card ends]**

Given the volume of the plenary power’s history, it is unlikely that

this evolution marks the death of the plenary power.243 It does,

however, signify that with the increasing knowledge of the

complexities of immigration law and the evolution of constitutional

standards of review, questions relating to immigration are emerging

where the plenary power may no longer be an appropriate

justification.244 A determination of immigrant visa eligibility is a step

logically prior to admission and is thus beyond the plenary power’s

scope.

Their evidence says three cases harmed the doctrine—

Zadvydas—neg arg

Alienkoff ‘2

T Alexander, Geo. Immigr. L.J. 365 2001-2002, “ DETAINING PLENARY POWER: THE MEANING

AND IMPACT OF ZADVYDAS V DAVIS,”

Zadvydas, then, is a conundrum. It is a doctrinal muddle, yet it kindles the possibility of a dramatic shift in constitutional norms in the immigration field. It purports to put an end to indefinite detention, yet it supplies grounds to the Executive Branch and Congress to mandate indefinite detention. It reaches out to produce a just result, yet it appears to embrace one of the Court's least just immigration decisions. The problem here is not so much the Court's opinion; it is the damage that the plenary power doctrine has done to immigration law for more than a century. Constitutional norms have not been able to evolve over time, reflecting and influencing developments in other areas of constitutional law. 0 3 So we have awkward, surprising, interventions from time to time decisions that bring even further incoherence to the field. Thus, in Zadvydas, we are given no satisfactory grounds for the continuing validity of Mezei or for the "terrorist exception." Both will supply doctrinal fodder for the newly adopted policies that restrict the rights and freedoms of non-citizens and citizens - and this from an opinion that strikes a hard blow for individual liberty!

Separate question from plenary powers

McCaslin 2k

Clay, Tulane School of Law, “ “MY JAILOR IS MY JUDGE”: KESTUTIS ZADVYDAS AND THE INDEFINITE IMPRISONMENT OFPERMANENT RESIDENT ALIENS BY THE INS,” Tulane Law Review November, 2000

The Constitution confers plenary power upon Congress and the executive branch to legislate and regulate matters pertaining to immigration, subject only to very limited judicial review. [FN71] As a general principle, these issues are better suited to resolution by the political branches of the government than by the judiciary, because immigration matters tend to implicate relations with foreign governments, and because the necessary classifications “must be defined in the light of changing political and economic circumstances.” [FN72] Therefore, in holding that the indefinite detention of a permanent resident alien does not violate due process, courts have relied on the “plenary power doctrine.” [FN73] The government's reliance on the plenary power doctrine, however, is misplaced in this context. The plenary power doctrine extends only to immigration-related policies and decisions; it does not provide the government with a license to tread on fundamental constitutional rights in such cavalier fashion. The Supreme Court has never held that Congress's plenary power to regulate immigration divests a resident alien of his or her constitutional rights. [FN74] In fact, the Court reached precisely the opposite conclusion in INS v. Chadha, in which it held that congressional exercise of the plenary power may be accomplished only through constitutional means. [FN75] Congress's broad authority in the area of \*206 immigration does not include an unrestricted license to do whatever it pleases, entirely free from intervention by the federal courts. [FN76] The Supreme Court has explicitly recognized that when Congress's plenary power intersects with the Constitution, the federal judiciary is “required[,] by the paramount law of the Constitution, to intervene.” [FN77] Moreover, **the issues in the Zadvydas case and in similar cases nationwide in no way implicate or threaten Congress's plenary power to regulate immigration.** [FN78] None of these individuals are challenging the authority of Congress or the INS to deport them. [FN79] In fact, most of these people would be more than happy to return to their countries of origin rather than waste away for years in a prison cell in the United States. [FN80] All that these prisoners are challenging is the constitutionality of their indefinite detention when it is clear that their removal cannot be effected. [FN81] With that in mind, these cases can be properly characterized as belonging to a category that raises serious constitutional questions lying outside the purview of congressional plenary power. [FN82] Because lawful permanent resident aliens qualify as “persons” for purposes of the Fifth Amendment, they are entitled to have the \*207 constitutionality of their indefinite detention reviewed in a habeas corpus proceeding. [FN83]

Flores-Villar – also a neg arg

**OYEZ 10**, info project at Chicago Kent Law, “FLORES-VILLAR v. UNITED STATES”, <http://www.oyez.org/cases/2010-2019/2010/2010_09_5801>

