# Note

Can’t find the flashdrive the entire 1nc is on, but all of the cards that were referenced in the 2nr are in here..full doc coming soon. Sorry if I am blasting you

-Donnie

### 1NC Suspension Clause CP

**The United States federal judiciary should rule that the Suspension Clause entitles all persons indefinitely detained under the War Powers Authority of the President of the United States to habeas corpus that guarantees a meaningful review of the basis of their detention.**

#### Ruling on the Suspension clause creates more meaningful judicial review

**Garrett, Virginia law professor, 2012**

(Brandon, “Habeas Corpus and Due Process”, 11-20, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2008746>, ldg)

Congress and the Executive have largely accommodated, in the wake of Boumediene, a system in which judicial review plays a central role in detention cases, even if judges remain deferential both to congressional authorization for detention and executive procedures for screening and release of detainees.57 The Suspension Clause may facilitate this equilibrium better than a due process approach, which would focus more on procedure and less on substance. A judge asking whether the Due Process Clause was violated focuses on the minimal adequacy of general procedures, which may not necessarily require a judicial process. A judge asking whether the Suspension Clause was violated asks a different question: whether the process preserves an adequate and effective role for federal judges to independently review authorization of each individual detainee. The specific question for the judge is whether a person is in fact detained lawfully, which is a fundamental question of substance. Despite connections between habeas corpus and due process, the habeas judge’s preoccupation with authorization instead of procedure suggests important reasons for the concepts to remain separate. Habeas corpus and due process can share an inverse relationship,58 meaning that the Suspension Clause can continue to do its work standing alone.

### 1NC Plenary Power DA

#### Plan wrecks plenary immigration powers

**Rubenstein, Hofstra law professor, 2010**

(David, “Can a Federal Judge Order the Release of Nonmilitary Guantanamo Detainees into the United States?”, Preview of United States Supreme Court Cases, 37.6, proquest, ldg)

Finally, beyond the implications for Guantanamo detainees, an eventual ruling on the merits can reasonably be expected to spill into the immigration context more generally. Among other things, a ruling in favor of respondents might reinvigorate the political branches' historic assertion of plenary control over our borders, whereas a ruling in favor of petitioners might undermine such grand assertions.

#### That snowballs-leads to massive review of immigration policy and constitutional challenges

**Cox, Chicago law school lecturer, 2004**

(Adam, “Citizenship, Standing, and Immigration Law”, March, 92 Calif. L. Rev. 373, lexis, ldg)

The constitutional core of immigration law - the doctrine of Congress's plenary power over immigration - is in large part a doctrine of standing. This fact has gone generally unrecognized. Immigration scholars typically interpret plenary power doctrine as grounded either in the notion that certain constitutional constraints do not operate when Congress exercises its immigration power or in the notion that courts will not enforce those constraints in the context of immigration law. n12 As this Part shows, however, a third conception of the doctrine operates in constitutional [\*378] immigration law: courts often implicitly conceptualize the plenary power as grounded in the notion that aliens lack the right to seek meaningful judicial review of the constitutionality of immigration policy. For over a century, the doctrine of Congress's plenary power over immigration has largely insulated immigration law from constitutional challenge. n13 Both the substance and scope of this plenary power, as well as the judicial justifications for it, have developed unsteadily and remain incoherent in many respects. n14 As a result, the power's contours and underpinnings are the subject of substantial doctrinal confusion and extended academic criticism. n15 In fact, the term "plenary power" itself is an unfortunate and unhelpful phrase. The moniker does not explain what, if anything, is special about constitutional immigration law; Congress's power over many subjects is considered "plenary," but laws concerning other subjects are generally open to constitutional challenge. The term is, if anything, misleading, because it wrongly suggests that the doctrine is concerned solely with congressional "power." As this Part explains, however, the doctrine is far more conceptually complicated and ambiguous. While this complexity and ambiguity make the doctrine difficult to describe with precision, however, it is possible to identify the doctrine's basic thrust: pursuant to the doctrine, courts largely insulate immigration law from constitutional challenges.

#### Plenary powers key to prevent state regulation of immigration

**Schuck, Yalw law professor, 2007**

(Peter, “Taking Immigration Federalism Seriously”, 2007 U Chi Legal F 57, lexis, ldg)

Probably no principle in immigration law is more firmly established, or of greater antiquity, than the plenary power of the federal government to regulate immigration. n1 Equally canonical is the corollary notion, analogous to the dormant power doctrine in Commerce Clause jurisprudence, that this federal power is indivisible and therefore the states may not exercise any part of it without an express or implied delegation from Washington. Despite the plenary power doctrine's authority, it has been assailed over the years by many academics and defended, I think, by none. Questioning its source in the Constitution, fit with other bodies of law, institutional implications, internal coherence, specific applications, and policy merits, critics have called for abandoning or significantly limiting it. n2 Its detractors have also criticized the doctrine's failure to clarify how power is allocated between Congress and the President in situations where they disagree. An interesting feature of these critiques of the plenary power doctrine is that the critics seem to have no difficulty accepting its [\*58] corollary -- the principle that federal authority over immigration preempts the states from playing any independent role in the development and administration of immigration law and policy. Indeed, they enthusiastically affirm and defend it. This conjunction of positions, which might otherwise seem illogical or at least awkward, is probably best explained by ideology and politics. As I have explained elsewhere, the immigration law professoriate occupies a position at the extreme left in the national debate over immigration. n3 [\*59]

#### State immigration laws kill heg and cooperation key to solving free trade, proliferation and multilateral cooperation

**Steinberg, former Texas Public Affairs school dean, 2010**

(James, “Chapter 5 Foreign Relations”, <http://www.state.gov/documents/organization/194015.pdf>, ldg)

Second, H.B. 56 antagonizes foreign governments and their populations, both at home and in the United States, likely making them less willing to negotiate, cooperate with, or support the United States across a broad range of foreign policy issues. U.S. immigration policy and treatment of foreign nationals can directly affect the United States’ ability to negotiate and implement favorable trade and investment agreements, to secure cooperation on counterterrorism and counternarcotics trafficking operations, and to obtain desired outcomes in international bodies on priorities such as nuclear nonproliferation, among other important U.S. interests. Together with the other recently enacted state immigration laws, H.B. 56 is already complicating our efforts to pursue such interests. H.B. 56’s impact is liable to be especially acute, moreover, not only among our critical partners in the region but also among our many important democratic allies worldwide, as those governments are the most likely to be responsive to the concerns of their constituents and the treatment of their own nationals abroad. • Third, H.B. 56 threatens to undermine our standing in regional and multilateral bodies that address migration and human rights matters, and to hamper our ability to advocate effectively for the advancement of human rights and other U.S. values. Multilateral, regional, and bilateral engagement on human rights issues and international promotion of the rule of law are high priorities for the United States. Consistency in U.S. practices at home is critical for us to be able to argue for international law consistency abroad. By deviating from national policy in this area, H.B. 56 may place the United States in tension with our international obligations and commitments, and compromise our position in bilateral, regional, and multilateral conversations regarding human rights. 10. Furthermore, when H.B. 56 is considered in the context of the unprecedented surge in state legislative efforts to create state-specific immigration enforcement policies, each of these threats is significantly magnified, and several additional concerns arise. • First, by creating a patchwork of immigration regimes, states such as Alabama make it substantially more difficult for foreign nationals to understand their rights and obligations, rendering them more vulnerable to discrimination and harassment. • Second, this patchwork creates cacophony as well as confusion regarding U.S. immigration policy, and thereby undermines the United States’ ability to speak with one voice in the immigration area, with all its sensitive foreign policy implications. • Third, this patchwork fosters a perception abroad that the United States is becoming more hostile to foreign nationals, corroding a reputation for tolerance, openness, and fair treatment that is critical to our standing in international and multinational fora, our ability to attract visitors, students, and investment from overseas, our influence in a wide range of transnational contexts, and the advancement of our economic and other interests. 11. In light of these broad, overlapping, and potentially unintended ways in which immigration activities can adversely impact our foreign affairs, it is critically important that national immigration policy be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government. In all matters that are closely linked to U.S foreign relations, including immigration, the United States is constantly engaged in weighing multiple competing considerations and choosing among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests and values. The United States likewise is constantly seeking the support of foreign governments, through a delicately navigated process, across the entire range of U.S. policy goals. Only the federal government has the international relationships and information, and the national mandate and perspective, to be able to appropriately evaluate these choices on a continuing basis in response to fluctuating events on the world stage. The proliferation of state laws advancing state-specific approaches to immigration enforcement represents a serious threat to the national control over immigration policy that effective foreign policy demands.