A California federal district court convicted Ruben Flores-Villar under the Immigration and Nationality Act ("INA") of being a deported alien found in the United States. On appeal to the U.S. Court of Appeals for the Ninth Circuit, Mr. Flores-Villar argued that the relevant provisions of the INA violated the Equal Protection Clause of the Fifth Amendment on the basis of age and gender. The provisions impose a five-year residency requirement, after age fourteen, on United States citizen fathers but not mothers, whose residency requirement is merely one year. The Ninth Circuit applied the Supreme Court's holding in *Nguyen v. INS* which did not deal precisely with the provisions before the court, but held that other more onerous residency requirements for fathers but not mothers in the INA did not violate the Equal Protection Clause. The court concluded that the provisions challenged by Mr. Flores-Villar also did not violate the Equal Protection Clause and affirmed the judgment of the district court.

Galvan v. Press—same story

Lawnix no date, free online case briefs, Galvan v. Press – Case Brief Summary, <http://www.lawnix.com/cases/galvan-press.html>

Facts

The Internal Security Act of 1950 provided for the deportation of any alien who had been a member of the Communist Party at any time after entering the United States. Galvan was born in Mexico and had been living as an alien in the United States since 1918. When questioned by the Immigration and Naturalization Service, he stated that he had been a Communist Party member from 1944 to 1946. Galvan was served with a deportation warrant in March 1949. He received a new hearing in December 1950 and was ordered deported under the Internal Security Act of 1950.

Galvan filed a petition for a writ of habeas corpus. The district court denied the petition, the Court of Appeals for the Ninth Circuit affirmed, and the Supreme Court granted certiorari.

Issues

Is the power of Congress over the rights of aliens to enter and remain in the United States subject to the limitations of substantive due process?

Does the Ex Post Facto Clause of the Constitution apply to deportation?

Holding and Rule (Frankfurter)

No. The power of Congress over the rights of aliens to enter and remain in the United States is not subject to the limitations of substantive due process.

No. The Ex Post Facto Clause does not apply to deportation.

Congress has very broad power concerning the rights of aliens to enter and remain in the United States. That power touches basic aspects of national sovereignty, foreign relations, and national security.

Policies regarding the rights of aliens to enter and remain in the United States are peculiarly concerned with the political conduct of government. The Executive Branch of the Government must respect the procedural safeguards of due process in enforcing these policies. But the formulation of these policies is entrusted exclusively to Congress.

The Act is constitutional as here applied to a resident alien shown to have been willingly a member of the Communist Party, although not shown to have been aware of advocacy of violent overthrow of the Government. It is enough that Galvan joined the Communist Party, aware that it was a distinct and active political organization, and that he did so of his own free will.

### at: chow

Totally inapplicable precedent – Mezei wasn’t a prisoner and left the US, he didn’t enter

Jamal Kiyemba et al. 9, petition for cert to SCOTUS, “brief of petitioners”, No. 08-1234, <http://ccrjustice.org/files/2009-12-04%20kiyemba_FINAL%20merits%20brief_0.pdf>

The government relied on Mezei, the 5-4 McCarthy Era decision that stranded Ignatz Mezei at Ellis Island,33 and United States ex rel. Knauff v. Shaughnessy. Neither case acknowledges a detention power per se; each involves Executive power to exclude those **who come voluntarily to the border**, but are barred by statute from accomplishing their objective of formal immigration admission.

**Mezei did not arrive as the President’s captive**. He left the U.S. voluntarily, returned voluntarily, and sought the immigration remedy of admission. Mezei, 345 U.S. at 207. He was excluded by Executive officials, id. at 208, who invoked statutory authority. The war bride Ellen Knauff also came voluntarily, and her exclusion was similarly authorized by statute. Knauff, 338 U.S. 539-40. Though poignant, each case structurally was a collateral attack on an exclusion order issued against a volunteer, under the Executive’s congressionally delegated immigration powers. Because Mezei voluntarily presented himself for admission at the border, and his exclusion was expressly authorized by statute, the case implicates only the exclusion power as applied to volunteers. Mezei, 345 U.S. at 210-11 (quoting statutes).

Justice **Clark’s majority opinion never refers to Mezei’s plight as “detention**,” laboring to describe it as something else. See, e.g., Mezei, 345 U.S. at 207, 213 (“harborage,” “temporary haven,” and “exclusion”). While perhaps elusive to historians, this distinction was essential to the holding, and thus to the case’s precedential force. It affords a second way to harmonize the case with Boumediene, which is that the case did not address detention at all.

Unlike these Petitioners, **Mezei really was “free to leave.” He left—twice**. Mezei, 345 U.S. at 208-09. Thus a much narrower separation-of-powers-problem was implicated in Mezei and Knauff than is here.34 The government’s concern—a legitimate Executive concern—was that if volunteers could claim admission by beaching themselves, enemies might secure that beachhead. Id. at 215. That concern does not arise when the prisoner is not an enemy, nor when the Executive forces him within the court’s jurisdiction. Because stranded volunteers are the authors of their predicament, that predicament is distinguishable from the unilateral Executive detention that, as Boumediene holds, gives rise to judicial power to direct release.

### at: impact d

Huge risk of instability in Mexico—leads to state collapse

Bonner, 10

(Senior Principal of the Sentinel HS Group. He was Administrator of the U.S. Drug Enforcement Administration from 1990 to 1993 and Commissioner of U.S. Customs and Border Protection from 2001 to 2005, The New Cocaine Cowboys, Foreign Affairs, July/August)

The recent headlines from Mexico are disturbing: U.S. consular official gunned down in broad daylight; Rancher murdered by Mexican drug smuggler; Bomb tossed at U.S. consulate in Nuevo Laredo. This wave of violence is eerily reminiscent of the carnage that plagued Colombia 20 years ago, and it is getting Washington’s attention. **Mexico is in the throes of a battle against powerful drug cartels, the outcome of which will determine who controls the country’s law enforcement, judicial, and political institutions**. It will decide whether the state will destroy the cartels and put an end to the culture of impunity they have created. Mexico could become a first-world country one day, but it will never achieve that status until it breaks the grip these criminal organizations have over all levels of government and strengthens its law enforcement and judicial institutions. It cannot do one without doing the other. Destroying the drug cartels is not an impossible task. Two decades ago, Colombia was faced with a similar—and in many ways more daunting—struggle. In the early 1990s, many Colombians, including police officers, judges, presidential candidates, and journalists, were assassinated by the most powerful and fearsome drug-trafficking organizations the world has ever seen: the Cali and Medellín cartels. Yet within a decade, the Colombian government defeated them, with Washington’s help. The United States played a vital role in supporting the Colombian government, and it should do the same for Mexico. The stakes in Mexico are high. If the cartels win, these criminal enterprises will continue to operate outside the state and the rule of law, undermining Mexico’s democracy. The outcome matters for the United States as well—if the drug cartels succeed, the United States will share a 2,000-mile border with a narcostate controlled by powerful transnational drug cartels that threaten the stability of Central and South America.

It’s on the brink

Bortoni, Staff Writer – Harvard Political Review, 11/23/’9

(Carlos, <http://www.hpronline.org/current-issue/the-fog-of-war/694-cops-and-drugs>)

In Mexico, the war against drug cartels has become more than a question of eradicating illicit substances or capturing criminals; with over 13,000 dead in the last three years, the fight now concerns the future of the country. Earlier this year, a U.S. Joint Forces Command study made headlines when it asserted that Mexico, alongside Pakistan, is on the verge of becoming a failed state. This is of obvious importance to Mexico's northern neighbor, particularly given that Mexican drug cartels account for at least 70 percent of all drugs that enter the United States. While Mexican officials may dispute that the country is on the verge of failure, weak policing of drug cartels, and the consequent replacing of police with an empowered military, indicate an alarming erosion of Mexico's public safety institutions, and demonstrate a need for rapid modernization that the United States cannot ignore.