#### Immigration reform key to hard power and soft power

Nye 12/10 Joseph S. Nye, a former US assistant secretary of defense and chairman of the US National Intelligence Council, is University Professor at Harvard University. His most recent book is The Future of Power. 12/10/12, Project Syndicate, Immigration and American Power, <http://www.project-syndicate.org/commentary/obama-needs-immigration-reform-to-maintain-america-s-strength-by-joseph-s--nye>

Equally important are immigration’s benefits for America’s soft power. The fact that people want to come to the US enhances its appeal, and immigrants’ upward mobility is attractive to people in other countries. The US is a magnet, and many people can envisage themselves as Americans, in part because so many successful Americans look like them. Moreover, connections between immigrants and their families and friends back home help to convey accurate and positive information about the US. Likewise, because the presence of many cultures creates avenues of connection with other countries, it helps to broaden Americans’ attitudes and views of the world in an era of globalization. Rather than diluting hard and soft power, immigration enhances both. Singapore’s former leader, Lee Kwan Yew, an astute observer of both the US and China, argues that China will not surpass the US as the leading power of the twenty-first century, precisely because the US attracts the best and brightest from the rest of the world and melds them into a diverse culture of creativity. China has a larger population to recruit from domestically, but, in Lee’s view, its Sino-centric culture will make it less creative than the US. That is a view that Americans should take to heart. If Obama succeeds in enacting immigration reform in his second term, he will have gone a long way toward fulfilling his promise to maintain the strength of the US.

#### American primacy reduces the likelihood of every scenario for great power war.

**Kagan 2007**

Robert, End of Dreams, Return of History, Hoover Institute, <http://www.hoover.org/publications/policy-review/article/6136>

The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world ’s great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between China and Taiwan and draw in both the United States and Japan. War could erupt between Russia and Georgia, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between India and Pakistan remains possible, as does conflict between Iran and Israel or other Middle Eastern states. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China ’s neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan.

### 1NC Legitimacy DA

#### Presidents will never comply with a direct court refutation of war time policy-he’ll always use extenuating justifications-this wrecks the Court’s institutional strength

**Pushaw, Pepperdine law professor, 2004**

(Robert, Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, lexis, ldg)

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

#### Weakening the court prevents sustainable development

**Stein, New South Wales Court of Appeal former judge, 2005**

(Paul Stein, “Why judges are essential to the rule of law and environmental protection”, IUCN Environmental Policy and Law Paper No. 60, online, ldg)

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction

**Barry, Wisconsin land resources PhD, 2013**

(Glen, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse”, 2-4, <http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp>, ldg)

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.

# 2NC

## CP

### Solvency

#### 2. Ruling on the Suspension Clause reaffirms the court’s independent authority to review the other two branches-due process means the other branches can put in weak procedures to circumvent the AFF and the courts will defer-it is happening now

**Garrett, Virginia law professor, 2012**

(Brandon, “Habeas Corpus and Due Process”, 11-20, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2008746>, ldg)

The Suspension Clause has long cast a shadow over the regulation of detention. Now the Supreme Court has brought the Clause out of the shadows, giving it substance. It does not merely describe when the government may suspend the writ, nor does it solely reflect an important principle of constitutional avoidance in interpreting statutes that restrict judicial review of detention. Instead, the Clause affirmatively offers a simple but powerful form of process to detainees. Moreover, the Court emphasized a Suspension Clause concern with both legal and factual error. This Article has explored this new understanding of the Suspension Clause in light of the changing and unsettled relationship between two complex areas of law: due process and habeas corpus. Both “due process and habeas corpus are quite general, amorphous, and capacious” in their content.508 Despite ringing language uniting habeas and due process in a tradition dating back to Magna Carta, habeas and due process cover importantly different terrain. The Suspension Clause supplies process in circumstances where the Due Process Clause does not apply, while due process has varied applications outside areas covered by habeas corpus. In executive detentions, however, the Suspension Clause plays an outsized role. Taken seriously, the Court in Hamdi and Boumediene forged a relationship between the Suspension Clause and the Due Process Clause. Nelson Tebbe and Robert Tsai examined what circumstances justify “constitutional borrowing” and noted concerns where there is a lack of fit, a lack of transparency, and incomplete application from one area of constitutional law to another.509 In Boumediene, the Court was careful not to explicitly borrow due process standards. The Court’s caution was justified. While due process analysis focuses on adequacy of procedures, habeas process provides the authority for judges to examine the factual and legal authorization for detention. Though habeas process may be “skeletal” in its outlines, both at common law and in modern federal statutes, it provides judges a powerful tool. In significant ways, complex and sometimes poorly conceived distinctions in statutes nevertheless respect core habeas process, in part due to the judicial interventions. I have argued that Boumediene was no innovation, but rather it followed the longstanding view that habeas is at its most expansive concerning detention without a trial. The Suspension Clause demands that habeas corpus remain in full force where there was no adequate prior judicial process, particularly in the context of indefinite detentions. This places the judiciary in the uncomfortable position of reviewing broad congressional authorizations for detentions and changing executive procedures in factually and legally contested detainee petitions. Thrust into that difficult role, lower courts have often relied upon inapposite sources, hewing to some vision of a bare constitutional minimum rather than providing a meaningful habeas process. The D.C. Circuit approves a standard of proof that is too lenient as defined, if not also in application. Its approach unduly limits discovery and uses an odd harmless error rule. In other respects, rulings have done a better job harmonizing evidentiary and criminal procedure rules with habeas process. Careful application could avoid unfortunate rulings, with an exception: the decision not to extend habeas to Bagram was partially due to Boumediene’s misstep in adopting a multifactored jurisdictional test.510 Congress has preserved the central role of the judiciary in the contest over what procedures should govern review of national security detention. Although the National Defense Authorization Act for Fiscal Year 2012 contains broad authorization for detention, it does not alter or address procedural aspects of judicial review, despite calls to do so.511 Perhaps Congress has reached a stable equilibrium. Judges’ approaches to future detentions and detention legislation in future conflicts will focus on the Suspension Clause question. If Congress centers review in an enhanced version of CSRTs, if POWs receive military hearings and demand access to habeas, or if Congress creates a national security court with Article III judges but streamlined procedure, courts will ask whether each is an adequate and effective substitute for habeas, and not simply whether general procedures satisfy due process. In some cases, the answer might be the same under a habeas or due process approach, but only if judges retain the power to adequately review authorization for detentions. Moreover, Boumediene will continue to impact all of habeas corpus, ranging from judicial review under immigration statutes to central questions in postconviction law, including actual-innocence claims. The connection between habeas corpus and due process has been long celebrated. Daniel Meador heralded how “[f]lexibility to meet new problems is one of the characteristics of both due process and habeas corpus, and the value of the habeas corpus—due process combination as protection against arbitrary imprisonment—can hardly be exaggerated.”512 Yet the virtues of flexibility include the vices of malleability. The Suspension Clause jurisprudence forged in the wake of Hamdi and Boumediene suggests that connecting habeas corpus and due process requires great care. The structural role of the Suspension Clause is now firmly established. Contrary to expectations, after exerting its influence in the shadows for so long, the Clause anchors a process animating the operation of far-flung aspects of habeas corpus, ranging from military detention, to immigration detention, to postconviction review. While due process and habeas corpus overlap in some of the protections they provide, a judge asks different questions when examining a due process claim versus a habeas challenge to custody. A judge examining a due process claim will focus on the general adequacy of the procedures employed. A judge examining a habeas challenge will focus on the legal and factual authorization of an individual detention, and in more troubling cases, on the larger Suspension Clause question of whether federal judges have an adequate and effective ability to examine that question of authorization. The roles of habeas and due process are distinct and in important respects they share an inverse relationship—habeas corpus can fill the breach when due process is inadequate. The Suspension Clause ensures that habeas corpus serves a powerful, independent, and unappreciated role standing alone.

#### 3. Even without using Due Process or leading to release the CP solves signal-human right organizations agree.

**Geltzer, King's College London War Studies PhD, 2011**

(Joshua, “Of Suspension, Due Process, and Guantanamo: The Reach of the Fifth Amendment after Boumediene and the Relationship Between Habeas Corpus and Due Process”, 4-20, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1816758>, ldg)

Indeed, as Priester noted in his analysis quoted above, the Supreme Court’s decision in Munaf v. Geren202 seems to suggest that recognizing habeas jurisdiction can be significant even in the absence of any viable, substantive grounds for relief.203 In the wake of Boumediene, and even in the absence of any recognition of substantive constitutional protections for Guantanamo detainees, Human Rights First has declared that “Habeas Works,”204 suggesting that extending the Suspension Clause alone to Guantanamo may have sufficed to establish a meaningful opportunity for detainees to be heard by judges. Moreover, much of the Court’s opinion in Boumediene reads as Suspension Clause-specific,205 and of course the D.C. Circuit has interpreted it as such: that interpretation may well be correct if Boumediene rests on the unique role of habeas access in providing some form of judicial access for those detained. If that interpretation is right, then the Due Process Clause might not apply to detainees at Guantanamo: Boumediene was, like Rasul and Hamdan before it, es- sentially a case about jurisdiction, but not more, and due process might not share the lofty and distinctive status possessed by habeas and thus uniquely protected in Boumediene.

#### 4. The whole point of Boumediene was that habeas and the Suspension clause is a bigger deal then due process and functions independently-obvi only the CP resolves this.

**Geltzer, King's College London War Studies PhD, 2011**

(Joshua, “Of Suspension, Due Process, and Guantanamo: The Reach of the Fifth Amendment after Boumediene and the Relationship Between Habeas Corpus and Due Process”, 4-20, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1816758>, ldg)

Fifth and finally, habeas can be understood as akin to an equitable power on the part of courts, thus empowering judges to review the basis for imprisonment according to a judicial sense of fairness rather than based on any particular substantive guarantees external to habeas itself. Indeed, this understanding comports with habeas’ historical origins, as well as with Justice Brennan’s statement that “habeas corpus has traditionally been regarded as governed by equitable principles,”186 and one might view post-Boumediene habeas review as returning to a past in which habeas review did not seek particular grounds, such as due process, on which to review imprisonment, but instead involved wide-spanning judicial inquiry of the justifications for depriving an individual of his liberty by imprisoning him.187 In- deed, Boumediene itself embraced the idea that “[h]abeas ‘is, at its core, an equitable remedy.’”188 A recent, exhaustive historical study of habeas by Paul Halliday provides the context needed to understand the way in which habeas relief can be seen as courts’ exercise of equitable authority. Halliday explains that, in England, “[n]o one called habeas corpus an equitable writ. But this should not keep us from considering the ways in which its use was equitable in everything but name.”189 In exploring the centuries-old roots of habeas, Halliday finds that particular substantive guarantees external to habeas relief were not necessary for a prisoner to prevail in his petition. To the contrary, what was needed was a compelling tale of the unfairness of the prisoner’s imprisonment: Habeas corpus is a judicial writ, issued when the justices had been convinced by a story that they should examine more closely the circumstances of a person’s imprisonment. The telling of tales, and the discretion of the judges in deciding to heed the moral of such tales, was quite like the process used in most courts of equity.190 In turn, Halliday finds that habeas review was traditionally an exceedingly case-specific inquiry, as “justices made an equitable habeas jurisprudence that followed the facts of cases rather than rules.”191 And while, to be sure, statutes could prove relevant in ascertaining whether a particular imprisonment was permissible,192 the basic inquiry was essentially an equitable one revolving around the discretion of judges. That all-encompassing approach to habeas review is one from which, as Halliday acknowledges, American courts have departed.193 Yet, for Boumediene to suggest a conception of habeas review as judges’ exercise of equitable discretion is in accord with historical precedent, and might even be portrayed as a return to what Halliday regards as the zenith, over two centuries ago, of robust habeas review: he posits that “the writ’s vigor may have peaked in the 1780s”194 and suggests that habeas has historically involved “an ongoing tension . . . between what is in our law and what we would like to be in it.”195 For Boumediene to lean toward the latter would seem to return to a conception of habeas review as less rigidly determined by statutes and precedent and more flexibly exercised under the equitable authority of judges.196 Consistent with such a view, the Boumediene Court might have been exercising its equitable discretion in assessing the procedures that Congress offered in lieu of habeas to Guantanamo detainees and, in the end, rejecting them as insufficient. Indeed, this understanding of the majority might provide the best explanation for why it was not deterred by the Chief Justice’s complaint that there was no basis for finding a violation of the Suspension Clause without at least determining whether due process had been satisfied.197 On behalf of the majority, Justice Kennedy responded: “Even when the procedures authorizing detention are structurally sound, the Suspension Clause remains applicable and the writ relevant. . . . This is so . . . even where the prisoner is detained after criminal trial conducted in full accordance with the protections of the Bill of Rights.”198 For the Boumediene majority, habeas review provides something of importance even when all of the constitutional guarantees often invoked in such proceedings, including due process, have been provided to the prisoner. That additional something might well be an opportunity for a court to exercise equitable authority to assess the fairness of the imprisonment as a whole, rather than just in terms of particular, discrete constitutional rights such as due process. So when Boumediene declared that “the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law,”199 it mattered little that, as noted by Azmy above, there was not much relevant law to be applied in this context. As long as lower court judges could exercise their equitable discretion to assess detention at Guantanamo, this vision of habeas review would be fulfilled. In the words of the Court, “common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances.”200 This view suggests that habeas review, while perhaps informed by due process analysis, is not limited to it: to the contrary, the majority’s approach suggests that habeas review always has independent value, even when the requirements of due process have been met. In sum, the relationship between habeas review and due process can be conceived in five related but distinct ways. Drawing on those five conceptions of the relationship between habeas and due process can help us answer this Article’s fundamental question: should Boumediene be read as anticipating that the Due Process Clause will follow the Suspension Clause to Guantanamo?

#### 5. Due process only focuses on procedures-not meaningful opportunity-means the government wins every-time-rubber stamping turns any signal

**Hafetz et al., Seton Hall law professor, 2012**

(Jonathan, “NO HEARING HABEAS: D.C. CIRCUIT RESTRICTS MEANINGFUL REVIEW”, 5-1, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2145554>, ldg)

It is an open secret that Boumediene v. Bush’s promise of robust review of the legality of the Guantanamo detainees’ detention has been effectively negated by decisions of the United States Court of Appeals for the District of Columbia Circuit, beginning with Al-Adahi v. Obama. This Report examines the outcomes of habeas review for Guantanamo detainees, the right to both habeas and “a meaningful review” of the evidence having been established in 2008 by the Supreme Court in Boumediene. There is a marked difference between the first 34 habeas decisions and the last 12 in both the number of times that detainees win habeas and the frequency in which the trial court has deferred to the government’s factual allegations rather than reject them.1 The difference between these two groups of cases is that the first 34 were before and the remaining 12 were after the July 2010 grant reversal by the D.C. Circuit in Al-Adahi. Detainees won 59% of the first 34 habeas petitions. Detainees lost 92% of the last 12. The sole grant post-Al-Adahi in Latif v. Obama has since been vacated and remanded by the D.C. Circuit. The differences were not limited merely to winning and losing. Significantly, the two sets of cases were different in the deference that the district courts accorded government allegations. In the 34 earlier cases, courts rejected the government’s factual allegations 40% of the time. In the most recent 12 cases, however, the courts rejected only 14% of these allegations. The effect of Al-Adahi on the habeas corpus litigation promised in Boumediene is clear. After Al-Adahi, the practice of careful judicial fact-finding was replaced by judicial deference to the government's allegations. Now the government wins every petition.

### NB

#### Everyone who has won a habeas hearing has been offered resettlement-they just declined-the plan is a massive precedent break by challenging the consensus of the other two branches-that is gonna cause massive backlash

**Rubenstein, Hofstra law professor, 2010**

(David, “Can a Federal Judge Order the Release of Nonmilitary Guantanamo Detainees into the United States?”, Preview of United States Supreme Court Cases, 37.6, proquest, ldg)

In a 2009 split decision, the circuit court vacated the district court's order. The circuit court's majority decision recognized that the traditional remedy for a successful habeas petition is release from custody. But, the court explained, petitioners are not seeking "simple release"; rather, they seek "a court order compelling the Executive to release them into the United States outside the framework of the immigration laws." This remedy, the court held, is unavailable to the judiciary under existing law. According to the circuit court, the only judicial remedy was to require the government to continue its diplomatic efforts "to find an appropriate country willing to admit petitioners." Following the circuit court's decision, Congress passed a series of appropriation acts prohibiting the relevant agencies from using federal funds to transfer or release persons detained at Guantanamo into the United States. Meanwhile, the government's diplomatic resettlement efforts met with significant success. Four of the seventeen detained Uighurs were resettled in Bermuda and six were resettled in Palau. Of the seven Uighurs remaining at Guantanamo when the Supreme Court granted certiorari in this case, two have since accepted resettlement offers from Switzerland, and five have received (but declined) at least two offers of resettlement from third countries. Thus, all of the petitioning Uighurs either have resettled or have been offered resettlement outside of the United States. Due to these changed circumstances, the Supreme Court vacated the circuit court's decision on March 1, 2010, without holding oral argument. In its short per curium order, the Court stated that it should not be the first to decide how the new facts bear on the original issue presented and instructed the circuit court to determine "what further proceedings in that court or in the [d] istrict [cjourt are necessary and appropriate for the full and final disposition of the case." CASE ANALYSIS The case is not moot; seven petitioners remain at Guantanamo despite their offers of resettlement. Although the focus and force of the parties' arguments before the lower court(s) on remand will be affected by the changed circumstances, much of the substantive points of disagreement remain. At the heart of this dispute lies a potentially historic clash between core government functions. One front hosts the judicial habeas power to order release of persons unlawfully detained by the executive branch. This habeas power is forged in the common law and constitutionally protected by the Suspension Clause, which forecloses congressional suspension of the habeas writ except in exceptional circumstances not claimed here. On the competing front, however, lies the political branches' historic sovereign prerogative to determine who may enter the United States and under what circumstances. In Boumethene, the Supreme Court reinforced the fundamental role of the judicial habeas power in our constitutional system of checks and balances. The Court explained that habeas "serves not only to make Government accountable but also to secure individual liberty." As applied to this case, petitioners have argued that the judicial habeas power - in order to be an effective safeguard against unlawful executive detention - must include the judicial power to order petitioners' conditional release into the United States when no other country is willing to accept them. In light of petitioners' offers of resettlement, the factual predicate of this claim is significantly (if not completely) undermined. Apart from the changed facts, respondents emphasize that the habeas power is an equitable one limited by practical and legal constraints. Here, such constraints include the undisputed legal prohibition of resettling petitioners in their home country or to any country that might in turn repatriate them to China. Moreover, according to respondents, release into the United States is not a legal option for two related reasons: first, because the power to admit or exclude aliens is a "sovereign prerogative" completely vested in the political branches; and second, because the political branches have decisively spoken against the Uighurs' admission into the United States. In particular, respondents argue, Congress has exercised its authority to control the borders under long-standing immigration laws that would bar petitioners' admission into the United States. Further, through its recent appropriation acts, Congress barred use of federal funds to release Guantanamo detainees here. Assuming petitioners even have a legitimate claim to release into the United States under the new facts, they will still need to avoid or overcome the immigration and appropriation laws relied upon by respondents. In regard to the former, petitioners have maintained throughout that the immigration laws are irrelevant. That is so, petitioners claim, because they have never sought or been formally denied admission to the United States as immigrants. According to petitioners, their presence in the United States would be limited to determining the conditions of their release pending resettlement in third countries. Although petitioners concede that their presence here may ultimately lead the executive to commence immigration removal proceedings against them, petitioners contend that this course must play itself out and would not necessarily be an exercise in futility (ostensibly because petitioners may have valid legal objections to removal and to their immigration detention pending removal). In any event, petitioners claim, an interpretation of the immigration laws to justify petitioners' potentially indefinite detention would run afoul of the Constitution's Suspension Clause. Not so, according to respondents, who heavily rely on the Court's decision in Shaughnessy v. Mezei, 345 U.S. 206 (1953). There, in the context of a habeas challenge, the Court affirmed the executive's immigration exclusion order despite the alien's challenge to his indefinite detention at Ellis Island. According to the Court, the alien was free to go - just not within the United States.

#### Plan is a massive break of precedent and wrecks separation of powers-they misread habeas and Boumediene-remedy is not key.

**Feith, Yale JD, 2012**

(Daniel, “Restraining Habeas: Boumediene, Kiyemba, and the Limits of Remedial Authority”, 7-22, <http://harvardnsj.org/2012/07/restraining-habeas-boumediene-kiyemba-and-the-limits-of-remedial-authority/>, ldg)

Judged according to the Modern Understanding of habeas, Kiyemba is a troubling decision. Its facts and law challenge the Modern Understanding’s core principles. The Modern Understanding marries habeas with due process rights; Kiyemba decouples them. The Modern Understanding sees vindicating those rights as the writ’s core purpose; the Kiyemba petitioners remain confined three years after the government conceded it lacked authority to detain them.[71] Whereas the Modern Understanding conceives of habeas corpus as a remedy to unlawful imprisonment, Kiyemba limits the remedial authority of habeas courts even at the price of the Uighurs’ freedom. These tensions, moreover, seem to place Kiyemba in conflict with Boumediene’s holding that the judicial power to issue habeas must include authority “to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner’s release.”[72] In this Section, I argue that contrary to initial appearances, Kiyemba and Boumediene are doctrinally coherent.[73] Whatever its normative appeal, the Modern Understanding misapprehends Boumediene, which emphasized, above all, that the purpose of habeas is to preserve the separation of powers. The remainder of this Section demonstrates how Kiyemba is faithful to that imperative. Part of the difficulty in determining whether Kiyemba’s view of limited judicial remedial authority comports with Boumediene is that the Boumediene Court itself hedged in stating what remedial authority is constitutionally required. The Court noted that habeas is, “above all, an adaptable remedy”[74] and that “release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted.”[75] On the other hand, the Court categorically declared that “the habeas court must have the power to order the conditional release of an individual unlawfully detained.”[76] It even described this imperative as a holding.[77] Can Kiyemba be squared with this holding? Boumediene’s holding regarding remedial authority ought to be contextualized within its larger discussion of the purpose of habeas corpus. As described in Section I.B, Boumediene understood habeas corpus primarily as an instrument for preserving the “delicate balance of governance . . . ”—which is to say, the separation of powers—“that is itself the surest safeguard of liberty.”[78] Notwithstanding the common charge that Boumediene is a “sweeping assertion of judicial supremacy,”[79] the majority understood its assertion of authority in defensive terms. It viewed the government’s claim that formal sovereignty determines the Suspension Clause’s application as an overreach of the political branches’ proper authority at the expense of the Court’s power.[80] Its rejection of that position aimed to restore constitutional balance. Thus, Boumediene’s understanding of habeas is—pace Professor Calabresi—as a common law for the age of the Constitution. That is, Boumediene understood habeas according to pre-1789 English common law, but with the modifications necessary to make habeas work within a constitutional framework of separated powers. The judicial power, in particular, changed from the common law to the Constitution. Article III replaced the king’s prerogative as the source of courts’ authority.[81] Instead of having the run of the road, as in England, the American judiciary must stay in its lane. Boumediene emphasized this obligation only vis-à-vis the political branches, but that is because in that instance, the Court thought the political branches were trenching on judicial authority, not vice-versa. It would be absurd to read Boumediene, which invoked the separation of powers more than ten times,[82] to exempt the judiciary from the obligation to respect the inter-branch boundaries of power.[83] Therefore, insofar as remedial authority in habeas cases is a subset of judicial power, that obligation should inform our understanding of Boumediene’s command that habeas courts “must have the power to order the conditional release of an individual unlawfully detained.” In other words, remedial authority—like judicial power generally—must respect the coordinate branches’ prerogatives. This point is especially relevant to Kiyemba. Professor Stephen Vladeck has suggested that if the D.C. Circuit had “tak[en] seriously the flexibility of the writ as a means of promoting equity,” it would have found it within its authority “to order the government to release the prisoner within a specified, finite period of time, and to sanction the government if it failed to do so.”[84] Such arguments about the equitable nature of the Great Writ, however, beg the question of the constitutional limits on the authority of a habeas court to fashion an equitable remedy. The D.C. Circuit faced precisely that question in Kiyemba. Ordering the detainees’ release into the United States, thereby fulfilling Boumediene’s letter, would encroach on the “exclusive province of the political branches”[85] to control entry at our borders, thereby violating Boumediene’s logic. By holding that it lacked the power to issue such an order, the Kiyemba Court reconciled Boumediene’s letter to its logic. Kiyemba’s recognition that the separation of powers limits habeas courts’ remedial authority also accords with the Supreme Court’s ruling on Munaf v. Geren,[86] a case decided the same day as Boumediene. Munaf involved two American citizens arrested and detained by the U.S. military in Iraq who filed habeas petitions to prevent their transfer to Iraqi authorities to stand trial for alleged crimes, citing the risk of torture.[87] In a unanimous opinion, the Court held that the petitioners are entitled to habeas but denied them relief. Rejecting petitioners’ fear of torture as grounds for relief, the Court “recognized that it is for the political branches, not the Judiciary, to assess practices in foreign countries and to determine national policy in light of those circumstances.”[88] Munaf, in other words, recognized that even the authority of habeas courts has limits. Reading Boumediene together with Munaf reinforces the validity of Kiyemba’s conclusion that its remedial authority must respect the prerogatives of its coordinate branches of government.[89] Conclusion This article has argued that, contrary to the claim that Kiyemba and Boumediene present conflicting views of habeas courts’ remedial authority, the two cases are actually consistent. Boumediene departed from the modern, prisoner-focused, rights-based understanding of habeas and embraced an understanding focused on the legality of the jailer’s authority. Rooted in the English common law, this Historical Understanding views habeas in the American constitutional context primarily as an instrument for preserving the separation of powers. This understanding underpinned the Boumediene Court’s assertion that the Suspension Clause reaches Guantanamo—a ruling widely derided as an assertion of judicial supremacy. Yet this understanding also compelled the Kiyemba Court’s recognition of limits to its remedial authority—a holding widely derided as an act of judicial abdication. There is a further irony to Boumediene’s Historical Understanding: the impoverishment of the very writ it celebrated. By placing the political branches’ authority at the center of the habeas inquiry, the Historical Understanding cuts detainees and their rights out of the analysis. It is now possible, as in Kiyemba, to fulfill the writ’s core purpose—assessing the lawfulness of detention—without fashioning a remedy. From a systemic perspective, this may be fine. From the detainees’ perspective, it is devastating. Kiyemba identifies troubling limits to the Great Writ’s remedial power, but they are limits of the Supreme Court’s own making.

## DA

### Turns Case – JI/Legitimacy

#### Political branch counter measures would wreck judicial legitimacy

**Chesney, Texas law professor, 2009**

(Robert, “National Security Fact Deference”, 95 Va. L. Rev. 1361, lexis, ldg)

Judicial involvement in national security litigation, as noted at the outset, poses unusual risks for the judiciary as an institution. Such cases are more likely than most to involve claims of special, or even exclusive, executive branch authority. They are more likely than most to involve a perception - on the part of the public, the government, or judges themselves - of unusually high stakes. They are more likely than most to be in the media spotlight and hence in view of the public in a meaningful sense. These cases are, as a result of all this, especially salient as a political matter. And therein lies the danger for the courts. Because of these elements, an inappropriate judicial intervention in national security litigation is unusually likely to generate a response from the other branches or the public at large that might harm the institutional interests of the judiciary, either by undermining its prestige and authority or perhaps even by triggering some form of concrete political response.

#### Court stripping destroys judicial legitimacy and separation of powers---even unsuccessful backlash can put the entire edifice of judicial review in question

**Martin, Washington political science professor, 2001**

(Andrew, Statuatory Battles and Constitutional Wars: Congress and the Supreme Court, google books, ldg)

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### Undermines global JI

**Gerhardt, William & Mary Law professor, 2005**

(Michael, "THE CONSTITUTIONAL LIMITS TO COURT-STRIPPING,", Lewis & Clark Review, 9 Lewis & Clark L. Rev. 347, Summer, lexis, ldg)

Beyond the constitutional defects with the Act, n40 it may not be good policy. It may send the wrong signals to the American people and to people around the world. It expresses hostility to our Article III courts, in spite of their special function in upholding constitutional rights and enforcing and interpreting federal law. If a branch of our government demonstrates a lack of respect for federal courts, our citizens and citizens in other countries may have a hard time figuring out why they should do otherwise. Rejecting proposals to exclude all federal jurisdiction or inferior court jurisdiction for some constitutional claims extends an admirable tradition within Congress and reminds the world of our hard-won, justifiable confidence in the special role performed by Article III courts throughout our history in vindicating the rule of law.

Turn outweighs solvency-without support activism crashes-legitimacy is a pre-requisite

Hirsch 4 (Ran Hirsch is an Associate Professor of Political Science and Law at the University of Toronto, “'Juristocracy' - Political, not Juridical,” Project Muse)

In sum, the existence of an active, non-deferential constitutional court is a necessary, but not a sufficient condition, for persistent judicial activism and the judicialization of mega politics. Assertion of judicial supremacy cannot take place, let alone be sustained, without the tacit or explicit support of influential political stakeholders. It is unrealistic, and indeed utterly naïve, to assume that core political questions such as the struggle over the nature of Canada as a confederation of two founding peoples, Israel's wrestling with the question of "who is a Jew?" and its status as a Jewish and democratic state, the struggle over the status of Islamic law in predominantly Muslim countries, or the transition to democracy in South Africa could have been transferred to courts without at least the tacit support of pertinent political stakeholders in these countries. And we have not yet said a word about the contribution of ineffective political institutions, the spread of litigation oriented NGOs, or opposition and interest group use of the courts to the judicialization of mega-politics. A political sphere conducive to judicial activism is at least as significant to its emergence and sustainability as the contribution of courts and judges. In short, judicial power does not fall from the sky. It is politically constructed. The portrayal of constitutional courts and judges as the major culprits in the all-encompassing judicialization of politics worldwide is simply too simple a tale.

### Link – 2NC

#### The Court’s pursuing an incremental strategy in regards to War Powers now-the plan causes massive backlash and executive non-acquiescence

**Devins, William & Mary government professor, 2010**

(Neavl, “Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants”, 12 U. Pa. J. Const. L. 491, lexis, ldg)

Congress, the President, and the Court. Throughout the enemy combatant litigation, Congress signaled to the Court that it would go along with whatever ruling the Court made in these cases. In other words, contrary to the portrayal by academics and the news media of the Supreme Court's willingness to stand up to Congress and the executive branch, lawmakers repeatedly stood behind Court rulings limiting elected branch power. At the same time, as I will detail in the next Part, the Court pursued an incremental strategy - declining to test the boundaries of lawmaker acquiescence and, instead, issuing decisions that it knew would be acceptable to lawmakers. n85 The 2004 rulings in Hamdi and Rasul triggered anything but a backlash. In the days following the decisions, no lawmaker spoke on the House or Senate floor about the decision, and only a handful issued [\*508] press releases about the cases. n86 And while eight members of Congress signed onto amicus briefs backing administration policy, n87 Congress did not seriously pursue legislative reform on this issue until the Supreme Court had agreed to hear the Hamdan case. n88 When Congress enacted the Detainee Treatment Act (DTA) in December 2005, "lawmakers made clear that they did not see the DTA as an attack on either the Court or an independent judiciary." n89 Most significant, even though the DTA placed limits on federal court consideration of enemy combatant habeas petitions, lawmakers nevertheless anticipated that the Supreme Court would decide the fate of the President's military tribunal initiative. Lawmakers deleted language in the original bill precluding federal court review of Hamdan and other pending cases. n90 Lawmakers, moreover, depicted themselves as working collegially with the Court; several Senators, for example, contended that the "Supreme Court has been shouting to us in Congress: Get involved," n91 and thereby depicted Rasul as a challenge [\*509] to Congress, n92 "asking the Senate and the House, do you intend for ... enemy combatants ... to challenge their detention [in federal courts] as if they were American citizens?" n93 Lawmakers also spoke of detainee habeas petitions as an "abuse[]" n94 of the federal courts, and warned that such petitions might unduly clog the courts, n95 thus "swamping the system" n96 with frivolous complaints. n97 Under this view, the DTA's cabining of federal court jurisdiction "respects" the Court's independence and its role in the detainee process. n98 Following Hamdan, lawmakers likewise did not challenge the Court's conclusions that the DTA did not retrospectively bar the Hamdan litigation and that the President could not unilaterally pursue his military tribunal policy. n99 Even though the Military Commissions Act (MCA) eliminates federal court jurisdiction over enemy combatant habeas petitions, lawmakers depicted themselves as working in tandem with the Court. Representative Duncan Hunter (R. Cal.), who introduced the legislation on the House floor, said during the debates that the bill was a response to the "mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists." n100 And DTA sponsor Lindsey Graham stated: "The Supreme Court has set the rules of the road and the [\*510] Congress and the president can drive to the destination together." n101 Even lawmakers who expressed disappointment in the Court's ruling did not criticize the Court. Senator Sessions (R. Ala.), for example, blamed Hamdan's lawyers for misleading the Court about the legislative history of the DTA. n102 Debates over the MCA habeas provision, moreover, reveal that lawmakers thought that the Supreme Court was responsible for assessing the reach of habeas protections. Fifty-one Senators (fifty Republicans and one Democrat) voted against a proposed amendment to provide habeas protections to Guantanamo detainees. Arguing that enemy combatants possessed no constitutional habeas rights, n103 these lawmakers contended that they could eliminate habeas claims without undermining judicial authority. One of the principal architects of the MCA, Senator Lindsey Graham, put it this way: Enemy combatants have "a statutory right of habeas ... . And if [the Supreme Court finds] there is a constitutional right of habeas corpus given to enemy combatants, that is ... totally different ... and it would change in many ways what I have said." n104 Forty-eight Senators (forty-three Democrats, four Republicans, and one Independent) argued that the habeas-stripping provision was unconstitutional, that the courts would "clean it up," n105 and that Congress therefore should fulfill its responsibility to protect "that great writ." n106 When the Supreme Court agreed to rule on the constitutionality of the MCA, the Congress no longer supported the MCA's habeas-stripping provisions. Democrats had gained control of both Houses of Congress. Not surprisingly, there was next-to-no lawmaker criticism of Boumediene. In the week following the decision, no member [\*511] of the House, and only two Senators, made critical comments about the decision on the House or the Senate floor. n107 \* \* \* Supreme Court enemy combatant decisions were not out-of-step with prevailing social and political forces. Academics (including prominent conservatives), the media (again including conservative newspapers), former judges, and bar groups had all lined up against the administration. Interest groups too opposed the administration (including some conservative groups). Over the course of the enemy combatant litigation, the American people increasingly opposed the Bush administration. This opposition, in part, was tied to policy missteps (some of which implicated enemy combatant policy-making). These missteps were highly visible and contributed to widespread opposition to the Bush administration. For its part, Congress did not question the Court's role in policing the administration's enemy combatant initiative. By the time the Court decided Boumediene, voter disapproval of the President had translated into widespread opposition to the administration's enemy combatant initiative; a Democratic Congress supported habeas protections for enemy combatants and presidential candidates John McCain and Barack Obama called for the closing of Guantanamo Bay. In the next part of this Essay, I will discuss the incremental nature of the Court's decision making. This discussion will provide additional support for the claims made in this section. Specifically, I will show that each of the Court's decisions was in sync with changing attitudes towards the Bush administration. More than that, Part II will belie the myth that Court enemy combatant decisions were especially consequential. Unlike newspaper and academic commentary about these cases, Court decision making had only a modest impact. Correspondingly, the Court never issued a decision that risked its institutional capital; the Court knew that its decisions would be followed by elected officials and that its decisions would not ask elected officials to take actions that posed some national security risk. [\*512] II. Judicial Modesty or Judicial Hubris: Making Sense of the Enemy Combatant Cases From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113 Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights. [\*514] Small Steps: Hamdi and Rasul. These decisions were a minimalist opening volley in Court efforts to place judicial limits on the Bush administration. While rejecting claims of executive branch unilateralism in national security matters, the Court said next-to-nothing about how it would police the President's enemy combatant initiative. Rasul simply held that Guantanamo Bay was a "territory over which the United States exercises exclusive jurisdiction and control," and, consequently, that the President's enemy combatant initiative is subject to existing habeas corpus legislation. n122 This ruling "avoided any constitutional judgment" and offered no guidance on "what further proceedings may become necessary" after enemy combatants filed habeas corpus petitions. n123 Hamdi, although ruling that United States citizens have a constitutional right to challenge their detention as an enemy combatant, placed few meaningful limits on executive branch detentions. Noting that "enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive," the Court ruled both that hearsay evidence was admissible, and that "the Constitution would not be offended by a presumption in favor of the Government's evidence." n124 The Bush administration, as John Yoo put it, saw the limited reach of Hamdi and Rasul as creating an "opportunity" for the administration to regain control over its detention policy. n125 In particular, the administration asked Congress to enact legislation that would limit federal court review of enemy combatant claims. The administration also launched Combatant Status Review Tribunals (CSRT) as a more formal substitute for unilateral executive determinations of a detainee's enemy combatant status. n126 Capitalizing on Rasul's failure to consider the constitutional dimensions of enemy combatant claims, CSRTs largely operated as a rubber stamp of administration determinations. In 2006, ninety-nine out of 102 detainees brought before CSRTs were designated as enemy combatants. n127 The Justice Department reconvened CSRTs to reconsider the remaining three cases [\*515] and, ultimately, the remaining three were determined to be enemy combatants. n128 Hamdi and Rasul were both "narrow, incompletely theorized [minimalist] decisions." n129 And while newspapers and academics focused their attention on the Court's open-ended declaration that "a state of war is not a blank check for the President," n130 the decisions did not meaningfully limit the executive. Well aware that Congress and the American people supported the President's military commission initiative, n131 the Court understood that a sweeping denunciation of administration policies might trigger a fierce backlash. n132 Moreover, by ruling that Congress had authorized the President's power to detain enemy combatants (through its post-9/11 Authorization for the Use of Military Force Resolution), and by suggesting that the Court would make use of pro-government presumptions when reviewing military commission decision making, the Court formally took national security interests into account. n133 Actions taken by the executive in response to these rulings underscore that the Court's de minimis demands neither risked national security nor executive branch non-acquiescence. None of this is to say that the 2004 decisions were without impact. Following Rasul, for example, the administration understood that it needed to make use of some type of military court review - a requirement that may have impacted the military's handling of enemy combatants. At the same time, the Court did not issue a potentially debilitating blow to the Bush administration by decisively and resoundingly rejecting key elements of the administration's legal policy. n134 Instead, the Court simply carved out space for itself to review administration policy-making - without setting meaningful boundaries on what the administration could or could not do.

#### Obama will disregard the Court if they don’t conform to his strategy

**Pyle, Mount Holyoke College constitutional law professor, 2012**

(Christopher, “Barack Obama and Civil Liberties”, Presidential Studies Quarterly, 42.4, ebsco, ldg)

But this is not the only double standard that Obama's attorney general has endorsed. Like his predecessors, Holder has chosen to deny some prisoners any trials at all, either because the government lacks sufficient evidence to guarantee their convictions or because what “evidence” it does have is fatally tainted by torture and would deeply embarrass the United States if revealed in open court. At one point, the president considered asking Congress to pass a preventive detention law. Then he decided to institute the policy himself and defy the courts to overrule him, thereby forcing judges to assume primary blame for any crimes against the United States committed by prisoners following a court-ordered release (Serwer 2009). According to Holder, courts and commissions are “essential tools in our fight against terrorism” (Holder 2009). If they will not serve that end, the administration will disregard them. The attorney general also assured senators that if any of the defendants are acquitted, the administration will still keep them behind bars. It is difficult to imagine a greater contempt for the rule of law than this refusal to abide by the judgment of a court. Indeed, it is grounds for Holder's disbarment. As a senator, Barack Obama denounced President Bush's detentions on the ground that a “perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence” (Greenwald 2012). But, three years into his presidency, Obama signed just such a law. The National Defense Authorization Act of 2012 authorized the military to round up and detain, indefinitely and without trial, American citizens suspected of giving “material support” to alleged terrorists. The law was patently unconstitutional, and has been so ruled by a court (Hedges v. Obama 2012), but President Obama's only objection was that its detention provisions were unnecessary, because he already had such powers as commander in chief. He even said, when signing the law, that “my administration will not authorize the indefinite military detention without trial of American citizens,” but again, that remains policy, not law (Obama 2011). At the moment, the administration is detaining 40 innocent foreign citizens at Guantanamo whom the Bush administration cleared for release five years ago (Worthington 2012b). Thus, Obama's “accomplishments” in the administration of justice “are slight,” as the president admitted in Oslo, and not deserving of a Nobel Prize. What little he has done has more to do with appearances than substance. Torture was an embarrassment, so he ordered it stopped, at least for the moment. Guantanamo remains an embarrassment, so he ordered it closed. He failed in that endeavor, but that was essentially a cosmetic directive to begin with, because a new and larger offshore prison was being built at Bagram Air Base in Afghanistan—one where habeas petitions could be more easily resisted. The president also decided that kidnapping can continue, if not in Europe, then in Ethiopia, Somalia, and Kenya, where it is less visible, and therefore less embarrassing (Scahill 2011). Meanwhile, his lawyers have labored mightily to shield kidnappers and torturers from civil suits and to run out the statute of limitations on criminal prosecutions. Most importantly, kidnapping and torture remain options, should al-Qaeda strike again. By talking out of both sides of his mouth simultaneously, Obama keeps hope alive for liberals and libertarians who believe in equal justice under law, while reassuring conservatives that America's justice will continue to be laced with revenge. It is probably naïve to expect much more of an elected official. Few presidents willingly give up power or seek to leave their office “weaker” than they found it. Few now have what it takes to stand up to the national security state or to those in Congress and the corporations that profit from it. Moreover, were the president to revive the torture policy, there would be insufficient opposition in Congress to stop him. The Democrats are too busy stimulating the economies of their constituents and too timid to defend the rule of law. The Republicans are similarly preoccupied, but actually favor torture, provided it can be camouflaged with euphemisms like “enhanced interrogation techniques” (Editorial 2011b).

#### Plan requires a substantive due process right that the Court has never affirmed-will definitely be perceived as overreaching

**Rubenstein, Hofstra law professor, 2010**

(David, “Can a Federal Judge Order the Release of Nonmilitary Guantanamo Detainees into the United States?”, Preview of United States Supreme Court Cases, 37.6, proquest, ldg)

But respondents reject petitioners' invocations of the Due Process Clause and Geneva Convention as entitlements to statutory habeas relief under Section 2241. Respondents argue that whatever due process rights extend extraterritorially to petitioners at Guantanamo, the Court has never recognized a substantive due process right to be released into the United States and should not do so here. Respondents further argue that, in the Military Commissions Act, Congress barred judicial enforcement of the at-issue Geneva Convention provisions, and that, in any event, nothing in the Geneva Convention mandates release into the territory of the detaining state as relief from unlawful detention.

### Modeling Defense

#### No one models the US system anymore.

Liptak 2012

Adam, New York Times, ‘We the People’ Loses Appeal With People Around the World

Sure, it is the nation’s founding document and sacred text. And it is the oldest written national constitution still in force anywhere in the world. But its influence is waning. In 1987, on the Constitution’s bicentennial, Time magazine calculated that “of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.” 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.” “The turn of the twenty-first century, however, saw the beginning of a steep plunge that continues through the most recent years for which we have data, to the point that the constitutions of the world’s democracies are, on average, less similar to the U.S. Constitution now than they were at the end of World War II.” There are lots of possible reasons. The United States Constitution is terse and old, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may send the signal that it is of little current use to, say, a new African nation. And the Constitution’s waning influence may be part of a general decline in American power and prestige. In an interview, Professor Law identified a central reason for the trend: the availability of newer, sexier and more powerful operating systems in the constitutional marketplace. “Nobody wants to copy Windows 3.1,” he said. In a television interview during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. “I would not look to the United States Constitution if I were drafting a constitution in the year 2012,” she said. She recommended, instead, the South African Constitution, the Canadian Charter of Rights and Freedoms or the European Convention on Human Rights. The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber. As Sanford Levinson wrote in 2006 in “Our Undemocratic Constitution,” “the U.S. Constitution is the most difficult to amend of any constitution currently existing in the world today.” (Yugoslavia used to hold that title, but Yugoslavia did not work out.) Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in a 1789 letter to James Madison, once said that every constitution “naturally expires at the end of 19 years” because “the earth belongs always to the living generation.” These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty. Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care. It has its idiosyncrasies. Only 2 percent of the world’s constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.) 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.

#### US has lost influence

Law and Versteeg 2012

David S., University of Washington St. Louis Professor of Law and PoliSci, and Mila, UVA Law Professor, The Declining Influence of the United States Constitution New York University Law Review, Vol. 87, 2012 http://whatthegovernmentcantdoforyou.com/wp-content/uploads/2012/02/ssrn-id1923556.pdf

It has long been assumed that the United States remains “the hegemonic model”7 for constitutionalism in other countries. The U.S. Constitution in particular continues to be described as “the essential prototype of a written, single-document constitution.”8 There can be no denying the popularity of the Constitution’s most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism.9 Today almost ninety percent of all countries possess written constitutional documents backed by some kind of judicial enforcement. 10 As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state.11 There are growing suspicions, however, that America’s days as a constitutional hegemon are coming to an end.12 It has been said that the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights.13 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.14 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”15 by participating in an ongoing “transnational judicial dialogue”16 is supposedly diminishing the global appeal and influence of American constitutional jurisprudence.17 Studies conducted by 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.18 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.

#### Latin American constitutions model each other, not the United States.

Cheibub et al 2011

Jose Antonio, Professor of Political Science – University of Illinois Urbana Champaign, Latin American Presidentialism in Comparative and Historical Perspective Texas Law Review [Vol. 89] http://www.texaslrev.com/wp-content/uploads/Cheibub-Elkins-Ginsburg-89-TLR-1707.pdf

We have analyzed the formal features of executive power in Latin America, a region long understood to be one amenable to strong executive rule. We have demonstrated that, although the presidency was inspired by the American model, other models were equally influential in structuring the precise contours of executive and legislative power in the region. We have also seen increasing convergence within the region along important dimensions of executive–legislative relations. We can thus speak of a Latin American model of presidential power that includes a powerful role in legislation as well as extensive emergency rule. This distinguishes the Latin American presidency from those in other regions of the world. Our analysis has several implications for the study of comparative law and politics. First, it calls attention to geography as an important predictor of constitutional design. Second, our analysis emphasizes change rather than continuity and convergence over time. This approach contrasts with the recent emphasis in comparative law on “legal origins” as determinants of contemporary outcomes.99 Finally, while the legal-origins analysts emphasize the importance of French law in Latin America,100 our account shows that at a constitutional level, the influence of Spain and the United States was also significant in the early years. But while the legal-origins school argues for long-range consequences of initial choices, we observe a gradual process of constitutional updating in which constitutions within the region grow more similar to each other, and a move away from the models from which they were initially drawn.

#### Can’t reform Russian system – entrenched interests and limited scope.

Jordan 2009

Pamela, associate professor of history at the University of Saskatchewan, author of Defending Rights in Russia: Lawyers, the State, and Legal Reform in the Post-Soviet Era, Strong-arm Rule or Rule of Law? Prospects for Legal Reform in Russia http://jurist.org/forum/2009/07/strong-arm-rule-or-rule-of-law.php

Even if Medvedev is sincere about promoting rule of law, he faces considerable barriers. Conservative factions in the Kremlin reportedly continue to dominate decision making and obstruct legal reform, which would involve transforming a corrupt system that has well served their political and economic interests. Besides conflicts among political clans, the chief obstacles are entrenched interests in the law-enforcement agencies and the powerful Procuracy, which supervises criminal investigations and prosecutes criminal cases. Even many judges are former law-enforcement officials and thus more prone to accusatory bias. In general, as Trochev's research shows, judges face a host of internal and external pressures that prevent them from applying measures in the European Human Rights Convention. In addition, as demonstrated by widespread banditry in the North Caucasus, adherence to federal law is not universal. According to the 1993 Russian Constitution, federal law takes precedence over regional law, but in reality this measure is not yet observed in all 83 regions of the Russian Federation. It is also important to note that, while on the one hand, the Kremlin strives to centralize power in Moscow, it has, on the other, turned a blind eye to illegality in some regions. For example, human-rights activists have attributed Estemirova's murder to Chechen President Ramzan Kadyrov, a corrupt warlord whom President Putin appointed in 2007. Estemirova herself reported that the Kremlin "gave a green light to the special service and local militia to do as they please here, on the condition that they provide Chechnya's absolute loyalty to Russia."

# 1NR

### Overview

#### Proliferation causes nuclear war.

**Kroenig, Georgetown University Government assistant professor, 2012**

(Matthew, Assistant Professor of Government at Georgetown University and Stanton Nuclear Security Fellow at Council on Foreign Relations, “The History of Proliferation Optimism: Does It Have A Future?”, 5-26, http://www.npolicy.org/article.php?aid=1182andrtid=2)

The proliferation optimist position, while having a distinguished pedigree, has several major problems. Many of these weaknesses have been chronicled in brilliant detail by Scott Sagan and other contemporary proliferation pessimists.[34] Rather than repeat these substantial efforts, I will use this section to offer some original critiques of the recent incarnations of proliferation optimism. First and foremost, proliferation optimists do not appear to understand contemporary deterrence theory. I do not say this lightly in an effort to marginalize or discredit my intellectual opponents. Rather, I make this claim with all due caution and with complete sincerity. A careful review of the contemporary proliferation optimism literature does not reflect an understanding of, or engagement with, the developments in academic deterrence theory in top scholarly journals such as the American Political Science Review and International Organization over the past few decades.[35] While early optimists like Viner and Brodie can be excused for not knowing better, the writings of contemporary proliferation optimists ignore the past fifty years of academic research on nuclear deterrence theory. In the 1940s, Viner, Brodie, and others argued that the advent of Mutually Assured Destruction (MAD) rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.[36] After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: how can states credibly threaten a nuclear-armed opponent? Since the 1960s academic nuclear deterrence theory has been devoted almost exclusively to answering this question.[37] And, unfortunately for proliferation optimists, the answers do not give us reasons to be optimistic. Thomas Schelling was the first to devise a rational means by which states can threaten nuclear-armed opponents.[38] He argued that leaders cannot credibly threaten to intentionally launch a suicidal nuclear war, but they can make a “threat that leaves something to chance.”[39] They can engage in a process, the nuclear crisis, which increases the risk of nuclear war in an attempt to force a less resolved adversary to back down. As states escalate a nuclear crisis there is an increasing probability that the conflict will spiral out of control and result in an inadvertent or accidental nuclear exchange. As long as the benefit of winning the crisis is greater than the incremental increase in the risk of nuclear war, threats to escalate nuclear crises are inherently credible. In these games of nuclear brinkmanship, the state that is willing to run the greatest risk of nuclear war before back down will win the crisis as long as it does not end in catastrophe. It is for this reason that Thomas Schelling called great power politics in the nuclear era a “competition in risk taking.”[40] This does not mean that states eagerly bid up the risk of nuclear war. Rather, they face gut-wrenching decisions at each stage of the crisis. They can quit the crisis to avoid nuclear war, but only by ceding an important geopolitical issue to an opponent. Or they can the escalate the crisis in an attempt to prevail, but only at the risk of suffering a possible nuclear exchange. Since 1945 there were have been many high stakes nuclear crises (by my count, there have been twenty) in which “rational” states like the United States run a risk of nuclear war and inch very close to the brink of nuclear war.[41] By asking whether states can be deterred or not, therefore, proliferation optimists are asking the wrong question. The right question to ask is: what risk of nuclear war is a specific state willing to run against a particular opponent in a given crisis? Optimists are likely correct when they assert that Iran will not intentionally commit national suicide by launching a bolt-from-the-blue nuclear attack on the United States or Israel. This does not mean that Iran will never use nuclear weapons, however. Indeed, it is almost inconceivable to think that a nuclear-armed Iran would not, at some point, find itself in a crisis with another nuclear-armed power and that it would not be willing to run any risk of nuclear war in order to achieve its objectives. If a nuclear-armed Iran and the United States or Israel have a geopolitical conflict in the future, over say the internal politics of Syria, an Israeli conflict with Iran’s client Hezbollah, the U.S. presence in the Persian Gulf, passage through the Strait of Hormuz, or some other issue, do we believe that Iran would immediately capitulate? Or is it possible that Iran would push back, possibly even brandishing nuclear weapons in an attempt to deter its adversaries? If the latter, there is a real risk that proliferation to Iran could result in nuclear war. An optimist might counter that nuclear weapons will never be used, even in a crisis situation, because states have such a strong incentive, namely national survival, to ensure that nuclear weapons are not used. But, this objection ignores the fact that leaders operate under competing pressures. Leaders in nuclear-armed states also have very strong incentives to convince their adversaries that nuclear weapons could very well be used. Historically we have seen that in crises, leaders purposely do things like put nuclear weapons on high alert and delegate nuclear launch authority to low level commanders, purposely increasing the risk of accidental nuclear war in an attempt to force less-resolved opponents to back down.

### PP Strong – 2NC

#### Plenary power is strong now

**Lindsay, Baltimore law professor, 2010**

(Matthew, “Article: Immigration as Invasion: Sovereignty, Security, and the Origins of the Federal Immigration Power”, Winter, 45 Harv. C.R.-C.L. L. Rev. 1, lexis, ldg)

Although the Supreme Court in recent decades has muted some of the more severe aspects of the plenary power doctrine, n23 the constitutional exceptionalism of the immigration power, as well as its core legal rationale, remain fundamentally intact. As the passages quoted from the Kim decision indicate, the Court continues to define federal authority over immigration with reference to national sovereignty in matters of war, foreign affairs, and the preservation of republican government. n24 It perpetuates the wholesale presumption that all laws regulating immigration are part and parcel of the conduct of national security, even though the social and political judgments that historically appeared to justify such a presumption--specifically, the Court's literal equation in the late nineteenth century between foreign pauper labor and foreign aggression--would strike most contemporary policymakers and judges as anachronistic. n25

### State Immigration Bad – 2NC

#### Causes over focus on enforcement drive by xenophobia-deters immigrants

**Stumpf, Leiws & Clark law professor, 2008**

(Juliet, “States of Confusion: The Rise of State and Local Power over Immigration”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157552>, ldg)

Opening the door to this level of state governance of noncitizens through criminal law is particularly troubling when invidious purposes underlie the state or local interest in immigration law. Although measures to control crime in state and local communities are inarguably necessary and may increase deportation rates, using criminal laws and enforcement to target noncitizens is unlikely to be cost-effective. The notion that immigrants contribute disproportionately to crime302 runs counter to studies showing lower crime rates among first generation immigrants than among the nativeborn population in the United States.303 The least educated immigrant groups, Salvadorans, Guatemalans, and Mexicans, are most likely to be stereotyped as “illegal aliens,” yet they have the lowest incarceration rates among Latin American immigrants.304 Still, when subnational governments seek to employ criminal law in the immigration arena, that illusory elision of undocumented immigrants and criminals is invariably summoned up. A prime example is Forsyth County’s declaration connecting its county employment resolution to the commission of crimes by undocumented immigrants.305 The same is true in Gray and Lozano of the crime-based motivations offered to justify increasing burdens on employers and landlords to verify the lawful status of employees and lessees.306 The lack of empirical support for prioritizing immigrants in criminal legislation suggests that motives other than crime control underlie at least some of the subnational criminal laws focusing on noncitizens. Several subnational actions explicitly tie the motives for such laws to the ethnicity or culture of the newcomers. As examples drawn from North Carolina, in their resolutions directing law enforcement to check the immigration status of each undocumented resident upon arrest, Gaston and Lincoln Counties connected illegal immigration with increasing the crime rate “due to lack of comprehension of the English language and inability to read and follow established laws” as well as “lack of social and personal health care standards.”307 The Alamance County sheriff, who has directed his deputies to check the immigration status of all foreign persons arrested, characterized Mexicans as having “different” morals exemplified by heavy drinking and sexual exploitation of minors.308 The proliferation of subnational criminal statutes affecting noncitizens and the troubling motives that may underlie them counsel against permitting states to join the plenary power of the federal government with their own criminal police powers. Crimmigration law has exacerbated the view that citizens are members of our community, while noncitizens are not.309 The negative connection drawn between immigrants and criminals, coupled with the domestication of immigration law, creates a danger that lawmakers and courts will fail to curb unduly harsh measures and heavier sanctions that subnational governments place on noncitizens.