### impact

#### That’s necessary for a successful Energy and Climate Partnership of the Americas

Edwards, 11

(Research Fellow---Brown University’s Center for Environmental Studies, Researcher for and works with the Latin American Platform on Climate and the Climate and Development Knowledge Network, “Climate, energy to dominate US-Latin American relations,” http://www.trust.org/item/?map=climate-energy-to-dominate-us-latin-american-relations/)

With the challenges of climate change, clean energy, resource scarcity and green growth [are] set to **dominate U.S.-Latin American relations**, Valenzuela’s successor should have experience in these areas. These issues are a priority for the Obama administration and present lucrative opportunities for the U.S. to improve trade and commercial relations with Latin America at a time when the region is a magnet for investment in clean energy. In Chile, President Barack Obama spoke of the urgency of tackling climate change and embracing a more secure and sustainable energy future in the Americas. The Energy and Climate Partnership of the Americas **(ECPA)**, which aims to accelerate the deployment of clean energy and advance energy security, is an essential component of hemispheric relations. Multiple U.S. agencies and departments are carrying out extensive work on climate change. The U.S. Agency for International Development (USAID), which runs the Global Climate Change Initiative, argues that climate change is one of the century’s greatest challenges and will be a diplomatic and development priority.The U.S. Special Envoy for Climate Change, ToddStern, says that Latin America is a significant focus of funding with over $60 million spent in 2009-10 on climate-related bilateral assistance in the region. The U.S. military Southern Command co-hosted two events in Colombia and Peru focused on climate change concluding that the issue is a major security concern and as a result could be a powerful vehicle for U.S. military engagement in the region. This year the Union of South American Nations’ (UNASUR) Defense Council (CDS) inaugurated the new Defense Strategic Studies Center (CEED), which will look at various challenges including the protection of strategic energy and food resources and adapting to climate change. THE REGION’S RESOURCES Latin America and the Caribbean boast incredible and highly coveted natural resources including 25 percent of the planet’s arable land, **22 percent of its forest area**, [and] 31 percent of its freshwater, 10 percent of its oil, 4.6 percent of its natural gas, 2 percent of coal reserves and 40 percent of its copper and silver reserves. The International Energy Agency forecasts that in the future world consumers are going to become more dependent on the Americas to satisfy their demand for oil with Brazil, Colombia, the U.S. and Canada set to meet the demand. Brazil will host the U.N. Conference on Sustainable Development in 2012 with the green economy theme topping the agenda. Peter Hakim, president emeritus of Inter-American Dialogue, argues that while U.S.-Brazilian relations are fraught, both countries need to work harder to improve cooperation. Climate change, clean energy, resource scarcity and green growth are key potential areas for U.S.-Brazilian relations. The launch of a U.S.-Brazilian Strategic Energy Dialogue, focusing on cooperation on biofuels and renewable energy, among other areas, is a productive start. Although Latin America and the Caribbean continue to be the largest U.S. export market, the U.S.’s share of the region’s imports and exports has dropped over the last few years. China is now the top destination for the exports of Argentina, Venezuela, Brazil, Chile, Costa Rica, Peru and Uruguay. Latin American exports to China are concentrated in raw materials, which account for nearly 60 percent, while exports to the U.S. are more diversified. THE RISE OF CHINA Arturo Valenzuela says this makes Latin Americans better off trading with the U.S. because they can take advantage of greater technology in the value chain. However, crude oil remained the top export to the U.S. for Argentina, Brazil, Colombia, Ecuador, Mexico and Venezuela in the 2007-2009 time period. The U.S. may assert it has a superior trade model to China, but the U.N.’s economic commission for the region argues there is a **perceived lack of strategic vision by the U.S. in Latin America**. Although the Energy and Climate Partnership of the Americas (ECPA) is the flagship U.S. initiative in the region and will be a key focus for President Obama at the 2012 Summit of the Americas, it is not yet comparable to past initiatives such as the 1960s-era Alliance for Progress.

#### ECPA key to sustainable development

Kammen, 12

(Professor of Energy at UC Berkeley and Diego Ponce de Leon Barido, Doctoral student in the Energy and Resources Group at UC Berkeley, “Building Bridges to a Sustainable Energy Future,” National Geographic, 12/5, http://www.greatenergychallengeblog.com/2012/12/05/building-bridges-to-a-sustainable-energy-future/

The Americas are undergoing a transition in the energy sector that will have **global geopolitical ramifications**. At the same time as the United States is touted to become the world’s largest oil producer by 2020, and a net exporter by 2030, Brazil, Nicaragua, and Panama show the most promise in becoming regional hubs not only for clean energy investment, but for sustained low-carbon economic growth (see related story: “U.S. to Overtake Saudi Arabia, Russia as World’s Top Energy Producer“). Although Latin America and the Caribbean lag behind the United States and Canada in terms of implemented clean energy policy and project funding, 7 percent of the region’s total installed capacity today is renewables, and it is expected to grow faster in years to come. (See related interactive map: “The Global Electricity Mix“)Faced with ever-changing economic and political realities, **regional collaborations** for knowledge-creation and -sharing are **crucial for fostering lasting partnerships** that can **make ‘sustainability science’, well, sustainable**. International partnerships that lead to concrete action are often the clearest signs of innovation. At the state to state level, the Energy and Climate Partnership for the Americas (ECPA) and at the person-to-person level, the Fulbright NEXUS program provide clear evidence regional collaborations that are clearly changing the modes of engagement within the hemisphere. One of us just returned from a partnership-building ECPA sponsored trip to Nicaragua, facilitated by both the U. S. Embassy team and a local NGO, blueEnergy, which is discussed below and here, focused on community energy. Just two years after its launch by President Obama in 2009, ECPA has moved beyond its initial focus on knowledge sharing around cleaner and more efficient energy, and now also supports **sustainable forest and land use initiatives** as well as **climate change adaptation**

strategies. Governments and institutions such as the Organization of American States (OAS), the World Bank, and the Inter-American Development Bank (IDB), have all worked together to support regional technical workshops, business strategies, and other initiatives for new and cleaner ways to provide energy. ECPA has also become a **vehicle for leaders in sustainability research and practice** to work at the institutional level to link industry, university, and civil-society groups in the New World.

#### Extinction

Barry, 13

(Ph.D. in Land Resources and Masters of Science in Conservation Biology and Sustainable Development-UW-Madison, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” 2/4, http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp)

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial **ecosystem loss is at or near a planetary boundary**. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional **sustainable development**

goals while maintaining an operable biosphere. It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities. Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet. Those knowledgeable about planetary boundaries – and abrupt climate change and terrestrial ecosystem loss in particular – must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies. If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature – extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the **Earth System could die if critical thresholds are crossed**. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last? The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been **understated for decades**. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary – yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a **period of great dying** in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us. Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric. I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic – based upon an "Earth narrative" of natural and human history – which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000). Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival – entirely dependent upon the natural world – depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats. The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios – the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala – is **intellectually dishonest**. We must consider the real possibility that we are pulling the biosphere down with us, setting back or **eliminating complex life.** The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative. Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers. Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long. Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies. In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever. One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program – funded by a carbon tax – to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries. In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet **with the loss of the biosphere all life may be gone**. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

## 2NR

### 2nr

Precedent key to solve

Siegel 12, Associate at Cleary Gottlieb

(Ashley E., SOME HOLDS BARRED: EXTENDING EXECUTIVE DETENTION HABEAS LAW BEYOND GUANTANAMO BAY, www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SIEGEL\_000.pdf)

This Note explores the novel area of law extending habeas rights to war-on terror detainees, the past precedents that may suggest what direction the jurisprudence will take, and how the jurisprudence should resolve the case of a foreign detainee held by a foreign government at the behest of the United States. Part I reviews habeas law from its historical roots to its modern application in executive detention cases brought about by the United States’ detention of aliens at Guantanamo Bay. Part II examines alien detention abroad apart from the habeas context. Part III explores the likelihood and appropriateness of extending the Boumediene line of cases to scenarios of alien detainees held abroad by foreign governments at the behest of the United States. The Supreme Court has recently demonstrated a greater willingness to exert its power in the national security realm, no longer giving broad deference to the Executive’s wartime powers. The Supreme Court in this realm appears to take a functionalist, case-by-case approach that leaves open the possibility that the Court will exert itself in different executive detention contexts. Given the vital, fundamental individual rights implicated by executive detention, the Supreme Court should continue to actively review the actions of the legislative and executive branches. Further, based on the reasoning supporting its past precedents, the Court should extend jurisdiction to detainees held by foreign nations at the behest of the U.S. government.

**1ar ev is also new uq for us – Skinner’s warrant is Nishimura Ekiu v. United States from 1893**

**THAT CASE SAID HABEAS WITHOUT RELEASE IS A-OK!**

**Justia no date**, Nishimura Ekiu v. United States - 142 U.S. 651 (1892), <http://supreme.justia.com/cases/federal/us/142/651/case.html>

The Act of March 3, 1591, c. 551, forbidding certain classes of alien immigrants to land in the United States, is constitutional and valid.

Upon a writ of habeas corpus, if sufficient ground for the prisoner's detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment.