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#### TERROR DA

#### Court trials hamstring the executive—triggers terrorism

**McCarthy, FDD Center for Law and Counterterrorism director, 2009**

(Andrew, “Outsourcing American Law”, AEI Working Paper, <http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf>, ldg)

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

#### Nuclear terrorism is likely

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

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#### TPA DA

#### TPA is top of the agenda and Obama is making a full court press-Now is the make or break time for spending political capital on trade-TPA failure collapses global trade, the economy and US leadership.

McLarty-former chief of staff to Clinton during the NAFTA ratification fight-2/2/14

Huffington Post 2/2/14

http://www.huffingtonpost.com/thomas-f-mclarty/a-critical-test-of-leader\_b\_4705623.html

A Critical Test of Leadership

In his State of the Union address last week, President Obama took a good first step in asking Congress to provide the tools he needs to close two of the most ambitious trade deals in U.S. history. But he faces an immediate challenge from within his party that could imperil negotiations, with huge stakes for the U.S. globally and for our economy at home. At issue is Trade Promotion Authority (TPA), which allows the president to send a trade agreement to Congress for an up-or-down vote, without amendments. Many Republicans reflexively oppose granting any request from the administration. But the biggest opposition is coming from Democrats skeptical of the value of free trade. The day after the president's address, Senate Majority Leader Harry Reid said he opposed "fast track" authority. His remarks revealed the depth of a gulf among Democrats over trade, and sparked new criticism from Republicans as a sign that the president's party couldn't be lined up behind a major administration initiative. For President Obama, this is a critical test of his leadership. Can he muster enough support for his trade agenda within his own party, and then assemble a bipartisan majority in both houses of Congress? Failure would be a great setback for U.S. prestige internationally, and a dismal signal for the president's remaining three years in office. We've seen this movie before -- and it didn't end well. The last Democratic president to seek fast track authority on trade was Bill Clinton in 1997. The effort collapsed when then House Speaker Newt Gingrich was unable to marshal his Republican majority. It was an opportunity lost, ending a period of bipartisan cooperation on trade and stalling momentum created a few years earlier by the North American Free Trade Agreement. Repeating this history would be a mistake, especially as our economy struggles to create good jobs at high wages. But the president faces an uphill battle. Now is the moment for Democrats to pause and take full measure of the stakes involved in opposing fast track. It's time for Republican supporters of trade to rally. And it is essential that the president and his cabinet exert persistent, focused leadership to persuade the skeptics. President Obama deserves much credit for advancing the most far-reaching trade agenda in a generation. The administration is nearing the finish line in negotiations of the Trans Pacific Partnership, an agreement with 11 Pacific Rim nations, including Japan and perhaps South Korea and others. Simultaneous talks are underway between the United States and the European Union over the Transatlantic Trade and Investment Partnership -- creating an economic NATO and the largest liberalized trade zone in the world. Together, the agreements would lower barriers in markets accounting for more than 60 percent of the global economy. Neither negotiation would survive a failure to renew Trade Promotion Authority, which expired in 2007. TPA reassures our negotiating partners that they will not agree to difficult concessions only to see Congress later force unilateral changes. Under TPA, Congress establishes negotiating goals and must be regularly consulted by the president. In exchange, Congress promises an up-or-down vote without amendment. No major trade legislation has passed Congress in decades without it. President Clinton knew that because trade was so hard, its support had to be bipartisan. To push for NAFTA, he assembled a high-profile war room in the White House, led by a prominent Democrat, Bill Daley, and former Republican Congressman Bill Frenzel. The president worked members tirelessly. The bill eventually passed with 102 Democratic and 132 Republican votes, and a similarly bipartisan total in the Senate. By contrast, the 1997 effort to renew fast-track authority lacked that high-profile White House push -- helping seal its doom. Over the last decades, global trade has proven essential to building employment and reducing inequality at home. One of every five jobs in the United States is tied to exports. More significantly for the long run, 95 percent of the world's customers live outside our borders. While many Americans have concerns about free trade, they say the benefits of U.S. involvement in the global economy outweigh the risks (by a 2-1 margin in a poll last month by the Pew Research Center). Even so, last fall 151 House Democrats signed a letter expressing their opposition to granting President Obama Trade Promotion Authority. Almost three dozen House Republicans followed suit. When the bill to renew TPA was introduced earlier this month, a number of Democratic Senators announced their opposition. They have now been joined by Sen. Reid. The warning signs are clear, but so is the path forward. Now is the time for a full-court press from the White House. President Obama should be clear about the imperative of TPA and make the strong case for trade as a catalyst for job growth. Then he must press his cabinet to the task. Ambassador Froman is a skilled negotiator and advocate. His cabinet colleagues include many effective proponents of free trade and international engagement, including Secretary of State John Kerry, Treasury Secretary Jack Lew, and Commerce Secretary Penny Pritzker. Without a concerted effort, TPA may well fail, embarrassing us abroad, casting a shadow on the president's second term and hurting our economy in the long run. Why not instead show America and the world that the president and Congress, including leaders of his own party, can work together?

#### The plan expends capital on a separate war powers issue–it’s immediate and forces a trade-off

O’Neil-prof law Fordham-7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of –Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Free trade prevents multiple scenarios for world war and WMD Terrorism

Panzner-New York Institute of Finance-8

Michael, faculty at the New York Institute of Finance, 25-year veteran of the global stock, bond, and currency markets who has worked in New York and London for HSBC, Soros Funds, ABN Amro, Dresdner Bank, and JPMorgan Chase “Financial Armageddon: Protect Your Future from Economic Collapse,” pg. 136-138

Continuing calls for curbs on the flow of finance and trade will inspire the United States and other nations to spew forth protectionist legislation like the notorious Smoot-Hawley bill. Introduced at the start of the Great Depression, it triggered a series of tit-for-tat economic responses, which many commentators believe helped turn a serious economic downturn into a prolonged and devastating global disaster. But if history is any guide, those lessons will have been long forgotten during the next collapse. Eventually, fed by a mood of desperation and growing public anger, restrictions on trade, finance, investment, and immigration will almost certainly intensify. Authorities and ordinary citizens will likely scrutinize the cross-border movement of Americans and outsiders alike, and lawmakers may even call for a general crackdown on nonessential travel. Meanwhile, many nations will make transporting or sending funds to other countries exceedingly difficult. As desperate officials try to limit the fallout from decades of ill-conceived, corrupt, and reckless policies, they will introduce controls on foreign exchange. Foreign individuals and companies seeking to acquire certain American infrastructure assets, or trying to buy property and other assets on the cheap thanks to a rapidly depreciating dollar, will be stymied by limits on investment by noncitizens. Those efforts will cause spasms to ripple across economies and markets, disrupting global payment, settlement, and clearing mechanisms. All of this will, of course, continue to undermine business confidence and consumer spending. In a world of lockouts and lockdowns, any link that transmits systemic financial pressures across markets through arbitrage or portfolio-based risk management, or that allows diseases to be easily spread from one country to the next by tourists and wildlife, or that otherwise facilitates unwelcome exchanges of any kind will be viewed with suspicion and dealt with accordingly. The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to full-scale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientist at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

### Off

#### SECURITY K

#### **Technical solutions to war powers are a** shell game which locks in exceptionalism. we must ask prior to debate about the plan what our national security interests are who is served by those goals

Williams 7 (Daniel, associate professor of law at Northeastern University School of Law. He received a J.D. from Harvard, NORTHEASTERN UNIVERSITY SCHOOL OF LAW. “After the Gold Rush-Part I: Hamdi, 9/11, and the Dark Side of the Enlightenment,” NORTHEASTERN PUBLIC LAW AND THEORY FACULTY WORKING PAPERS SERIES NO. 16-2007. http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=970279)

This fearsome sort of legality is largely shielded from our view (that is, from the view of Americans---the ones wielding this legality) with the veil of democracy, knitted together with the thread of process jurisprudence. Within process jurisprudence, there is no inquiry into the fundamental question: allocation of power between the branches to accomplish . . . what? It is very easy to skip that question, and thus easy to slide into or accept circular argumentation.31 With the focus on the distribution of power, arguments about what to do in this so-called war on terror start off with assumptions about the nature of the problem (crudely expressed as violent Jihadists who hate our freedoms) and then appeal to those assumptions to justify certain actions that have come to constitute this “war.” The grip of this circularity, ironically enough, gains its strength from the ideology of legality, the very thing that the Court seeks to protect in this narrative drama, because that ideology fences out considerations of history, sociology, politics, and much else that makes up the human experience. What Judith Shklar observed over forty years ago captures the point here: the “legalism” mindset--which thoroughly infuses the process jurisprudence that characterizes the Hamdi analysis--produces the “urge to draw a clear line between law and nonlaw” which, in turn, leads to “the construction of ever more refined and rigid systems of formal definitions” and thus “serve[s] to isolate law completely from the social context within which it exists.” 32 The pretense behind the process jurisprudence--and here pretense is purpose--is the resilient belief that law can be, and ought to be, impervious to ideological considerations. And so, the avoidance of the “accomplish . . . what?” question is far from accidental; it is the quintessential act of legality itself.33 More than that, this “deliberate isolation of the legal system . . . is itself a refined political ideology, the expression of a preference” that masquerades as a form of judicial neutrality we find suitable in a democracy.34 If the Executive’s asserted prerogative to prosecute a war in a way that will assure victory is confronted with the prior question about what exactly we want to accomplish in that war--if, that is, we confront the question posed by Slavoj Zizek, noted at the outset of this article—then the idea of national security trumping “law” takes on an entirely different analytical hue. Professor Owen Fiss is probably right when he says that the Justices in Hamdi “searched for ways to honor the Constitution without compromising national interests.”35 But that is a distinctly unsatisfying observation if what we are concerned about is the identification of what exactly those “national interests” are.36 We may not feel unsatisfied because, in the context of Hamdi, it undoubtedly seems pointless to ask what we are trying to accomplish, since the answer strikes us as obvious. We are in a deadly struggle to stamp out the terrorist threat posed by Al Qaeda, and more generally, terrorism arising from a certain violent and nihilistic strain of Islamic fundamentalism. Our foreign policy is expressly fueled by the outlook that preemptive attacks is not merely an option, but is the option to be used. In the words of the Bush Administration’s 2002 National Security Strategy document, “In the world we have entered, the only path to safety is the path of action. And this nation will act.”37 O’Connor and the rest of the Court members implicitly understand our foreign policy and the goal to be pursued in these terms, which explains why the Hamdi opinion nowhere raises a question about what it is the so-called “war on terror” seeks to accomplish. After all, the stories we want to tell dictate the stories that we do tell. We want to tell ourselves stories about our own essential goodness and benevolence, our own fidelity to the rule of law; and that desire dictates the juridical story that ultimately gets told. Once one posits that our foreign policy is purely and always defensive, as well as benevolent in motivation,38 then whatever the juridical story—even one where the nation’s highest Court announces that the Executive has no blank check to prosecute a war on terror—the underlying reality inscribed upon the world’s inhabitants, the consequences real people must absorb somehow, is one where “the United States has established that its only limit on the world stage will be its military power.”39 As O’Connor sees it, the real problem here is that, given that the allocation-of-power issue is tied to the goal of eliminating the terrorist threat, we have to reckon with the probability that this allocation is not just an emergency provision, but one that will be cemented into our society, since the current emergency is likely to be, in all practicality, a permanent emergency. But to say we are in a struggle to stamp out a terrorist threat posed by Islamic fundamentalism, and to say that “the only path to safety is the path of action,” conceals--renders invisible, a postmodernist would likely put it--an even more fundamental, and more radical, question: the allocation of power that the Court is called upon to establish is in the service of eliminating a terrorist threat to accomplish . . . what? The standard answer is, our security, which most Americans would take to mean, to avert an attack on our homeland, and thus, as it was with Lincoln, to preserve the Union. And so, we accept as obvious that our dilemma is finding the right security-liberty balance. The problem with that standard answer is two-fold. First, it glosses over the fact that we face no true existential threat, no enemy that genuinely threatens to seize control over our state apparatus and foist upon us a form of government to which we would not consent. That fact alone distinguishes our current war on terrorism from Lincoln’s quest to preserve the Union against secession.40 Second, this we-must-protect-the-Homeland answer is far too convenient as a conversation stopper. When the Bush Administration=’ National Security Strategy document avers that “the only path to safety is the path of action,” we ought to ask what global arrangements are contemplated through that “path of action.” When that document announces that “this nation will act,” it surely cannot suffice to say that the goal is merely eliminating a threat to attain security. All empires and empire-seeking nations engage in aggression under the rubric of self-defense and the deployment of noble-aims rhetoric. These justifications carry no genuine meaning but are devices of the powerful and the privileged, with the acquiescence and often encouragement by a frightened populace, to quell unsettling questions from dissenters within the society.41 Stop and think for a moment, how is it that the nation with the most formidable military might--the beneficiary of the hugest imbalance in military power ever in world history--is also the nation that professes to be the most imperiled by threats throughout the world, often threatened by impoverished peasant societies (Vietnam, Nicaragua, El Salvador, Chile, Granada, etc.)?42 An empire must always cast itself as vulnerable to attack and as constantly being under attack in order to justify its own military aggression. This is most acutely true when the empire is a democracy that must garner the consent of the populace, which explains why so much of governmental rhetoric concerning global affairs is alarmist in tone. The point is that quandaries over constitutional interpretation--ought we be prudential, or are other techniques more closely tied to the text the only legitimate mode of constitutional adjudication--may very well mask what may be the most urgent issue of all, which concerns what exactly this nation’s true identity is at this moment in world history, what it is that we are pursuing. Whereas Sanford Levinson has courageously argued that “too many people >venerate= the Constitution and use it as a kind of moral compass,”43 which leads to a certain blindness, I raise for consideration an idea that Hamdi suppresses, through its narrative techniques, which is that too many people “venerate” this nation without any genuine consideration of the particular way we have, since World War II, manifested ourselves as a nation. I join Levinson’s suspicion that our Constitution is venerated as an idea, as an abstraction, without much thought given to its particulars. It is important to be open to the possibility that the same is true with regard to our nation--the possibility that we venerate the idea of America (undoubtedly worth venerating), but remain (willfully?) ignorant of the particulars of our actual responsibility for the health of the planet and its inhabitants.44 To openly consider such issues is not anti-American--an utterly absurd locution--for to suggest that it is amounts to a denial that U.S. actions (as opposed to rhetoric that leeches off of the promise and ideal of “America”) can be measured by some yardstick of propriety that applies to all nations.45 The very idea of a “yardstick of propriety” requires a prior acceptance of two ideas: one, that we are part of something larger, that we are properly accountable to others and to that larger circumstance; and two, that it is not a betrayal or traitorous for a people within a nation to look within itself.46 Issacharoff and Pildes, the most prominent process theorists, observe that process jurisprudence may be inadequate to address the risk that we “might succumb to wartime hysteria.”47 I would broaden that observation so as to be open to the possibility that the risk goes beyond just wartime hysteria, that our desire for security and military victory, rooted in our repudiation of a genuine universal yardstick of propriety that we willingly apply to ourselves (often called American exceptionalism48)--which means that security and military victory are not ipso facto the same thing--could easily slide us into sanctioning a form of sovereignty that is dangerously outmoded and far out of proportion to what circumstances warrant. Process jurisprudence supposedly has the merit of putting the balance of security and liberty into the hands of the democratic institutions of our government. But what it cannot bring into the field of vision--and what is absolutely banished from view in Hamdi--is the possibility that the democratic institutions themselves, and perhaps even the democratic culture generally, the public sphere of that culture, have been corrupted so severely as to reduce process jurisprudence to a shell game.49 More specifically, the formal processes of governmentality responding to crisis is judicially monitored, but the mythos of our national identity, particularly the idea that every international crisis boils down to the unquestioned fact that the United States at least endeavors to act solely in self defense and to promote some benevolent goal that the entire world ought to stand behind, is manufactured and thus some hegemonic pursuit in this global “war on terror” remains not just juridically ignored, but muted and marginalized in much of our public discussions about it.50 Under process jurisprudence, it is the wording of a piece of legislation, not the decoding of the slogan national security, that ultimately matters. And under process jurisprudence, fundamental decisions have already been made--fundamental decisions concerning the nature of our global ambitions and the way we will pursue them--before the judiciary can confront the so-called security-liberty balance, which means that the analytical deck has been stacked by the time the justiciable question---that is, what we regard as the justiciable question---is posed. Stacking the analytical deck in this way reduces the Court members to the role of technicians in the service of whatever pursuit the sovereign happens to choose.51 This is why it is worth asking what many might regard as a naive, if not tendentious, question: is it true that in the case of Hamdi and other post-9/11 cases, the judiciary’s quandary over allocation of power is actually in the service of genuine security, meaning physical safety of the populace? Does the seemingly obvious answer that we seek only to protect the safety of our communities against naked violence blind us to a deeper ailment within our culture? Is it possible that the allocation of power, at bottom, is rooted in a dark side of our Enlightenment heritage, an impulse within Legality that threatens us in a way similar to the Thanatos drive Freud identified as creating civilization’s discontent?52 Perhaps Hamdi itself, as a cultural document, signals yet another capitulation to the impulse to embrace a form of means-ends rationality that supports the Enlightenment drive to control and subdue.53 Perhaps what Hamdi shows is that 9/11 has not really triggered a need to recalibrate the security-liberty balance, but has actually unleashed that which has already filtered into and corrupted our culture—Enlightenment’s dark side, as the Frankfurt School understood it54’’and is thus one among many cultural documents that ought to tell us we are not averting a new dark age, but are already in it, or at least, to borrow a phrase from Wendell Berry, that we are “leapfrogging into the dark.” 55 It is impossible, without the benefit of historical distance, to answer these questions with what amounts to comforting certitude. But they are worth confronting, since the fate of so many people depends on it, given our unrivaled ability and frightening willingness to use military force. Our culture’s inability to ask such questions in any meaningful way, as opposed to marginalizing those who plead for them to be confronted, is somewhat reminiscent of how early Enlightenment culture treated scientific endeavors. “Science,” during the rise of Enlightenment culture, rebuffed the why question, banished it as a remnant of medieval darkness, because the why-ness of a certain scientific pursuit suggested that certain domains of knowledge were bad, off-limits, taboo. The whole cultural mindset of the Enlightenment was to jettison precisely such a suggestion. That cultural mindset produced a faith all its own, that all scientific pursuits, and by extension all human quests for knowledge, will in the end promote human flourishing. It has taken the devastation of our planet to reveal the folly of that faith, a blind-spot in the Western mind. It may turn out, as a sort of silver lining on a dark cloud, that the terrorism arising from Islamic jihadists may do something similar.

#### **Questioning the affirmatives ontology is a prior question to the advantages; the form of social relations their advocacy embodies rests on faulty epistemology and makes extinction inevitable---vote negative as a form of noncooperation with their political economy**

Willson 13 (Brain, is a Ph.D New College San Fransisco, Humanities, JD, American University, “Developing Nonviolent Bioregional Revolutionary Strategies,” http://www.brianwillson.com/developing-nonviolent-bioregional-revolutionary-strategies/)

Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

### Off

#### COURT COUNTERPLAN

#### Text

#### The Supreme Court should determine that Article III courts have exclusive jurisdiction over the legal status of individuals indefinitely detained under the War Powers authority of the President of the United States.

#### It competes-the Supreme Court can resolve jurisdictional questions but it cannot formally “grant” jurisdiction which is a term of art and means legislation

Weinberg-prof law Texas-95

http://www.utexas.edu/law/faculty/lweinberg/powpub.pdf

When I say “the power of Congress,” I should be read—unless the context precludes it—as referring to the power of the nation, including the Supreme Court. The Supreme Court cannot enact a positive grant of jurisdiction, but as a practical matter its rulings can so affect the jurisdiction of either set of courts that the question of its power is bound up with the question of national power generally.

#### It solves---Judicial centralization over detention is already happening and has been supported by the Supreme Court

Goldsmith-prof law Harvard-9

Long-Term Terrorist Detention and Our National Security Court

<http://www.brookings.edu/research/papers/2009/02/09-detention-goldsmith>

Very few people thought this system was a good idea, and since the summer of 2004 the de facto “national security court” supervising detention has become centralized and institutionalized in two ways. First, after Rasul federal courts spontaneously determined that all habeas cases from Guantánamo should be brought to the federal district court of the District of Columbia, subject to appellate review in the D.C. Circuit.20 Justice Anthony Kennedy confirmed the appropriateness of this judicial centralization of habeas review in 2008 in his opinion in Boumediene v. Bush.21 Following Boumediene, the federal court of the District of Columbia placed Judge Thomas F. Hogan in charge of coordinating and managing the Guantánamo Bay cases; of ruling on procedural issues common to these cases; and of identifying substantive issues that are common to all.22 The second centralizing and institutionalizing move came from Congress, which in 2006 required all appeals from Combatant Status Review Tribunal determinations go to the United States Court of Appeals for the District of Columbia Circuit, and provided minimal statutory guidance on both the substance and procedure for review. In effect, then, we already have a thinly institutionalized “national security court” in the federal courts of the District of Columbia. This national security court possesses, and is further developing, some of the virtues that national security court proponents have long argued for. It is relatively centralized, it contains a limited number of judges under the procedural supervision of a single judge, it has seen many different terrorism detention cases already, and it deals with them much more efficiently than the decentralized system. The court has been developing, and will continue to develop, specialized expertise in the issues before it. It has also been developing, and will continue to develop, relatively coherent substantive and procedural doctrines and rules to deal with these cases—coherent, that is, in terms of learning from the run of cases and in treating like cases alike, especially as compared to a system

### 1nc

#### ICJ COUNTERPLAN

#### The United States Federal Government should file a declaration with the International Court of Justice submitting the question of indefinite detention for individuals detained under the War Powers authority of the President of the United States for binding adjudication by the International Court of Justice. In particular, the issue of whether or not Article III courts should have exclusive jurisdiction over the legal status of such individuals should be included for adjudication. The United States federal government will ask that the case take priority.

#### Observation One: Theory. The CP is legitimate. It test an increase in restrictions by making them contingent on an ICJ ruling. Net benefits check abuse and provide a germane policymaking warrant for voting negative.

#### Observation Two: Net Benefits

#### ICJ credibility-Submitting US use of force decisions to ICJ jurisdiction is uniquely important for the credibility of the institution-strong ICJ is vital to global stability

Meyer-American Society for International Law-3 http://hnn.us/articles/1465.html

George W. Bush drew fire from law and order advocates when in 2002 he "unsigned" (that is withdrew America from) the Treaty of Rome of 1998 that created an international criminal court. American scholars and humanists had led for many years in advocating establishment of such a court. That Court has only recently begun to function. It can try and punish persons allegedly guilty of crimes of international concern that their own nation has failed to prosecute. This self-made exemption from the Rule of Law will seem especially hypocritical as U.S. officialdom plans an international criminal tribunal to place former Iraqi leaders on trial. This recent isolation of America from global criminal law has received considerable attention. Not so the persistent American refusal to accept the compulsory jurisdiction of the International Court of Justice (ICJ), created largely by American efforts. The ICJ, also based at The Hague, has always been known semi-officially and in popular parlance as the "World Court." The new criminal court can only deal with crimes allegedly perpetrated by individuals. The role of the ICJ is confined to disputes between or among nation-states and such legal questions as may be raised by international organizations. The location of the two quite separate courts at The Hague and superficial similarity of their roles have resulted in persistent confusion as to their identity. That confusion has been compounded by the ignorance (or laziness) of headline writers who for the sake of its brevity called the criminal tribunal the "World Court" even before it began to work. When even minor disputes between nations are settled at the ICJ, there is a gain in the removal of potential irritants that can worsen relations. Some cases present issues so important that the Court's potential role as arbiter can be a significant factor in preserving peace. The protest at U.S. exemption of individuals from criminal jurisdiction has been widely reported. The continued refusal of the United States to subject its own actions, especially the use of force against others, to judgment by the ICJ has been treated as a non-event. The president who turned America's back on judgment under international law was Ronald Reagan. His action resulted from fear (especially after prominent condemnation by Senators Barry Goldwater and Daniel Patrick Moynihan) of an adverse Court ruling in Nicaragua's case against the U.S. Reagan withdrew American acceptance of mandatory jurisdiction that had been filed forty years earlier by President Truman, with unanimous support of the Senate. Republican representative Jim Leach of Iowa led opposition to President Reagan's action terminating consent to World Court jurisdiction. He said of the action of the president (put into office by his party) that "it lowers the United States to the level of international scofflaw…it symbolizes a retreat from support for the concept of international adjudication that dates back to the last century." (Hearing, House Subcomm. International Affairs Oct 30, 1985) Others agreed. Paul Simon, then senator from Illinois, in an Op-Ed in the New York Times, decried the self-inflicted wound to U S prestige. When the U.S. vetoed an otherwise unanimous Security Council call for U S compliance with the Court's ruling in the Nicaragua case, the L A Times editor's headline was "World Scofflaw" The Gorbachev regime reversed in 1998 a history of eight decades of Soviet boycott of the Court and its predecessor. The U.S. Congress acted in response. In the 1990 Foreign Relations Authorization Act there was included a call for "efforts to broaden, where appropriate the compulsory jurisdiction and enhance the effectiveness of the ICJ." There was no action taken to implement this by President G.W.H. Bush, father of the incumbent. Fifteen years earlier as U S ambassador to the U N, the earlier President Bush had officially declared in response to a U.N. survey: The United States firmly believes that a strong and active international Court is a central and indispensable element of an international legal order. Prevention of the use or threat of force to settle international disputes is essential to the maintenance of international security and is most effectively assured by the development of an international legal order and resort to a strong and respected Court. In July 1993, a congressionally created U.S. Commission on Improving the Effectiveness of the United Nations gave attention to the ICJ. It endorsed compulsory jurisdiction and recommended "to set a standard of leadership, the U.S. consider reaccepting the compulsory jurisdiction of the Court. No response from President Clinton. During a wide-ranging policy overview conducted in 1994 by the Senate Committee on Foreign Affairs, Senator Christopher Dodd raised "the issue of the World Court" and said: "I think it is sad indeed … that we have withdrawn ourselves from the jurisdiction of that Court. The Cold War is over. I think it important that we re-engage." Secretary of State Warren Christopher responded that he agreed. By his silence, President Clinton did not. That was about the last time public reference was made to U.S. refusal to accept compulsory jurisdiction. The individuals and groups previously concerned seemed to have abandoned the cause. Some had given up. Others were engaged in a new issue that had begun to seem urgent by the nineties of the 20th Century: They were distracted by the impact of the savage cruelties during the hostilities that marked the years following the break-up of the former Yugoslavia. They were appalled by the scale of the genocide in Rwanda. Demands to "do something" impacted national leaders and they turned to the Security Council of the United Nations for action. The Council responded by improvising temporary international criminal courts to try and punish criminal violation of human rights in Rwanda and the former Yugoslavia. This was not a new idea. Most well known early proposal was the call to "Hang the Kaiser," that was heard after the First World War. Intermittently discussed thereafter among publicists and in law reviews, the notion of criminal trials for war guilt was put into effect in temporary tribunals that sat in Nuremberg and Tokyo after World War II. To achieve such a result on a temporary basis seemed enough and nothing was done at the San Francisco conference that created the United Nations and the ICJ. In the last years of the twentieth century, the idea of an international criminal court became something of a cause. There came into being an "NGO Coalition for an International Criminal Court" that attracted many who had been supporters of a return to the ICJ's compulsory jurisdiction. The fruit of their efforts, joined by statesmen from several nations, was the Rome Conference of 1998 and the Treaty for a criminal tribunal of general international jurisdiction. This was the Court-to-be that was spurned by the Bush Administration. Not only that! So abhorrent was the thought of such a Court that Secretary Powell's State Department launched an international drive directed against vulnerable nations, seeking to have them abstain from joining and withdraw if they had; moreover some were persuaded to agree even to refuse extradition of alleged criminals. That the Bush administration thus has not only refused to submit to the criminal tribunal, but is actively seeking to torpedo it, has been considered reprehensible. This has sorely disappointed those who believe that crimes against humanity should not go unpunished. But President Bush cannot be fairly faulted for failing to return the United States to support an International legal system, such as was advocated by his father; one presided over, as the first president Bush urged, by a court to adjudge among the nations. He was not asked to do so and, not having been reminded, probably never gave it any thought. Postscript On May 11, 2003 Theodore Sorenson, President Kennedy's chief speechwriter, delivered the commencement address at American University in Washington, DC. In his speech he called the decision to withdraw from the World Court in 1986 a "mistake," adding: The World Court, established after World War I, to move disputes between nations from the battlefield to the courtroom, merits our full support. We must avoid a world in which any nation can decide on its own whether it has grounds to attack its neighbor, or seize its neighbor's resources. This country has both a history and an obligation of leadership in international jurisprudence. In today's unpromising, unpredictable, unruly world, stronger institutions of international justice would make the United States a safer place.

## Case

## ADV 1

### Adv 1

#### Internal link is to Britan is obviously stupid—the US suffered 9/11, is way more key to the global economy and nothing happened.

#### Impact is empirically denied-Britain economy sucked for years

**Financial Times 1-24-14**

(“The death and life of Britain’s market economy”, <http://www.ft.com/intl/cms/s/0/d45ed5c6-842b-11e3-b72e-00144feab7de.html#axzz2srSfwbI6>, ldg)

Among the reeling victims of the crash – the sacked workers, liquidated companies, beggared states – lay, for a while, the reputation of Britain’s liberal economic model. Growth powered by financial services and consumerism, an indifference to all but the most avant-garde manufacturing, a workforce trading on its flexibility rather than its productivity – these characteristics seemed benign enough during the boom years, when continental social democracy was the system with something to prove. But in little more than a year – the time it took for Britain’s economy to contract by 7 per cent, and its fiscal deficit to reach 11 per cent of gross domestic product – the sheen had rather worn off.

#### No massive retaliation to terrorist attacks

**Mueller, OSU political science professor, 2010**

(John, “Think Again: Nuclear Weapons”, January/February, <http://www.foreignpolicy.com/articles/2010/01/04/think_again_nuclear_weapons?page=0,4>, ldg)

"A Nuclear Explosion Would Cripple the U.S. Economy." Only if Americans let it.Although former CIA chief George Tenet insists in his memoirs that one "mushroom cloud" would "destroy our economy," he never bothers to explain how the instant and tragic destruction of three square miles somewhere in the United States would lead inexorably to national economic annihilation. A nuclear explosion in, say, New York City -- as Obama so darkly invoked -- would obviously be a tremendous calamity that would roil markets and cause great economic hardship, but would it extinguish the rest of the country? Would farmers cease plowing? Would manufacturers close their assembly lines? Would all businesses, governmental structures, and community groups evaporate? Americans are highly unlikely to react to an atomic explosion, however disastrous, by immolating themselves and their economy. In 1945, Japan weathered not only two nuclear attacks but intense nationwide conventional bombing; the horrific experience did not destroy Japan as a society or even as an economy. Nor has persistent, albeit nonnuclear, terrorism in Israel caused that state to disappear -- or to abandon democracy. Even the notion that an act of nuclear terrorism would cause the American people to lose confidence in the government is belied by the traumatic experience of Sept. 11, 2001, when expressed confidence in America's leaders paradoxically soared. And it contradicts decades of disaster research that documents how socially responsible behavior increases under such conditions -- seen yet again in the response of those evacuating the World Trade Center on 9/11.

### Public Attention – 1NC

#### Preventive detention fuels terrorism-gives them a consistent platform to gain support.

**Daskal, HRW senior counterterrorism counsel, 2009**

(Jennifer, “The Way Forward: A New System of Preventive Detention? Let's Take a Deep Breath”, 40 Case W. Res. J. Int'l L. 561, lexis, ldg)

Terrorists, having political motivations behind their acts, like public attention. They like to be treated as special. When Khalid Sheikh Mohammed appeared before a "Combatant Status Review Tribunal" at Guantanamo Bay, he wore the status symbol of "combatant" proudly, comparing himself to George Washington saying that had Washington been captured by the British, he, too, would have been called an "enemy combatant." n46 Treating terrorists as criminals strips them of that status and allows them to fade into relative obscurity. Judge William Young, who presided over the case of Richard Reid, understood this well. At the sentencing hearing, Judge Young rejected Reid's self-proclaimed combatant status, sentenced him to life in prison, and told him: "you're no warrior. I know warriors. [\*572] You are a terrorist. A species of criminal guilty of multiple attempted murders." n47 In bypassing the existing criminal justice system and instead placing terrorists in a newly created system of administrative detention, the United States fuels the idea that they deserve special treatment and risks elevating their status. This risk is compounded by the likelihood that such detainees will be entitled to regular reviews of their detention-keeping their names and cases in the press and making them poster children for terrorist recruiters. By comparison, the criminal justice system provides closure, allowing convicted terrorists to largely disappear from the public's eye. Those on the front lines of the fight against al-Qaeda understand this well. To reiterate the lessons from the Army's Counterinsurgency Manual: the key to victory against a non-traditional foe like al-Qaeda lies in cutting off the enemy's "recuperative power" by diminishing its legitimacy while increasing one's own. "To establish legitimacy," the manual continues, "commanders should transition security activities from combat operations to law enforcement as quickly as feasible. When insurgents are seen as criminals, they lose public support." n48 This is also a lesson that is supported by history. Between 1971 and 1975, the British army rounded up close to 2,000 individuals it believed to be associated with the Irish Republican Army (IRA) and interned them in prison camps, where they were held without charge. Violence increased, not decreased, as anti-detention anger helped fuel the conflict. Years later, the home secretary, Reginald Maudling-who once sanctioned the internments-said the experience from 1971 to 1975 was "by almost universal consent an unmitigated disaster," which has left an indelible mark on the history of Northern Ireland. n49 In the words of former British Intelligence officer Frank Steele who served in Northern Ireland during this period: "Internment barely damaged the IRA's command structure and led to a flood of recruits, money and weapons." n50 Even Edward Heath, the British Prime Minister in 1971 when internment was introduced, later called it a "mistake" which "gave the IRA a way to recruit from amongst people who had been interned, and . . . proved impossible to stop." n51 [\*573] The United States should not again repeat Britain's mistakes in Northern Ireland.

### Intel Coop – 1NC

#### Court proceedings lead to compromising intelligence AND freezes future cooperation

**Friedman et al., National Strategy Forum president and chair, 2009**

(Richard, “Trying Terrorists in Article III Courts Challenges and Lessons Learned”, July, <http://prawfsblawg.blogs.com/files/trying-terrorists-art-iii-report-final.pdf>, ldg)

There was substantial agreement among the workshop participants that the government faces unique foreign relations and intelligence issues when using classified and sensitive evidence obtained through foreign liaison relations for terrorism trials in a public Article III court. Some discussants agreed that these issues were partly legal and partly political, and that all of these issues have the potential to threaten either successful prosecution or important intelligence relations. The following is a brief account of many discussants’ concerns with the foreign relations and intelligence challenges of trying terrorists in Article III courts. First, the disclosure of evidence in some terrorism trials may force a decision about whether to expose important intelligence gathering priorities, methods, and sources. This exposure may lead to conflicting interests between U.S. intelligence and law enforcement agencies; the risk of conflict is no less substantial when using sensitive evidence as opposed to classified evidence.17 In addition, it is not always clear at the outset which intelligence information will be valuable in the future, meaning that intelligence agencies are resistant to disclosing any intelligence information unless its secrecy can be adequately safeguarded and its use will result in meaningful benefits to the government. Second, the use of classified and sensitive evidence obtained from the intelligence arm of a foreign government can pose an obstacle to future cooperation between the United States and the foreign government. Intelligence information is often shared between governments with the express understanding that such cooperation will remain secret. In terrorism trials, the prosecution may face the dilemma of either (i) turning over the evidence of foreign cooperation and thereby undermining the trust of the foreign government, (ii) proceeding with litigation on a more restricted set of evidence, or, in some rare cases, (iii) withdrawing some charges against the defendant. Third, where a secret informant only cooperates with U.S. intelligence under assurances that she will never be identified or have to testify in an American courtroom, prosecutors and intelligence officials may be faced with losing a valuable intelligence source for the purpose of prosecuting a single (or a small group of) terrorist suspect(s). The higher value the informant, the less likely the intelligence service will agree to such disclosure, meaning that the prosecution may be forced to proceed on significantly less evidence. This problem also arises where the source is a foreign intelligence agent barred from testifying in an American courtroom by her own government. A few discussants argued, however, that these were merely practical barriers for the prosecution that can be, and in past cases have been, overcome, for example, by renegotiating with an intelligence source or engaging in diplomacy with a foreign government on a case-bycase basis. Some discussants urged that criminal prosecutors often handle issues pertaining to reluctant and secret witnesses, meaning that prosecutors can continue to do so in terrorism trials. However, other discussants disagreed, asserting that the national security, intelligence, and foreign relations implications of handling secret witnesses in terrorism trials are different and more complex than secrecy considerations typically at issue in traditional criminal trials.

### Interrogation – 1NC

#### Interrogation is key to combat terrorism-limiting procedural rights is key.

**Blum, DHS attorney advisor, 2008**

(Stephanie, The Necessary Evil of Preventive Detention in the War on Terror: A Plan for a More Moderate and Sustainable Solution, 54-5, ldg)

According to the Bush administration, individuals may be significant intelligence assets, and criminal charges with the ensuing rights to counsel and right to exculpatory material would greatly halt and disrupt interrogation. Under the criminal justice system, once in custody, a defendant must be warned of his rights to counsel and against self-incrimination.10 Furthermore, a defendant in a criminal proceeding is constitutionally entitled to obtain potentially exculpatory information in the possession of the government.11 As Yoo explains, introducing a lawyer immediately after capture of an enemy combatant would disrupt interrogation as any competent defense counsel would tell his client to remain silent.12 According to former White House counsel Alberto Gonzales (later the attorney general), "[t]he stream of intelligence would quickly dry up if the enemy combatants were allowed contact with outsiders during the course of an ongoing debriefing."13 He added that such a result would be "an intolerable cost" and not required by the Con¬stitution.14 Rosenzweig and Carafano discuss how "isolation" is one of the "most successful means of productive interrogation."15 Judge Posner describes how a "detainee who feels isolated and has no access to a lawyer can more easily be pressured to provide information sought by the government."16 In fact, Khalid Sheikh Mohammed (KSM), the mastermind behind 9/11, initially demanded an attorney upon arrest and stated that he would see his captors in court.17 As explained subsequently, KSM was not provided an attorney and, according to the administration, has provided substantial intelligence that has stopped specific terrorist plots. Therefore, one purpose for a preventive-detention regime is to interrogate a terrorist suspect in isolation who may prove to be a valuable intelligence asset before criminal charges and the ensuing rights to counsel accrue. This concern about Miranda protections interfering with needed inter-rogation is not just theoretical. As explained by FBI agent Coleen Rowley, Zacarias Moussaoui (the twentieth hijacker) was in custody on 9/11 due to an immigration violation. Because he had requested a lawyer, however, the FBI was prevented from questioning him when in theory he could have possessed further information about coconspirators or a second wave of attacks.18 The situation of Padilla is particularly enlightening on this issue of interrogation as a rationale for preventive detention. Yoo describes Padilla as "an intelligence prize."19 Based on information from other captured al Qaeda operatives (discussed subsequently), the administration had intelligence that Padilla, who was arrested at O'Hare International Airport in 2002, had just come from Pakistan where he had met with high-level al Qaeda operatives with plans to detonate a radioactive bomb in a large U.S. city. Yet, upon arrest, while he had approximately $10,000 and a cell phone with al Qaeda operatives' phone numbers on it, he did not have any of the bomb-making equipment or plans on him, and he did not have the expertise to construct such a weapon himself. There were obvious questions that needed to be answered: Where would Padilla, who had an extensive violent criminal record as a juvenile, get the money, supplies, and expertise to build such a bomb? Where would he get the radioactive material? Were there sleeper al Qaeda cells in the United States?20 Although Padilla's attorney argues that Padilla could have been charged with conspiracy or levying war,21 the Justice Department did not think that it could detain Padilla very long in the criminal justice system based on the amount of evidence it had, or that Padilla would likely reveal his al Qaeda contacts if he knew he was going to be released in a matter of months.22 In a June 2004 press release, former deputy attorney general James Comey stated, Had we tried to make a case against Jose Padilla through our criminal justice system, something that I as the United States attorney in New York could not do at that time without jeopardizing intelligence sources, he would very likely have followed his lawyer's advice and said nothing, which would have been his constitutional right. He would likely have ended up a free man, with our only hope being to try to follow him 24 hours a day, seven days a week and hope—pray,—that we didn't lose him.23

## ADV 2

### Adv 2

#### Data privacy wrecks the whole relationship

**Barker, Bertelsmann Foundation trans-Atlantic relations director, 2013**

(Tyson, “BLOWN COVER: THE NSA AND THE UNRAVELING US-EU INTELLIGENCE RELATIONSHIP”, 7-3, <http://www.bfna.org/sites/default/files/BBrief%20Blown%20Cover%20-%20The%20NSA%20and%20the%20Unraveling%20US-EU%20Intelligence%20Relationship%20(3%20July%202013).pdf>, ldg)

The EU has long pined for greater respect from Washington. Negotiations over data sharing were more than discrete talks on limited framework agreements. They were a vehicle by which to develop a broader strategic relationship based on equal partnership and mutual respect with a post-Lisbon Treaty EU. US officials often found the negotiations tedious and exasperating. Since 2010, the administration and members of Congress have held extensive consultations with the European Commission and waves of EP delegations to ensure them that the systems used for data collection and analysis are limited, carefully monitored, and operating under judiciously crafted and transparent guidelines. Such assurances went a long way toward repairing the US’s damaged image in Europe. The recent disclosures have obliterated much of this effort. Even while negotiating an intricate framework for the usage of narrowly defined classifications of personal data, the NSA was voraciously aggregating Europeans’ personal and institutional data across wide swaths of territory. It will be difficult to justify this action as vital to US national security. The public debate on both sides of the Atlantic has returned to the hubristic bravado characteristic of the George W. Bush era. Former NSA chief and CIA head Michael Hayden has stated that fourth-amendment privacy protections are not part of an “international treaty” and that Europeans should “look first and find out what their own governments are doing”.20 For their part, Europeans brandish images from the 2007 German film “The Lives of Others”, which explored the deep human impact of pervasive surveillance in authoritarian East Germany. In their eyes, USA stands for “United Stasi of America.”21 Secretary of State John Kerry’s comment that the NSA’s alleged activities were “not unusual” reflects the indifference with which the US has treated the EU’s governing pathos.22 This apathy could now lead to a crisis of confidence. The Obama administration has touted the reparation of US’s global soft power as one of its greatest foreign-policy achievements. How it handles relations with Europe in its wake could demonstrate whether that achievement is enduring.

#### Relations resilient-issues don’t spillover.

**Laux, Streit Council intern, 2013**

(Jillian, “The State of the Transatlantic Relationship: Are We Really Drifting Apart”, 2-20, <http://blog.streitcouncil.org/?p=1293>, ldg)

Since the post-WWII years, it has become increasingly common, if not expected, for the U.S. and Europe to act in concert on a range of issues. They have even gone so far as to solidify their partnership through the creation of a host of international organizations, most notably NATO. The historical roots of the relationship, and its functional depth, have convinced many on both sides of the Atlantic that it is a fixture of the international order. Yet others have noted how often the partners disagree, and how the past decade has been especially wrought with disagreement and frustration as the U.S. and Europe have strategically and ideologically bumped heads over a wide-range of complex issues. The relationship has fluctuated so wildly that the idea of a deteriorating relationship among the allies is increasingly entering discussions. Many attribute the events of 2001 onwards as the beginning of crisis for the relationship. In particular, the U.S.-led invasion of Iraq sparked bitter controversy. Discontent ran rampant as both American and European publics took to the streets to protest each other’s positions, and discourse from policymakers grew increasingly cold, if not hostile, at times. Many hoped that the election of a new U.S. president and the withdrawal of troops from the Middle East would repair the fracturing relationship. However, the election of President Barack Obama, twice over, and the steady removal of troops from Iraq and Afghanistan have yet to solve the problems of the past decade; instead, they have served to highlight new and complex challenges facing the partners. Indeed, it seems as if for every issue the allies agree on these days, there are three that polarize them, spanning every realm of international affairs; from the Israeli-Palestinian conflict, to the International Criminal Court and international law in general, to global environmental issues. While arguments are never fun, they are not necessarily indicative of a failing relationship, particularly if the relationship in question is one that has known its fair share of dispute. Historically speaking, the transatlantic relationship developed in the aftermath of WWII due to the necessity of managing Soviet and German power, and to create a framework within which European nations could rebuild. Although formed out of necessity, the relationship blossomed and produced an alliance in which the partners benefitted from standing together. The ease of the relationship is often seen as resulting, not just from global circumstances, but also a common vision shared by the U.S. and Europe of how the world works, and should work. Despite their alignment of interests, the relationship was never as harmonious as some believe. Indeed, almost immediately, the vitality of the partnership was tested by challenges such as the Suez Crisis in 1956 and the Vietnam War. Similarly, while the immediate post-Cold War years ushered in a period of prosperity and stability for the partners, even these relatively uneventful years tested the bonds of friendship as the allies disagreed over how to properly handle matters such as the violent break-up of the former Yugoslavia. Given this history, the events of 2001 onwards seem little out of the ordinary for the transatlantic partners. Indeed, there are still many successes to boast about. Despite crippling recessions on both sides of the Atlantic, the transatlantic economy remains the largest and wealthiest in the world. Furthermore, the U.S. and Europe are still one another’s most important market and economic relations are only expected to deepen over the course of the next few years with the commencement of negotiations on a long-awaited free-trade agreement. And despite disagreements in the face of global challenges, the U.S. and Europe have proven that they are still capable of speaking with one voice. From the revolutions in the Middle East and North Africa, to the civil war in Syria and Iran’s nuclear program, these challenges have shown that there are still issues on which the allies present a united front. Similarly, their military alliance, NATO, has long outlived its initial purpose and proven its relevance in the post-Cold War era. It is unreasonable to presume that the U.S. and Europe will always agree on every issue. They never have, and most likely never will. While it is clear that the relationship needs work on forging a common vision on issues such as climate change and NATO’s future, the fact that they still work together on a wide range of challenges and are in the process of deepening transatlantic economic ties is worth noting. In this light, the past decade and current disagreements are less worrisome than many think.

#### Pakistan’s nukes are super secure-this is the most objective account

**Jaspal, South Asian Strategic Stability Institute advisor, 2013**

(Zafar, “Pakistan’s nuclear weapons safety and security”, 2-23, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/columns/23-Feb-2013/pakistan-s-nuclear-weapons-safety-and-security>, ldg)

The nature of debate; the conspiracy theories hatched against Pakistan’s nuclear programme and, above all, the fear of nuclear or radiological terrorist attacks necessitate serious analysis of the subject, i.e. the safety and security of Pakistan’s nuclear weapons. As the book reflects the biased approach that is immensely lacking scientific research, the following discussion is an attempt to present briefly the realistic-cum-objective account of the puzzle. Since the very beginning, Pakistan’s nuclear programme has been facing negligible internal and significant external opposition. In reality, the internal nuclear abolitionists have miserably failed to cultivate their viewpoint in the Pakistani society. The people of Pakistan have simply rejected their judgment about the demerits or repercussions of nuclear weapons in the strategic environment of South Asia. They have vehemently supported the nuclear programme and defied the malicious propaganda unleashed to hinder Islamabad’s pursuit to acquire indigenous nuclear weapons capability. Concurrently, the Government of Pakistan had constituted and implemented both short and long term policies to develop the country’s nuclear deterrence capability, particularly after India’s nuclear explosion in Rajasthan on May 18, 1974. Moreover, it has been intelligently addressing the security challenges to its nuclear infrastructure. Therefore, there has been no recorded incident of sabotage or theft of the Pakistani nuclear material to date. Needles to say, Pakistan has institutionalised highly-secured systems, which has been improved gradually to thwart internal and external security challenges to its nuclear infrastructure and arsenals, since the very beginning of the nuclear weapons programme. Immediately, after the nuclear weapons test in May 1998, the Government of Pakistan announced its National Command Authority (NCA), which comprises the Employment Control Committee, the Development Control Committee and Strategic Plans Division (SPD) - the secretariat of the Authority. The periodic meetings of the NCA, and briefings organised by the SPD, reveal that a range of overt and covert measures were adopted to guard the country’s nuclear programme. A few of the explicit measures are spelled out in the following paragraphs. First, the SPD works on behalf of the NCA, which increases its role in the nuclear decision-making. The Director General heads the SPD and is the focal person to ensure the safety and security of both the civilian and military component of the country’s nuclear programme. In addition, the separate strategic forces commands had been raised in all the three services. The services retain training, technical and administrative control over their strategic forces. Second, the custodians of the programme had established a Security Division, which today has more than 20,000 trained personnel to guard the arsenal. These trained soldiers are far superior to the terrorists. They are capable of guarding both nuclear weapons and sensitive nuclear facilities from terrorist syndicate sabotage attempts and external powers’ incursions into the nuclear weapons locations. Third, the NCA decided that nuclear weapons would not be stored at one place and very few people know about their locations. One can count these people on fingers who exactly know about the location of nuclear arsenals. The SPD introduced a very rigorous vetting process for the nuclear establishment, i.e. personal reliability programme for military personals and human reliability programme for the civilians to prevent insiders’ link with the terrorist groups. The officers, who are trusted with the weapons location information, ought to be under continuous surveillances by the intelligence agency, which is directly reporting to the high-ups of the secretariat. This methodology, certainly, conceals the location of the nuclear arsenals and also ensures the integrity of the employs. Fourth, the critics of Pakistan’s nuclear arsenals safety apparatus have failed to comprehend that its nukes are not maintained on a hair-trigger alert and, in times of peace, its nuclear warheads are maintained separately from their non-nuclear assemblies. This approach prevents accidental or unauthorised use of nuclear weapons. Fifth, the SPD has developed a foolproof security system such as Permissive Action Link system, which is modelled after the one used in the US. It electronically locks the nuclear weapons. The SPD also relies on a range of other measures, including dual key system. Sixth, Pakistan’s Parliament legislated an Act - the Export Control on Goods, Technologies, Material and Equipment Related to Nuclear and Biological Weapons and their Delivery Systems Act - in September 2004. The purpose of this Act is to further strengthen control on the export of sensitive technologies, particularly those related to nuclear and biological weapons and their means of delivery. Seventh, Pakistan established a Strategic Export Control Division (SECDIV), in the Ministry of Foreign Affairs, in April 2007. Its purpose is to further tighten control over exports by monitoring and implementing the Export Control Act of 2004. Eighth, to prevent the possibility of theft and sabotage during the transportation of sensitive nuclear materials, effective measures have been instituted to fulfil international obligations under the UNSCR 1540. Side by side, it has been ensured that specialist vehicles and tamper-proof containers are provided for the transportation of nuclear materials that are escorted by military personnel. Nevertheless, Islamabad is very actively participating in the international arrangements to prevent any nuclear or radiological terrorism. For instance, Pakistan was among the first countries that submitted a report to the UN to fulfil its obligations under the UNSCR 1540. Further, it joined the US sponsored Container Security Initiative (CSI) in March 2006 and the Global Initiative to Combat Nuclear Terrorism (GICNT) in 2007. Also, it is part of the Nuclear Security Summit (NSS) process - an initiative taken by President Barack Obama that has led to two successful summits in 2010 and 2012 held at Washington DC and Seoul. Pakistan participated in the two summits and made significant contributions in supporting the global efforts towards nuclear safety and security. Former Prime Minister Yousuf Raza Gilani, in his speech at the Seoul Summit in March 2012, had categorically stated: “Pakistan has taken effective measures, which are the most important part of its efforts to enhance nuclear security…….We have been implementing a nuclear security action plan in cooperation with the IAEA, which reinforces physical protection of nuclear medical centres and civilian nuclear plants. Pakistan has established nuclear security training centres to act as a regional and international hub to train people. “Pakistan had been deploying special nuclear material portals at key entry and exit points to detect, deter and prevent illicit trafficking of nuclear and radioactive materials…….Together, we have taken steps to create a secure world that will not live under the fear of nuclear terrorist attacks. We firmly believe that nuclear material must never fall into the hands of terrorists.” Islamabad, despite its reliable nuclear safety and security arrangements, unfortunately, confronts the joint opposition of its own nationalists, who do not miss a single opportunity (even today) to criticise, malign, and desist the positive developmental trajectory of the national nuclear weapons programme. They frequently spell out negative hypothetical scenarios and recommend the ruling elite to roll-back the country’s nuclear weapon programme without taking into account India’s fatting military muscle. Ironically, they deliberately or inadvertently ignore the trends in the South Asian strategic environment. In the same vein, there are numerous Western analysts, who are continuously highlighting similar unfounded fears mainly to malign Pakistan. They overlook the measures that it has taken over more than one decade to ensure the safety and security of its nuclear assets. In short, one can conclude that either these analysts have a nefarious agenda to soften the state’s defensive fence, or maybe they lack the strategic vision to understand the indispensability of nuclear weapons for the military security of Pakistan. As a final word, the national consensus on Pakistan’s nuclear programme and the institutionalised structure of the NCA and its secretariat constituted vigilant custodians of the country’s nuclear programme. These safety and security arrangements manifest that neither terrorist networks, nor any external power is capable to seize its nuclear weapons. Hence, the physical-protection systems at the Pakistani nuclear facilities are well-built. There are custodial safeguards, and thereby these facilities are not accessible to unauthorised outsiders and under constant monitoring process.

#### Pakistan nukes are secure

**Gregory, Durham international affairs professor, 2013**

(Shaun, “The Terrorist Threat to Nuclear Weapons in Pakistan”, 6-4, <http://www.europeanleadershipnetwork.org/the-terrorist-threat-to-nuclear-weapons-in-pakistan_613.html>, ldg)

In the fifteen years since Pakistan emerged as an operational nuclear weapons state in 1998 there has been no credible report of a terrorist seizure of nuclear weapons or nuclear-weapons related material in Pakistan, nor of terrorists penetrating and holding space within a confirmed nuclear weapons facility such as might allow them to gain access to, or otherwise create a threat with, nuclear weapons or nuclear weapons related material. This track-record, and indeed Pakistan’s similarly unblemished history during the decades since the 1950s over which Pakistan’s nuclear weapons programme has reached maturity, has persuaded many within and outside Pakistan that the risk of a terrorist threat to Pakistan’s nuclear weapons is at best overstated and at worst a myth designed to impugn the reputation of Pakistan and its Army. It is certainly the case that with the help primarily of the United States Pakistan has developed robust and serially redundant technologies and practices to assure the security of its nuclear weapons. On the technical side these include the protections of keeping weapons in a disassembled state (with warheads and fissile material kept at separate locations), the use of Permissive Action Link (PAL) technology to make weapons unusable if stolen, the use of authenticating and enabling codes to impose high-level and centralised control over the weapons and ensure against unintended or irrational use by unauthorised or Pakistan armed forces personnel, and the use of concentric physical barrier and related technologies (such as cameras and motion sensors) which impose security around the environments of nuclear weapons facilities, at the perimeter of such facilities, and around the weapons or weapons related material within those facilities. On the procedural side Pakistan’s nuclear weapons safety and security is under the purview of the Strategic Plans Division (SPD) which began operations in December 1998, the same year as the tests, and which since that time has been under the leadership of the same individual, Lieutenant General Khalid Kidwai (retd). The fact that Lt Gen. Kidwai, and many of those closest to him, has remained in post so long (defying the usual promotional rotation and retirement norms of the Pakistan Army) and that the SPD has close relations with the United States, has provided an enclave context of stability and bilateral reassurance within which the size and competence of the SPD has continued to grow and within which it has been possible for Pakistan to find responses to security and safety threats as these have emerged. The authority and control of the SPD over those who operate and have roles in the maintenance, transport, deployment, operations, and protection of Pakistan’s nuclear weapons and related infrastructure (thought to number between 40,000 and 70,000 people in total) is maintained through a variety of means. These include robust recruitment and personnel reliability screening to exclude or rotate out of existing duties those thought to be unreliable or potentially subject to outside pressures (for example of blackmail, honey-trap, foreign sympathies, and so forth); the use of intelligence elements within the SPD (intelligence, counter-intelligence and security teams and directorates) to oversee those with operational nuclear weapons duties; the use of other intelligence agencies (primarily the ISI) to vet and monitor those with access to nuclear weapons or nuclear weapons related materials; and the use of the “two-person rule” meaning that all activities related to nuclear weapons operations must include the decisions and actions of at least two individuals. The latter operates throughout the chain of command from the civil-military composition of Pakistan’s National Command Authority (NCA) which includes the Prime Minister, senior ministers and armed forces personnel, and which has overall authority over nuclear weapons and directs the SPD (formally at least), down to the individuals operating a single nuclear weapon.

### Court Clog – 1NC

#### Courts can’t handle a bunch of detainees

**Wittes, Brookings governance studies senior fellow, 2010**

(Benjamin, Detention and Denial: The Case for Candor After Guantanamo, 117-8, ldg)

The system's major disadvantages involve its limited capacity with respect to processing large numbers of detainees. It works best when dealing with small numbers, and using it as a mecha¬nism for processing sudden influxes of hundreds or thousands of detainees is inconceivable. Its legitimacy comes from the care with which it considers the evidence of each element of each offense alleged against each captive, a feature that makes it far too labor intensive and evidence intensive to handle huge volumes of detainees. Still, for periods in which the number of captives remains low—periods in which U.S. combat forces can rely on well-developed proxies for overseas detentions—the justice sys¬tem can and will bear a great deal of the weight. That is by and large a good thing, as its use oftentimes achieves the best balance of society's many interests in a detention. That said, the system is far from perfect, and its use often has real costs and dangers. If there exist ways to augment its capacity and to allow it to handle a greater percentage of captives more comfortably, that could both minimize controversy and maximize the effectiveness of what is, in many instances, the most effective system

#### Court clog turns detainee’s rights-takes out any perception of legitimacy

**Guiora, Utah law professor, 2009**

(Amons, “Creating a Domestic Terror Court”, 4-14, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1401982>, ldg)

This was abundantly clear to me when I testified before the Senate Judiciary Committee,'12 where the proponents of Article III courts repeatedly emphasized how well the process had worked in one particular case. My response was: We are talking about thousands of trials, not one. Jury trials and traditional processes are not going to provide defendants with speedy trials, but in fact, quite the opposite. Bench trials- with judges trained in understanding and analyzing intelligence information- will much more effectively guarantee terrorism suspects their rights. That is, the traditional Article III courts will be less effective in preserving the rights and protections of thousands of detainees than the proposed DTC. I predicate this assumption on a "numbers analysis": not establishing an alternative judicial paradigm will all but ensure the continued denial of the right to trial to thousands of detainees. A recent report published by Human Rights First defends traditional Article III courts' abilities to try individuals suspected of terrorism. 13 The authors demonstrate confidence in the courts' abilities to maintain a balance between upholding defendants' rights while simultaneously keeping confidential information secure.'4 Nevertheless, the report recognizes the limitations inherent in trying terrorist suspects in traditional courts as illustrated by the discussion concerning Zacarias Moussaoui's trial. 15

#### JAGs are finite; takes out solvency

Corn and Chickris 12 (Presidential Research Professor of Law, South Texas College of Law; Lieutenant Colonel (Retired), U.S. Army Judge Advocate General’s Corps. Prior to joining the faculty at South Texas, Professor Corn served in a variety of military assignments, including as the Army’s senior law of war advisor, supervisory defense counsel for the Western United States, Chief of International Law for U.S. Army Europe, and as a tactical intelligence officer in Panama, AND \* J.D., South Texas College of Law, “Unprivileged Belligerents, Preventive Detention, and Fundamental Fairness: Rethinking the Review Tribunal Representation Model,” http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1110&context=scujil&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fq%3Dhttp%253A%252F%252Fdigitalcommons.law.scu.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1110%2526context%253Dscujil%26sa%3DD%26sntz%3D1%26usg%3DAFQjCNHWYVWVmRTJx18MgjoGkakzI47S8A#search=%22http%3A%2F%2Fdigitalcommons.law.scu.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1110%26context%3Dscujil%22)

The third consideration that likely contributed to the lay representative approach is feasibility. A simplistic assessment of the cost-benefit equation might suggest that providing lay representation for suspected unlawful enemy belligerents is logical. The numbers and availability of non-legal military officers capable of being trained in representation duties is inherently more extensive than the narrower sub-set of available military legal officers. Judge Advocates are also a finite resource already involved in the support of military operations in unprecedented numbers. Providing a military lawyer for every captive facing an indefinite detention hearing would create an additional burden on this finite pool of military lawyers. If the focal point of satisfying the representation requirement is technical aptitude, then the availability of an alternate source of officers to perform these duties would seem an attractive and logical alternative

### Solvency Turn – 1NC

#### Military commissions are a sunk cost-relying solely on federal courts magnifies the risk of due process circumvention AND unsuccessfully detaining terrorists

**Huq, Chicago law professor, 2012**

(Aziz, “Forum Choice For Terrorism Suspects”, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1534&context=dlj>, ldg)

But it is also likely that the proposal would have effects that run counter to the intentions of its advocates. Extinguishing the redundancy that obtains from military forums would eliminate the possibility of positive jurisdictional arbitrage and the use of a second forum as a safety valve, at least in the absence of an immigration violation on the suspect’s part. Doing so raises the stakes in any given trial. When there is reason to believe that a suspect presents a credible risk but the admissible evidence is weak for reasons unrelated to the government’s investigative effort, a judge is under implicit or explicit pressure to bend procedural rules in deference to the government. This situation does not necessarily generate pressure to innovate in positive ways. Rather, it may translate into pressure upon risk-averse judges to grant more leeway to the government. More deference from judges would undermine the checking function Article III judges are supposed to play in terrorism cases. It would also compromise the information-forcing role of judicial review. Such pressures also may yield procedural rollback not only in terrorism related cases but across the body of criminal litigation to the detriment of criminal suspects. Criminal-procedure rights, after all, are transubstantive, and courts may bend generally applicable rules rather than allowing suspected terrorists to evade punishment or crafting ad hoc terrorism exceptions to constitutional rights. Although causation is hard to establish, judicial changes to Fourth Amendment and Confrontation Clause protections after 2001 may fairly be seen as evidence of precisely this sort of transubstantive slackening of constitutional criminal-procedure protections.309 The Article III-only proposal might be self-defeating in another way. By eliminating the insurance option created by redundancy and by streamlining existing reserve capacity, the proposal may make the jurisdictional system as a whole more vulnerable to failure in the teeth of an exogenous shock. The failure of such a system to interdict a terrorist who goes on to commit a serious attack would quite likely induce a political reaction that would undo the reformers’ goals. The gain from elimination of a military option that is presently in rare use may be smaller than first appears for other reasons.310 Recall that several redundancy-related costs have concave cost curves in relation to the extent to which redundancy is used. Absent heavy use, that is, jurisdictional redundancy may not generate large demoralization, de-skilling, or marginal-deterrence costs. Hence, redundancy in relative desuetude may not be as costly as is generally believed. By contrast, those costs with a convex curve—such as the high startup costs of military commissions and any attendant political legitimacy losses—already will largely have accrued at the point that redundancy is eliminated from the system. The costs turn not on the use of a forum, but on its creation. Under such conditions, this second kind of costs represents what economists would call a set of sunk costs, which should be ignored for the purpose of forward-looking design decisions. Put these cost curves together, and it becomes apparent that eliminating rarely-used military jurisdiction may not bring large welfare gains because the costs of such jurisdiction have either been irredeemably expended or not yet accrued. In short, attention to the cost curves of redundancy-related harms suggests that it would likely be inefficient to expend the costs of moving from the status quo ante of pervasive but scantily used redundancy to one of exclusive Article III jurisdiction. At the same time that it makes only ambiguous movement toward its putative libertarian goal, this proposal would have several unintended and undesirable policy effects: First, it would potentially reduce accuracy by eliminating opportunities to correct first-round false negatives. Second, it would eliminate competition-related incentives among forums that have fostered procedural innovation. Third, it would extinguish the government’s choice as to whether or not to use a costly procedure in a given case. By cutting off a choice that has worked as a source of information for congressional overseers, the proposal may increase agency costs. Whereas under the existing scheme Congress can assess what proportion of cases are prepared on the basis of robust and relatively reliable evidence, as opposed to thinner records, in a world in which Article III jurisdiction were to be mandated, agencies simply would not press some cases. Any informational effects created by forum choice would evaporate.

## 2nc

## CP

### A2: CP illegitimate

#### Elmore!

Elmore-80, Prof. Public Affairs at University of Washington, PolySci Quarterly 79-80, p. 605,

The emergence of implementation as a subject for policy analysis coincides closely with the discovery by policy analysts that decisions are not self-executing. Analysis of policy choices matter very little if the mechanism for implementing those choices is poorly understood in answering the question, "What percentage of the work of achieving a desired governmental action is done when the preferred analytic alternative has been identified?" Allison estimated that in the normal case, it was about 10 percent, leaving the remaining 90 percent in the realm of implementation.

### A2: Perm-Do Both

#### Doesn’t solve politics; the Court must act first to provide political cover.

Garrett and Stutz 2005 (Robert T. Garrett and Terrence Stutz, Dallas Morning News, “School finance now up to court Justices to decide if overhaul needed after bills fail in Legislature” lexis)

That could foreshadow the court's response to a chief argument by state attorneys – that the court should butt out and leave school finance to the Legislature. A court finding against the state would put the ball back in the hands of lawmakers, who have tended to put off dealing with problems in schools, prisons and mental health facilities until state or federal judges forced them to act. "It's the classic political response to problems they don't want to deal with," said Maurice Dyson, a school finance expert and assistant law professor at Southern Methodist University. "There is no better political cover than to have a court rule that something must be done, which allows politicians to say their hands are tied."

### A2: Perm-Do the CP

#### Granting jurisdiction explicitly requires congressional action

MIB Law 13

Federal Subject Matter Jurisdiction

http://www.miblaw.com/lawschool/federal-subject-matter-jurisdiction/

Federal courts have limited jurisdiction (as opposed to the general jurisdiction of state courts)\*. Limited jurisdiction means that the federal courts only have the jurisdiction affirmatively granted to them. Who grants this jurisdiction? Well, federal subject matter jurisdiction requires two things: constitutional authority and congressional authorization to use that authority. Specifically, the constitutional authority comes from Article III of the United States Constitution and the congressional authorization comes from statutes that are passed by Congress. In order to have original subject matter jurisdiction, a federal district court must meet BOTH requirements.

#### Grant implies an external actor---the Court cant grant something to self

Google Dictionary

<https://www.google.com/search?q=grant&oq=grant&aqs=chrome..69i57j0j69i61j69i59l2j0.826j0j7&sourceid=chrome&espv=210&es_sm=93&ie=UTF-8#es_sm=93&espv=210&q=grant+define>

grant

verb

1.

agree to give or allow (something requested) to.

"a letter granting them permission to smoke"

#### Granting jurisdiction means Congress

Wojciechowski-Law clerk Southern District of Texas, Victoria Division-9

Federalism Limits on Article III Jurisdiction

http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1011&context=nlr

Oddly missing from the entire discussion has been the constitution. This is understandable because jurisdictional issues are usually presented as statutory questions: Congress has the power to deter mine how much jurisdiction to actually grant to the federal courts, up to the jurisdictional ceiling created by Article 111. So whether a federal court has jurisdiction is often a question of whether Congress has granted jurisdiction, rather than whether the Constitution permits Congress to do so. The constitutional ceiling lurks in the background of jurisdictional questions, yet it has been ignored in the recent de- bates about subject-matter jurisdiction.5

### Court better

#### The CP solves better-New legislation would inevitably become politicized, lead to court challenges, create delays and incoherent jurisprudence

Nesbitt-JD Candidate Minnesota-10 95 Minn. L. Rev. 244

Note: Meeting Boumediene's Challenge: The Emergence of an Effective Habeas Jurisprudence and Obsolescence of New Detention Legislation

Furthermore, even if, from an abstracted institutional perspective, Congress is better suited to the task, there is good reason to doubt that Congress would, in fact, produce reasoned, sensible detention legislation. New legislation is likely to be less the result of reasonable deliberation and more a function of interest group politics. 195 A habeas reform bill introduced by Lindsey Graham in early August 2010 illustrates this point. 196 The bill would require the D.C. district courts to give "utmost deference" to the executive's determination as to whether a particular organization is associated with al Qaeda or the Taliban. 197 [\*280] In essence, this provision would take from Congress its constitutional power to determine the entities with which the United States is at war. 198 The criticism, then, is that even if institutionally competent, Congress may not be politically competent to pass detention legislation that would be any more effective than the habeas litigation has proven to be. 199 And, like the Graham bill, resulting legislation may well raise serious constitutional concerns, the resolution of which would only further delay the habeas proceedings. In any case, new legislation would also be subject to interpretation by courts, and so - rather than clarifying the law - may only destabilize the increasingly coherent jurisprudence. 200 It bears emphasizing that the political branches could pass new detention legislation that appropriately reckoned with the implications of Boumediene, ensuring that detainees have a prompt, meaningful chance to contest their status, to assess the evidence against them, and so on. 201 The suggestion here, however, is that the game would not be worth the candle: the federal courts in Washington, D.C. have already done this work for them. C. Congressional Inaction The best option is, in the end, the simplest one. The political branches should allow the courts to continue to adjudicate habeas petitions on the basis of the AUMF as construed in Hamdi and in light of the Court's guidance in Boumediene. As has happened over the last two years, remaining differences among judges will likely narrow over time as the jurisprudence matures. 202 True, as Judge Brown pointed out in urging congressional [\*281] action, the common-law process depends on incrementalism and eventual correction, and may be most effective where there are a significant number of cases brought before a large number of courts; by contrast, the number of Guantanamo detainees is limited, the circumstances of their confinement are unique, and all cases are heard before the D.C. courts. 203 Yet, as Part II demonstrated, even as district court judges have rejected the alternative approaches of their colleagues on both substantive and procedural issues, 204 the common-law process has already worked to resolve many of these disagreements. And that all habeas cases are heard before the federal courts in Washington, D.C. is a virtue rather than a vice, as it allows the D.C. judges to rapidly accumulate expertise. 205 A central purpose of the habeas litigation is to allow each detainee a fair and equal chance to challenge his confinement. The early months of litigation gave reasons to doubt whether that was happening. But times have changed. Detainees need not wait for the law to cohere on some future date; it is already beginning to do so. While detainees do not benefit from all aspects of the jurisprudence emerging from the D.C. Circuit, the law is at least becoming coherent and consistent enough to provide every detainee the same, genuine opportunity to challenge his detention. The D.C. Circuit has not resolved every divergence, nor could it. Some disagreements, rooted in different conceptions of the appropriate amount of deference to accord the government in light of Boumediene, will persist. 206 Given the convergence of [\*282] substantive detention standards discussed above, such disagreements may increasingly be about procedural matters. From a uniformity standpoint this result is less of a problem. Procedure is an area of unique judicial expertise; district court judges are well suited to develop procedures that ensure accurate fact-finding and a fair - or at least reasoned and public - resolution of each habeas case. 207 It would be unwise to mandate a one-size-fits-all procedural framework for cases that are widely recognized to be "unique" and "unprecedented." 208 CONCLUSION The Guantanamo habeas cases have challenged our court system. With little guidance from Congress or the Supreme Court, federal judges have been muddling through the habeas cases for over two years. But while district court judges have disagreed about both substantive and procedural issues, the D.C. Circuit has resolved the most salient of these disagreements. As a result, the habeas jurisprudence is increasingly coherent, and effectively provides each detainee with the same, meaningful chance to challenge his detention. Moreover, the many detainee wins have not come at the expense of laying precedent that threatens U.S. national security. Indeed, the standards emerging from the D.C. Circuit are, if anything, overly protective of national security prerogatives at the expense of detainee liberty. For detainees as well as for the government, then, habeas works. Many eight-or-more-year denizens of Guantanamo never belonged there, and the story of their detention will no doubt long stain the reputation of the United States as a champion of individual liberty and human rights. But the story recounted [\*283] here is not an unmitigated failure of these principles. Boumediene gave detainees access to a process that has led many to freedom; Fouad Al-Rabiah, the aviation engineer discussed in the Introduction, is now at home in Kuwait. 209 In sum, the habeas cases decided so far suggest that the wisest course of action is also the simplest and most politically attractive. Congress should stand back and allow the habeas litigation to proceed.

### A2: Court cant clarify jurisdiction

#### ---The CP is just an extension of Boumediene

Brighten-Jurisprudence and Social Policy Program, Berkeley-10

‘TheWay Ahead’ orThe Status Quo? Why National Security Court Proposals Threaten Judicial Independence A Review of Glenn Sulmasy’s TheNational SecurityCourt System: ANatural Evolution

of Justice in an Age of Terror1

<http://laworgs.depaul.edu/journals/RuleofLaw/Documents/Brighten%20-%20final.pdf>

In response to Hamdan, Congress enacted the Military Commissions Act of 2006, 33 authorizing a reformulated system of military commissions to prosecute ‘alien unlawful enemy combatants’. 34 This legislation precluded the latter individuals from seeking habeas corpus review, and instead provided a more limited and streamlined review process.35 The cataclysm erupted two years later, when the Supreme Court in Boumediene v. Bush 36 held the former section of the Military Commissions Act unconstitutional for suspending the Great Writ without adequate substitute, thus effectively and unprecedentedly mandating direct access to federal courts for aliens detained outside the United States.37 Sulmasy dedicates a large portion of chapters five and six to a near-diatribe about judicial intrusion in Boumediene, echoing a case comment he penned the previous year.38 “After Boumediene,” Sulmasy asserts, “the decision regarding military detention of enemies is purely in the hands of the civilian courts . . .the least accountable branch.” 39 The military, according to Sulmasy, will now “hav[e] the Supreme Court as their new operational commander,” owing to the court’s “inject[ion] [of] their policy preferences into military decision making . . . intrud[ing] on what is clearly the province of the political branches.” 40 This intrusion, predicts Sulmasy, will “complicate[] the mission for both the commanders in the field and the executive branch during an ongoing war.” 41 Moreover, Sulmasy warns that Boumediene, absent swift response by the political branches, will inevitably catalyze further judicial development of constitutional protections for ‘unlawful combatants’, effectively impeding the executive’s ability to pursue national security policy and to prosecute suspected terrorists. 42 Sulmasy’s reaction to Hamdan and Boumediene, though harsh, is not idiosyncratic; indeed, it mirrors that of other conservative commentators.43 It should be noted, moreover, that many scholars – regardless of political bent – acknowledge the Supreme Court’s unusually assertive posture in these decisions.44 In particular, Boumediene constitutes the first-ever decision by which the Supreme Court invalidated a military policy measure supported by both other branches during a time of purported warfare.45 This aspect, at least – to be fair to Sulmasy’s account – is not mere hyperbole invented by conservative critics. The bulk of The National Security Court System, then, presents an indictment of the judiciary’s post-9/11 reversal of what Sulmasy considers proper inter-branch relations, as he perceives the latter to have existed throughout the span of U.S. history. Hamdan and Boumediene, according to Sulmasy’s analysis, represent a fundamental rift between the good old days of judicial deference and the current period of unprecedented intrusion. As a descriptive proposition, Sulmasy’s thesis is questionable in certain respects. 46 Its empirical fallibility is unimportant for this review’s purposes, however; accurate or not, the book’s primary thesis furnishes Sulmasy’s impetus for his national security court system, and as this essay will explain below, fundamentally characterizes the political nature of that proposal.

#### ---Hamdan proves the Court can clarify their role in Detention policy

Calabresi-prof law NU-7

THE UNITARY EXECUTIVE, JURISDICTION STRIPPING,AND THE HAMDAN OPINIONS: A TEXTUALISTRESPONSE TO JUSTICE SCALIA

http://www.utexas.edu/law/journals/tlr/sources/Issue%2090.1/Kleinerman/RP%20CU/kleinerman.fn54.jurisdictionstripping.pdf

Hamdan argued in the Supreme Court that to read the Detainee Treatment Act to strip jurisdiction over pending habeas cases, as did Justice Scalia, “raises grave [constitutional] questions about Congress’ authority to impinge upon this Court’s appellate jurisdiction.”11 The Hamdan majority did not need to address this constitutional question because it (wrongly, in our view) read the Detainee Treatment Act to preserve jurisdiction over pending cases,12 but Justice Scalia’s construction of the statute required him to address Hamdan’s constitutional claims. He casually dismissed the possibility of any “lurking questions”13 about Congress’s power to strip the Supreme Court’s jurisdiction “in light of the aptly named ‘Exceptions Clause’ of Article III, § 2, which, in making our appellate jurisdiction subject to ‘such Exceptions and under such Regulations as the Congress shall make,’ explicitly permits exactly what Congress has done here.”14 We think that while Justice Scalia may have been right on the specific facts of Hamdan, 15 his broader claims about Congress’s power to strip jurisdiction from the Supreme Court are textually wrong. Simply put, Article III requires that the federal judiciary be able to exercise all of the judicial power of the United States that is vested by the Constitution and that the Supreme Court must have the final judicial word16 in all cases, such as Hamdan’s, that raise federal issues. These conclusions flow quite naturally from an originalist methodology that looks to the objective meaning of the Constitution that would have been held by a hypothetical reasonable observer in 1788 and that relies primarily on textual, intratextual, and structural arguments.17 Ironically one can make a strong case for Justice Scalia’s view of congressional power to control Supreme Court jurisdiction using legislative history and consequentialist arguments—tools that Justice Scalia normally abjures. But the more one focuses on formalist arguments from text and structure, the more clear it becomes that the Supreme Court is constitutionally vested with the final judicial say on matters within (at least the first three of) the heads of jurisdiction granted to the federal courts in Article III.

## ICJ

#### Regime strategy is repression now, makes transition inevitable. Only reformism can prolong the life of Putinism.

Shevtsova 2013

Lilia, senior fellow at the Carnegie Moscow Center, Russia XXI: The Logic of Suicide and Rebirth, JANUARY 31, 2013, http://carnegie.ru/2013/01/31/russia-xxi-logic-of-suicide-and-rebirth/fb54#

LONG LIVE THE CRISIS! If the current trends continue in Russia, its economic, social, and political decay will continue, which will bring inevitable geopolitical decline. A country cannot renew itself or strengthen its role on the international scene, after all, if the authorities are intent only on maintaining the status quo indefinitely, relying on the segments of society that are totally dependent on budget largesse, and stamping out dissent. The ability of the Russian system to adapt to the new internal and external circumstances continues to decrease. The authorities try to respond to new challenges mainly through coercion. The regime cannot change the political and social rules of the game, because that would mean new and unpredictable outcomes, and the Kremlin fears these more than it fears the results of the current rot. Francis Fukuyama has identified two key forms of political decay: first, the failure of the ruling elites, not just to change outmoded institutions, but also "to perceive that a failure has taken place." In Russia the situation is even more hopeless: The majority of the elite understands the suicidal path the country is on but is unable to change it. The second form of political decay is "repatrimonialization," when the ruling elite tries to pass on its positions to its children or friends. "The two types of political decay - institutional rigidity and repatrimonialization - oftentimes come together, as patrimonial officials with a large personal stake in the existing system seek to defend it against reform," concludes Fukuyama in "The Origins of Political Order: From Prehuman Times to the French Revolution." This process is taking place in Russia: politics and business have turned into a family affair for the influential clans that came to power under Yeltsin and Putin. Neo-patrimonialism helps to secure vested interests but also increases the dysfunctional nature of the system from the standpoint of society as a whole. Exactly how this political decay will develop and what forms it will take are still very unclear. Will it be a lengthy process of stagnation and decline that goes beyond any timeframe we can adequately measure today? Or will it be interrupted by social and political explosions, and, if so, when and with what consequences? Would these explosions (or explosion) just lead to the continuation of the authoritarian system under a new guise, or would it transform Russia into a liberal democracy? I would argue that gradual stagnation, even with "spots" of activism and signs of potential and even real growth in some economic areas (though this growth will hardly be of an innovative nature), is the less inspiring scenario for Russia - and even a threatening one. It will gradually exhaust society's drive and longing for real change. The most dynamic representatives of society will leave Russia, and the country will continue to plod ahead toward an incurable depression that will last for a very long time.

#### Political reforms pacify moderates – means the next wave of protests will be limited and unsuccessful.

Shevtsova 2013

Lilia, senior fellow at the Carnegie Moscow Center, Russia XXI: The Logic of Suicide and Rebirth, JANUARY 31, 2013, http://carnegie.ru/2013/01/31/russia-xxi-logic-of-suicide-and-rebirth/fb54#

The political mobilization from December 2011 to September 2012 eventually died down to a lull. The Kremlin managed to mobilize itself and develop counter-tactics, cracking down on the opposition and on civil society. But another irony has become apparent: the way that the regime and the Russian system defend themselves will only accelerate their demise. They have limited repressive resources and cannot use all of them out of fear of provoking both a Western response and a domestic counteroffensive. There is another problem of which the Kremlin has become aware: even if it starts to use coercion on a mass scale, thus risking bloodshed, it cannot be sure (as I've mentioned before) that the repressive machine will obey orders. It cannot use selective repression for very long, because this will ignite a new explosion: the most dynamic part of society cannot be cowed. At the same time, it does not have enough money to bribe the entire population for an extended period of time, as economic stagnation is constantly shrinking the budget pie. Meanwhile, the opposition continues to reinvent itself and to seek new forms of coordination, and its impact will gradually expand outside of Moscow, feeding on the growing social and economic discontent. The demand for alternatives to the regime and system remains, and it will provoke a new process of both deliberation and activity. For the time being, the protest movement that emerged in December 2012 (the Decembrists) has to learn the lessons of the recent past and prepare for future challenges. Two factors hinder the new protest wave: the authorities' attempts to tighten the screws on society and scare the hesitant moderates, and the moderates' willingness to convince themselves and society that the Kremlin can still be persuaded to behave decently, or even to reform itself. At the same time, the impatient minority is growing more radical, more restless, and more politicized. It is worth remembering that the radicalization of protest movements in Russian history has always followed periods of disappointed hopes for liberalization. Discontent with the limited nature of tsarist reforms led to the emergence of terrorism in Russia in the late 19th century, and in 1917 unfulfilled hopes for change set off what would become one of the 20th century's bloodiest revolutions. Today, the modernization rhetoric of the Medvedev presidency, supported and disseminated by numerous optimists, has ended in a backlash. Disappointment with this outcome has also played a part in bringing discontent to the surface. By clamping down on the most advanced part of society (the parts that could be the basis for modernization), and by openly appealing to the instincts of society's traditionalist segments, the Russian ruling group has proved that it is not ready to risk any reform. The continuing presence of system liberals in Putin's court and the emergence of various new Potemkin village councils of experts and even human rights defenders do not change the nature of the Kremlin's rule.

#### Halfway protests will be used to justify new authoritarianism and military adventurism.

Shevtsova and Kramer 2013

Lilia and David, senior fellow at the Carnegie Moscow Center and former Assistant Secretary of State for Democracy, Human Rights and Labor, The Authoritarian Surge, July 3 2013 http://www.the-american-interest.com/article.cfm?piece=1459

It is quite possible that, having exhausted the above means of power preservation, authoritarian leaders may resort to one more instrument that similar regimes had used in the past: exploiting an external conflict. For instance, Morsi could attempt to deflect attention from his own declining fortunes by instigating an armed conflict with Ethiopia, which has decided to build a hydroelectric dam on the Blue Nile that will reduce the water supply to Egypt.Aliyev of Azerbaijan may try to reclaim the Nagorno-Karabakh region. In any event, escalating internal repressions often go hand in hand with a country’s militarization and its readiness to flex its muscles on the international scene. Putin’s attempt to launch a return to militarization, which has always served as a way to preserve personalized power in Russia, is an even starker example of how these trends become intertwined. The new wave of authoritarianism is emerging just as the West is faced with crisis, a lack of leadership, and a search for responses to several new challenges. The new authoritarian leaders have used Western decline to justify their moves toward harsher authoritarian rule. Also of note is the disillusionment in democratic institutions in Central-East Europe, which has to do in part with the difficulties of their transformation and integration into the Euroatlantic community. Another explanation for the new authoritarianism is the weakness of the oppositions—primarily the liberal ones—which have been unable to present viable alternatives to the personalized regimes. The new authoritarianism is also fueled by abortive or halfway revolutions—that is, by social and political awakenings that fail to change the rules of the game or structures of governing. In the case of Egypt, this awakening has only led to a regime change at the top, but the movement in Tahrir Square has essentially been hijacked—first by the military and then by the Muslim Brotherhood. In the cases of Ukraine and Georgia, the hopes that accompanied their respective revolutions dissipated and over time have been replaced by the emergence of more bureaucratic-authoritarian rules. In Russia, certainly, and possibly Turkey as well, protests have given the regime an excuse to intensify repressions and introduce elements of a police state.

## ADV 1

### Intel Coop – 2NC

#### Discovery obligations are huge AND revealing methods and sources closes the knowledge gap

**McCarthy, Foundation for Defense of Democracies senior fellow, 2005**

(Andrew, “War Crimes Research Symposium: "Terrorism on Trial": Terrorism on Trial: The Trials of al Qaeda \*”, 37 Case W. Res. J. Int'l L. 513, lexis, ldg)

Under circumstances where such a profound threat was metastasizing in this manner, it was simply unacceptable to neutralize fewer than three dozen terrorists over eight years -- and that at a cost so prohibitive in time and resources (many of these cases even now still being on appellate or collateral review) that one quickly realizes the system could not have tolerated many more. n6 Eliminating such a piddling fraction of a committed enemy was a sure prescription to be hit repeatedly. And so we were. [\*518] Nothing, moreover, galvanizes an opposition, nothing spurs its recruiting, like the combination of successful attacks and a conceit that the adversary is reacting weakly. For zealots willing to immolate themselves in suicide-bombing and hijacking operations, mere prosecution is a provocatively weak response. No one, for example, was called to account for the 1996 Khobar attack in which nineteen U.S. airmen were killed. In 1998, bin Laden issued repeated threats, including a call for the murder of American civilians and military personnel wherever in the world they were found; there was no response. Later that year, the embassy bombings claimed over 240 lives; the nation responded with one episode of ineffectual cruise missile attacks on dubious targets, and an indictment where it took three years to prosecute a handful of (mostly) low-rung operatives. In the interim, when the Cole was bombed in Yemen, resulting in the deaths of seventeen naval personnel, the nation took no responsive action at all (not even returning an indictment until two years after the 9/11 attacks). Put succinctly, where they are the sole response to terrorism, trials inevitably cause more terrorism: they leave too many militants in place and they encourage the notion that a nation may be attacked with relative impunity. 2. Confusing Executive Roles and Educating the Enemy Equally perilous to national security as the general philosophy of combating terror by trials are the nuts-and-bolts of trial practice itself. Under discovery rules, the government is required to provide to accused persons any information in its possession that can be deemed "material to the preparation of the defense" ( Rule 16, Fed.R.Crim.P.), or, under current construction of the Brady doctrine, any information that is even arguably exculpatory. The more broadly indictments are drawn, the more revelation of precious intelligence due process demands -- and, for obvious reasons, terrorism indictments tend to be among the broadest. n7 The government must also disclose all prior statements made by the witnesses it calls (18 U.S.C. Sec. 3500) and, often, statements of even witnesses it does not call [\*519] ( Rule 806, Fed.R.Evid.). In capital cases, moreover, Brady is expanded, requiring surrender not only of evidence that is colorably exculpatory, but also of that which, even if inculpatory, might induce a jury to vote against the death penalty (e.g., any information tending to show the defendant committed a terrorist act but was a hapless pawn in the chain-of-command). This is a staggering quantum of information, certain to illuminate not only what the government knows about terrorist organizations, but the intelligence agencies' methods and sources for obtaining that information. When, moreover, there is any dispute about whether a sensitive piece of information needs to be disclosed, the decision ends up being made by a judge on the basis of what a fair trial dictates, rather than by the executive branch on the basis of what public safety demands. This is a fine state of affairs when the matter at hand is truly a law enforcement issue. International terrorism, however, is not such an issue, and treating it as if it were dangerously confounds significantly different duties imposed by our system on the executive branch. In law enforcement, as former U.S. Attorney General William P. Barr explained in his October 2003 testimony before the House Select Committee on Intelligence, government seeks to discipline an errant member of the body politic who has allegedly violated its rules. That member, who may be a citizen, an immigrant with lawful status, or even, in certain situations, an illegal alien, is vested with rights and protections under the U.S. Constitution. Courts are imposed as a bulwark against suspect executive action; presumptions exist in favor of privacy and innocence; and defendants and other subjects of investigation enjoy the assistance of counsel, whose basic job is to thwart government efforts to obtain information. The line drawn here is that it is preferable for the government to fail than for an innocent person to be wrongly convicted or otherwise deprived of his rights. Not so the realm of national security, where government confronts a host of sovereign states and sub-national entities (particularly terrorist organizations) claiming the right to use force. Here the executive is not enforcing American law against a suspected criminal, but exercising national-defense powers to protect the nation against external threats. Foreign hostile operatives are generally not part of the fabric of American life, and thus not vested with rights under the American Constitution. The catalytic concern in this realm is to defeat the enemy, and as Barr puts it, "preserve the very foundation of all our civil liberties." The line drawn here is that government cannot be permitted to fail. In that context, the mountain of information we are discussing here is being surrendered to an enemy, not a defendant. If al Qaeda had expended millions of its finite resources, it could never have hoped to amass the trove of intelligence it has garnered, for free, as a result of our prosecutions and their attendant, generous discovery rules. Concededly, this information has routinely been disclosed subject to judicial admonitions: defendants may use it only in preparing for trial, and may not disseminate it for other [\*520] purposes. Again, though, we are not talking about ordinary defendants as to whom a contempt citation is a grave prospect; we are talking about enemies of the United States -- guerillas bent on attacking government and disposed toward mass murder tend not to be terribly concerned about violating court orders (or, for that matter, about being hauled into court at all). Let me provide just one concrete example. In 1995, just before trying Sheikh Abdel Rahman and his co-defendants, I duly complied with discovery law by writing a letter to the defense counsel listing 200 names of people and entities the government was reserving the right to identify at trial as unindicted co-conspirators -- i.e., people who were on the government's radar screen but whom there was insufficient evidence to charge. Six years later, my letter turned up as evidence in the trial of those who bombed the U.S. embassies in east Africa. It seems that, within a short time of my having provided it to the defense, the letter had found its way to Sudan and was in the hands of bin Laden (who was on the list), having been fetched for him by an al-Qaeda operative who had procured it from one of his associates. Intelligence is dynamic. Over time, foreign terrorists and spies inevitably learn our tactics and adapt: consequently, we must refine and change those tactics. When we purposely tell them what we know -- for what is presumed to be the greater good of ensuring they get the same kind of fair trials as insider traders and tax cheats -- we enable them not only to close the knowledge gap but to gain immense insight into our technological capacities, how our agencies think, and what our future tactics are likely to be.

#### Safeguards don’t solve-if a detainee demands their rights we are screwed or the whole process is illegitimate taking out solvency

**Wittes, Brookings governance studies senior fellow, 2010**

(Benjamin, Law and the Long War, 168-171, ldg)

THE IDEA OF CREATING civilian legal authorities for holding those detainees whom the laws of war fit badly paradoxically complicates—rather than simplifying—the project of trying detainees for crimes. Ideally, one wants to maximize the size of the group that will face trial, since the more incarcerations America can justify with credible convictions for serious crimes, the fewer people it will have to hold without trial in a system struggling to acquire domestic and international acceptance. Yet ironically, the desire to conduct a large volume of criminal trials presents strong reason to stick with some form of military tribunal, even as the detention function migrates to a civilian agency—presumably the Department of Justice. Trying terrorists in federal court is a tricky business. Yank people out of the military system and treat them as civilians and it is suddenly no longer clear by what authority the government can depart from the letter of two hundred years of case law concerning trials under the Bill of Rights. Honor every bit of that case law, however, and conducting actual trials will become so difficult that the available pool of defendants for whom it presents a viable option will likely decline dramatically. The perverse result will be, in the name of the human rights and civil liberties of terrorist suspects, to place greater weight on a system of indefinite detention that grants them fewer protections than even the meanest military trial. By contrast, America has a long tradition of military commissions, and the Supreme Court has always tolerated the idea that the government might mete out stiff penalties—including death—based on military procedures that deviate from the trial norms of civilian courts. As recently as Hamdan in fact, the justices took it as a virtual given that military commissions, properly authorized, could be lawful.22 Yet military commissions too have problems. By their very nature, they are limited in jurisdiction to the trial of war crimes and, specifically, to trials of unlawful enemy combatants for those war crimes. Treat detainees as civil-prosecutor, Andrew McCarthy, recently coauthored a paper arguing for con¬gressional establishment of a "National Security Court" to create "an appro¬priate forum for fairly detaining and trying terrorists no matter how long the war on terror ensues" and for thereby "removing from our criminal justice system cases for which it was not designed and the handling of which neces¬sarily reduces the quality of justice afforded by the system."24 The judge, who later went on to preside over the litigation surrounding the initial phases of Jose Padilla's detention, was Attorney General Michael Mukasey. The Second Circuit Court of Appeals on appeal described in effusive terms Mukasey's handling of the case, which involved numerous defendants in addition to Rahman, saying he had "presided with extraordinary skill and patience, assur¬ing fairness to the prosecution and to each defendant and helpfulness to the jury. His was an outstanding achievement in the face of challenges far beyond those normally endured by a trial judge."25 If anyone's work has demonstrated that civilian justice can handle international terrorism, it is Mukasey. Yet shortly before his appointment as attorney general, he wrote that far from demonstrating the adequacy of the civilian justice system for handling terrorists, Padilla's conviction demonstrates that "current institutions and statutes are not well suited to even the limited task of supplementing what became, after Sept. 11, 2001, principally a military effort to combat Islamic terrorism." Ideas like McCarthy's, Mukasey argued, "deserve careful scrutiny by the pub¬lic, and particularly by the U.S. Congress. It is Congress that authorized the use of armed force after Sept. 11—and it is Congress that has the constitu¬tional authority to establish additional inferior courts as the need may be, or even to modify the Supreme Court's appellate jurisdiction."26 / The problem, put simply, is that criminal trials in the federal system give defendants a bonanza of procedural opportunities to gouge sensitive information from the government and to force the government to choose between the vitality of its prosecution and other crucial interests. Terrorism trials consume immense resources. They can offer defendants a platform from which to command public attention and communicate with confederates. Perhaps most important, the fundamental mismatch between the manners in which intelligence officers collect information and in which criminal investigators amass evidence can paralyze prosecutors who inherit defendants from intelligence investigations. Moussaoui's case put all of these problems on vivid display—though, in sharp contrast to Mukasey, the presiding judge in that trial emerged as an im¬passioned advocate of federal court terrorism trails.27 The government ulti¬mately obtained a conviction, but it also lucked out. Moussaoui, the only person to face criminal charges in federal court in this country in connection with September 11, may have been a dangerous terrorist, but he was also a nutcase who tried to represent himself, filed crazed pleadings, and made ludi¬crous courtroom speeches in which he repeatedly compromised any potential defense by admitting to key elements of the charges against him—for exam¬ple, that he was a member of Al Qaeda, pledged to attack America. For months, he refused to cooperate with his court-appointed lawyers, and when the judge took away his ability to act as his own counsel, he pleaded guilty—thereby re¬lieving the government of the burden of proving a tricky case. Despite the lucky breaks, Moussaoui's conviction took an extraordinary effort: nearly five years of litigation up and down the federal appellate ladder, millions of dollars, and a docket so long that a mere computer listing of the public documents filed in the case takes up more than two hundred pages.28 The case required the handling of massive volumes of classified information, even more than is typical in national security cases. And more particularly, it involved potential witnesses whose testimony Moussaoui sought yet whom the government was holding and interrogating in its high-value detainee pro¬gram overseas and refused to produce for security reasons. A defendant more inclined to demand his rights and less inclined to turn the Courtroom into a circus could have made these proceedings far more difficult than Moussaoui did, and the question of the availability of overseas detainees to such trials still lacks a definitive answer. It is, therefore, no surprise that after Moussaoui, noncitizen Al Qaeda suspects have not shown up in American courts if the government can avoid bringing criminal cases. Prosecutors dropped one such case, that of an Al Qaeda suspect named Ali Saleh Kahlah al-Marri, and turned the defendant over to the military as an enemy combatant.29 Even as the government claimed Moussaoui's case a victory, it has avoided testing these wa¬ters again. Other problems with federal court terrorism trials are less visible. Perhaps the most important of these is that the criminal process can remove interroga¬tion from the table. Consider the cases of Ramzi Yousef, the mastermind of the first World Trade Center bombing, and would-be shoe-bomber Richard Reid. The Justice Department prosecuted both men in federal court. Reid pled guilty without a plea bargain requiring his cooperation. Yusef was con¬victed at trial. As a result, government agents did not have the opportunity to interrogate them as they would a military detainee—or a civilian detainee un¬der the system I have outlined above. Indeed, rules of legal ethics affirmatively prohibit lawyers from contacting people known to be represented by lawyers but require instead that attorneys go through one another in negotiating with clients.30 And, of course, criminal suspects famously have a right to remain si¬lent and to have an attorney present at questioning. So unless a plea bargain facilitates a defendant's cooperation, the information he possesses can elude authorities.

### Resil

#### Intel coop empirically resilient-it is uniquely suited to not be disrupted by political disagreements

**Aldrich, Warwick international studies professor, 2009**

(Richard, “US–European Intelligence Co-operation on Counter-Terrorism: Low Politics and Compulsion”, The British Journal of Politics & International Relations, 11.1, Wiley Online, ldg)

How do we explain the paradox of public criticism and private partnership? Superficially, we might conclude that European political elites have simply wished to ‘have their cake and eat it’. European politicians, faced with the classic dilemmas of conducting counter-terrorism in a liberal society, have dealt with this by playing to public opinion with their criticisms of American covert activity; meanwhile they have approved discreet co-operation with the very same programmes. The best example is France. In 2002, the CIA and the French Direction Générale de la Sécurité Extérieure (DGSE) established a highly secret covert operations centre in Paris called ‘Alliance Base’ which has helped to conduct renditions in Europe. Moreover, during 2003, even while President Chirac was lambasting George Bush over the issue of Iraq, France had quietly agreed to deploy 200 French special forces to work with the Americans in southern Afghanistan (Priest 2005a). In April 2007, CIA Director Michael Hayden complained loudly about the hypocrisy of European political leaders who publicly denounce the CIA, but privately enjoy the enhanced security provided by joint intelligence operations. There is no question that in practical terms, the operations of the last five years have degraded al Qa'eda's formal structure, albeit at significant costs in terms of the ‘battle for hearts and minds’. Angered by European inquiries into renditions, Hayden spoke at a lunch at the German Embassy in Washington that was attended by many European diplomats. He insisted that inquiries had exaggerated the CIA's activities, adding that fewer than 100 people had been held in secret facilities since spring 2002, and that less than half had been subjected to ‘alternative procedures’ during their interrogations (Pincus 2007). Simultaneously Congress was inquiring into the impact of renditions on transatlantic co-operation and indeed upon intra-European co-operation (House of Representatives 2007). Although Hayden spoke of ‘bottomless criticism’, the phenomenon of European public criticism vs. private co-operation is complex and some of the important structural explanations for this have been ignored. While intelligence now looms larger in public discourse, the realm of grand strategy still remains unfamiliar territory for swollen ranks of the workaday intelligence officers. Unlike ministers and diplomats, theirs is not a world of ‘grand normative projects’ but instead a realm of individual cases, files and specific operations. Often characterised as sinister, the realm of intelligence is instead perhaps the most human of all aspects of government and consists to a large degree of personal relationships. The universal currency is trust. Achieving congruence on grand counter-terrorism strategy may require common ideals, but joint intelligence operations are driven by a more basic sense of mutual reliance and a track record of competence in the field (Svendsen (forthcoming)). Indeed, recent history suggests that intelligence co-operation between allies is rarely affected by disagreements over ideals or strategy. This is because the world of intelligence is remarkably fissiparous. Even a simple bilateral intelligence partnership between two countries actually consists of many intelligence relationships. Most countries boast a multiplicity of agencies, which are in turn further compartmentalised for security reasons. Intelligence is also the realm of specialists par excellence, whose particular interests, be it financial transfers or biological warfare, tend to insulate them from wider political arguments (Aldrich 1998). This has always been the case, but complexity is increasing as domestic agencies also develop stronger international relationships. French intelligence chiefs have long argued that it is perfectly possible for their operatives to work with allies on political and military targets, while remaining rivals in terms of economic and industrial espionage (Alexander 1998). Rivalry is probably at its most intense in the relatively unknown area of intelligence support to arms sales (Dover 2007). Other transatlantic phenomena stand in need of explanation, including the cautious growth of multilateral intelligence activity. Traditionally, even the longest-standing intelligence alliances have been tinged with a cautious bilateralism. Intelligence services have tended to prefer ‘need to know’ and the recent move towards ‘need to share’, often with more than one partner, reflects wider pressures that go beyond co-operation against terrorism. Arguably, Europe and the United States have little choice but to work ever more closely since an increasing number of their most troublesome opponents are transnational and are no respecters of boundaries. Intelligence agencies are now seen as the first line of defence against a whole range of illicit actors, be they terrorists, drug smugglers, people traffickers, proliferators or warlords, and seek to achieve the same fluidity as their opponents. This is an underlying trend that stretches back to 1989 and is likely to continue well beyond any termination of the ‘war on terror’.

### Alt Cause

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Lynch 11-4 Colum, Foreign Policy, Global Push to Rein in U.S. Moves from Spying to Gitmo, http://thecable.foreignpolicy.com/posts/2013/11/04/un\_usa\_nsa\_gitmo

"There is an effort to push back by the international community," Juan Mendez, an independent U.N. human rights watchdog and former Argentine political prisoner who endured torture during that country's "Dirty War," told Foreign Policy. "I think many governments, Europeans in particular, are moving backwards from their blind support for whatever the United States did after 9/11. As a result of this, they are asserting a need to go back to basics and reinforce international human rights standards and international humanitarian law standards." Mendez, who currently serves as a U.N. special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, is seeking to update the rules for the treatment of detainees. He has drafted a proposal to revise a code of conduct written in the 1950s -- known as the Standard Minimum Rules on the Treatment of Prisoners -- to reflect the evolution of international law over the past 60-plus years. The measures include new restrictions on the use of solitary confinement, and applies standard international guidelines for humanely treating incarcerated criminals to prisoners of war, immigrants, and patients of mental health facilities. European governments, led by Denmark and Switzerland, have pressed this week for a U.N. General Assembly resolution that would condemn the use of torture and endorse Mendez's plans. But they have faced resistance from the United States, which maintains that applying the rules beyond the criminal justice system would go beyond the scope of Mendez's mandate. In closed-door negotiations, the United States has sought to scrub language that would apply the rules to place like Guantanamo. "With respect to detention pursuant to the law of armed conflict, existing international instruments already govern the field," U.S. State Department lawyer Julianna Bentes told the committee. "Extending SMRs [Standard Minimum Rules] to cover additional categories would lead to confusion in both fields, and ultimately undermine state support for the U.N. standards for crime prevention and criminal justice." The United States still wields enormous influence at the United Nations, leading efforts in the Security Council to combat terrorism around the world. Since 9/11, the U.N. Security Council has created a raft of resolutions requiring governments to pass and enforce anti-terror laws, and imposed sanctions on individuals and entities suspected of having links to al Qaeda. Prosecuting the war on terror is one of the few things the U.N.'s five major powers -- Britain, China, France, Russia, and the United States -- consistently agree on. They have backed international peacekeeping efforts in Somalia and Mali that target Islamist militants linked to al Qaeda. But many smaller governments are increasingly reluctant to follow Washington's lead. Other rising powers, including Brazil and Germany, are seeking to take the initiative, promoting a raft of U.N. resolutions and rules that would curtail America's powers. America's go-it-alone strategy has fueled anxiety beyond the current controversy over spying. Brazil's Patriota voiced concerns about the United States's use of drones to target suspected terrorists, saying that it "indirectly encourages others to do the same." For the time being, there has not been a major push by governments at the U.N. to impose legal constraints on America's use of armed drones in foreign lands. But the matter has become the subject of an ongoing investigation by Ben Emmerson, the U.N. special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and Christof Heyns, the U.N. special rapporteur on extrajudicial, summary, or arbitrary executions. "Although drones are not illegal weapons, they can make it easier for States to deploy deadly and targeted force on the territories of other States," Heyns wrote. "If the right to life is to be secured, it is imperative that the limitations posed by international law on the use of force are not weakened by broad justifications of drone strikes." Navi Pillay, the U.N. high commissioner for human rights, said she is also "seriously concerned about human rights implications for the protection of civilians of armed drone strikes carried out in the context of counter-terrorism and military operations" by the United States and Israel. During a debate on protection of civilians in August, Pillay urged countries to "clarify the legal basis for such strikes," noting that "the current lack of transparency surrounding their use creates an accountability vacuum and affects the ability of victims to seek redress." In May, Pillay offered a broader critique of America's respond to terrorism in a speech to the Human Rights Council. "The objective of the global struggle against terrorism is the defense of the rule of law and a society characterized by values of freedom, equality, dignity, and justice," she said. "Yet time and again, my office has received allegations of very grave violations of human rights that have taken place in the context of counter-terrorist and counter-insurgency operations. Such practices are self-defeating. Measures that violate human rights do not uproot terrorism: they nurture it." Pillay said the "injustice embodied" in the Guantanamo detention center -- where many individuals are subject to "indefinite" and "arbitrary" detention in "breach of international law"-- has become an ideal recruitment tool for terrorists. Some of the push back is posturing by governments seeking to take advantage of the world's lone superpower being on the defensive. For example, China -- a country with a reputation for engaging in extensive online espionage of foreigners and ruthlessly cracking down on dissent at home -- urged the U.N. to curtail what it sees as American excesses. At a U.N. meeting last month dealing with online communications, Xie Xiaowu, a Chinese diplomat, called on member states to confront a "certain country [that] is abusing their technological advantages to spy on other countries, steal information from organizations or individuals of other countries, and violate people's privacy." It is imperative to establish "multilateral, democratic and transparent" international norms that are "fair, equitable and efficient" and that "respect the information sovereignty of all states and protect the fundamental rights of all citizens," he added. "Hegemony in the field of ICT [Information and Communications Technology] must be rejected." For years, China and Russia have been pushing for a U.N. code of conduct for cyber-security. The United States and other Western governments harbored suspicions that the Chinese and Russian effort was largely aimed at kneecapping America's technical advantage online -- and reinforcing states' rights to curb freedom of expression online. Other states expressing concern about American practices are doing so in part to shift blame away from themselves, U.N. experts say. Some of the nations complaining the most loudly also partnered with the NSA in its spying operations. The Brazilians have been embarrassed by the disclosure of an NSA listening station in Brasilia, right under the government's nose, said Bruce Jones, the director of New York University Center on International Cooperation. "In domestic terms, they have to create some distance" from the United States, he said. Germany, Jones noted, is seriously offended by the revelations that the NSA listened in on German Chancellor Angela Merkel's cell phone conversations. But what they really want is to develop a closer relationship with American intelligence agencies.

#### Parker thinks cred and alliances will collapse because of drones

Parker 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention. The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

## ADV 2

### Solvency Turn – 2NC

#### Court standards are too high to secure prosecutions-that leads to circumvention which takes out the AFF

**Goldsmith, Harvard law school professor, 2009**

(Jack, “Long-Term Terrorist Detention and Our National Security Court”, 2-4, <http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209_detention_goldsmith.pdf>, ldg)

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

# 1nc

## TPA DA

### 1NR Overview – TPA DA

#### Trade expansion makes nuclear war, conventional conflict and escalation less likely---defer negative because the DA structurally controls the case impacts

Hillebrand**,** Kentucky diplomacy professor,2010

(Evan, “Deglobalization Scenarios: Who Wins? Who Loses?”, Global Economy Journal, Volume 10, Issue 2, ebsco, ldg)

A long line of writers from Cruce (1623) to Kant (1797) to Angell (1907) to Gartzke (2003) have theorized that economic interdependence can lower the likelihood of war. Cruce thought that free trade enriched a society in general and so made people more peaceable; Kant thought that trade shifted political power away from the more warlike aristocracy, and Angell thought that economic interdependence shifted cost/benefit calculations in a peace-promoting direction. Gartzke contends that trade relations enhance transparency among nations and thus help avoid bargaining miscalculations. There has also been a tremendous amount of empirical research that mostly supports the idea of an inverse relationship between trade and war. Jack Levy said that, “While there are extensive debates over the proper research designs for investigating this question, and while some empirical studies find that trade is associated with international conflict, most studies conclude that trade is associated with peace, both at the dyadic and systemic levels” (Levy, 2003, p. 127). There is another important line of theoretical and empirical work called Power Transition Theory that focuses on the relative power of states and warns that when rising powers approach the power level of their regional or global leader the chances of war increase (Tammen, Lemke, et al, 2000). Jacek Kugler (2006) warns that the rising power of China relative to the United States greatly increases the chances of great power war some time in the next few decades. The IFs model combines the theoretical and empirical work of the peac ethrough trade tradition with the work of the power transition scholars in an attempt to forecast the probability of interstate war. Hughes (2004) explains how he, after consulting with scholars in both camps, particularly Edward Mansfield and Douglas Lemke, estimated the starting probabilities for each dyad based on the historical record, and then forecast future probabilities for dyadic militarized interstate disputes (MIDs) and wars based on the calibrated relationships he derived from the empirical literature. The probability of a MID, much less a war, between any random dyad in any given year is very low, if not zero. Paraguay and Tanzania, for example, have never fought and are very unlikely to do so. But there have been thousands of MIDs in the past and hundreds of wars and many of the 16,653 dyads have nonzero probabilities. In 2005 the mean probability of a country being involved in at least one war was estimated to be 0.8%, with 104 countries having a probability of at least 1 war approaching zero. A dozen countries12, however, have initial probabilities over 3%. The globalization scenario projects that the probability for war will gradually decrease through 2035 for every country—but not every dyad--that had a significant (greater than 0.5% chance of war) in 2005 (Table 6). The decline in prospects for war stems from the scenario’s projections of rising levels of democracy, rising incomes, and rising trade interdependence—all of these factors figure in the algorithm that calculates the probabilities. Not all dyadic war probabilities decrease, however, because of the power transition mechanism that is also included in the IFs model. The probability for war between China and the US, for example rises as China’s power13 rises gradually toward the US level but in these calculations the probability of a China/US war never gets very high.14 Deglobalization raises the risks of war substantially. In a world with much lower average incomes, less democracy, and less trade interdependence, the average probability of a country having at least one war in 2035 rises from 0.6% in the globalization scenario to 3.7% in the deglobalization scenario. Among the top-20 war-prone countries, the average probability rises from 3.9% in the globalization scenario to 7.1% in the deglobalization scenario. The model estimates that in the deglobalization scenario there will be about 10 wars in 2035, vs. only 2 in the globalization scenario15. Over the whole period, 2005-2035, the model predicts four great power wars in the deglobalization scenario vs. 2 in the globalization scenario.16 Deglobalization in the form of reduced trade interdependence, reduced capital flows, and reduced migration has few positive effects, based on this analysis with the International Futures Model. Economic growth is cut in all but a handful of countries, and is cut more in the non-OECD countries than in the OECD countries. Deglobalization has a mixed impact on equality. In many non-OECD countries, the cut in imports from the rest of the world increases the share of manufacturing and in 61 countries raises the share of income going to the poor. But since average productivity goes down in almost all countries, this gain in equality comes at the expense of reduced incomes and increased poverty in almost all countries. The only winners are a small number of countries that were small and poor and not well integrated in the global economy to begin with—and the gains from deglobalization even for them are very small. Politically, deglobalization makes for less stable domestic politics and a greater likelihood of war. The likelihood of state failure through internal war, projected to diminish through 2035 with increasing globalization, rises in the deglobalization scenario particularly among the non-OECD democracies. Similarly, deglobalization makes for more fractious relations among states and the probability for interstate war rises.

#### Trade turns terrorism

O’Driscoll, Former Director at the Center for International Trade and Economics at the Heritage Foundation, ‘2 (Gerald, December 18, “Trade Promotes Prosperity and Security” Backgrounder, www.heritage.org/Research/TradeandForeignAid/BG1617.cfm)

The document represents new thinking in the government that U.S. security depends on economic success in other countries, that economic and political repression breed poverty, frustration and resentment, and that open markets -- as well as open governments and open societies -- can alleviate the causes of the terrorist threat against the West. It is not that poverty causes terrorism. The 19 hijackers of Sept. 11 were chiefly middle class in origin, with 15 coming from oil-rich Saudi Arabia. But the conditions that produce poverty -- lack of economic freedom -- also produce the sense of hopelessness and despair that breeds resentment. Terrorist organizations exploit the situation to recruit new members. Meanwhile, the leaders of these countries blame the United States rather than accept responsibility for the policies impoverishing their own people.

#### Trade turns Central Asia

Daalder, Senior Fellow of the Foreign Policy Studies Program at the Brookings Institution, and Lindsay, Senior Fellow of the Foreign Policy Studies Program at the Brookings Institution, ‘3 (Ivo and James, Winter, “The Globalization of Politics: American Foreign Policy for a New Century” Brookings Review, Vol 21 No 1, http://www.brook.edu/press/review/winter2003/daalder.htm)

The prophets of globalization have trumpeted its benefits, particularly how the increased flow of goods, services, and capital across borders can boost economic activity and enhance prosperity. During the 1990s the more globalized economies grew an average of 5 percent a year, while the less globalized economies contracted by an average of 1 percent a year. The spread of ideas and information across the Internet and other global media has broadened cultural horizons and empowered people around the world to challenge autocratic rulers and advance the cause of human rights and democracy. Globalization can even lessen the chance of war. Fearing that war with Pakistan would disrupt their ties to U.S.-based multinationals, India's powerful electronic sector successfully pressed New Delhi in mid-2002 to deescalate its conflict with Pakistan.

#### TPA turns European relations – also key to solve warming

**Benson 13** - Intern at the Streit Council [Johann Benson (Master’s degree in public policy at the University of Minnesota’s Humphrey School of Public Affairs), “[Toward a Transatlantic Free Trade Agreement: What Impact on World Trade?](http://blog.streitcouncil.org/?p=1448),” Streit Talk, July 26, 2013 pg. http://blog.streitcouncil.org/?tag=ttip

With negotiations now officially underway, the proposed Transatlantic Trade and Investment Partnership (TTIP) is taking its first steps toward becoming reality. Questions remain, however; not only about what form the final agreement may take, but also what effect it could have on international trade.

In its [initial assessment of the TTIP](http://www.oecd.org/trade/TTIP.pdf), the OECD notes that while multilateral arrangements are preferable, bilateral and plurilateral agreements like the proposed TTIP “can be supportive of an effective multilateral trading system.” One of the primary ways in which these agreements can promote trade at the global level is by addressing issues that currently lie outside the scope of WTO regulations. Richard Baldwin, of the Graduate Institute in Geneva and the Centre for Economic Policy Research, has laid out the shortcomings of current WTO regulations and how post-2000 trade agreements are [fundamentally different](http://www.cepr.org/sites/default/files/policy_insights/PolicyInsight56.pdf) from those of the 1990s.

Baldwin argues that the rise of global supply chains has elevated the importance of removing non-tariff barriers, while tariffs (with some notable exceptions) have largely fallen by the wayside. Current WTO regulations (as well as agenda items of the stalled Doha Round) are not adequate for addressing the most pressing issues of international commerce and investment, such as competition (or antitrust) policy, the movement of capital, intellectual property rights (IPR), and investment assurances. These issues can and often have been addressed through recent bilateral trade and investment agreements. Critically, Baldwin also notes that there is a feedback effect from increased trade liberalization that makes future liberalization even more likely. It is for this reason, if no other, that an EU-U.S. free trade agreement is a step in the right direction.

Economic gains from the TTIP would mainly come from the harmonization of regulations and the removal of other non-tariff barriers. While the agreement is expected to lead to trade diversion among EU members (in the case of an ambitious agreement, for example, total trade between the UK and Spain [would decrease by about 45%](http://www.euractiv.com/trade/transatlantic-free-trade-boon-ba-analysis-529218)), it is projected that the TTIP would benefit the struggling economies of southern Europe even more than the EU as a whole. It would also drive trade creation between the EU and the U.S., and between the transatlantic area and third parties. For example, if car safety standards are harmonized in the European and American markets, it lowers costs not only for U.S. and EU automakers, but also for [any other company that exports to both markets](http://www.cfr.org/eu/eu-ustransatlantic-trade-investment-partnership/p30766). In fact, the third parties with the largest expected gains from the TTIP are ASEAN countries, due to their [very high trade to GDP ratios](http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf). Unfortunately, the fact that third parties often benefit from the removal of non-tariff barriers can also act as an obstacle to bilateral agreements. For instance, Jagdish Bhagwati has noted that [getting rid of production subsidies](http://werewolf.co.nz/2012/11/tpp-head-first-into-the-spaghetti-bowl/) requires a multilateral agreement because “you cannot – bilaterally – say that if the U.S. reduces or relaxes production subsidies, it will be only for New Zealand. Or only for Brazil.” This may, in some respects, limit the breadth and depth of the TTIP.

One of Bhagwati’s other worries about preferential trade agreements is that they create dispute settlement mechanisms that favor the stronger trading partner and undermine the WTO’s own dispute settlement mechanism. If the TTIP is eventually opened to newcomers on a take-it-or-leave-it basis, any country wishing to join the agreement – for which there would be strong incentives – would be strictly [a rule-taker](http://www.die-gdi.de/CMS-Homepage/openwebcms3_e.nsf/%28ynDK_contentByKey%29/MRUR-99EA5H?Open), with absolutely no say in the drafting of existing regulations. While numerous commentators argue that the primary objective of the TTIP is to ensure that “the United States and Europe remain [standard makers](http://www.cfr.org/trade/getting-yes-transatlantic-trade/p31077), rather than standard takers, in the global economy,” there is a risk that China and other emerging economies will attempt to erect trading blocs amongst themselves and create their own rules.

Completing the Doha Round may still be an uphill battle after the TTIP is concluded. The agreement is not likely to seriously threaten the multilateral trading system for the simple fact that bilateral deals – no matter how large – are themselves unable to address [a longer list](http://www.lowyinstitute.org/publications/saving-multilateralism-g20-wto-and-world-trade-0) of the world’s most pressing trade issues. Resource and food security, exchange rate policy, and efforts to limit carbon emissions all demand multilateral solutions. But the TTIP could provide a launching pad to address these and other issues.

#### Extinction

Don Flournoy 12, Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center and Don is a PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for University/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of theworld’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010).

### 1NR A2: No 1930s collapse

#### Trade will collapse like the 1930s now

Lincicome 12 (Scott, trade attorney, “Is Missing American Trade Leadership Beginning to Bear Protectionist Fruit? (Hint: Kinda Looks Like It),” June 12, http://lincicome.blogspot.com/2012/06/is-missing-american-trade-leadership.html)

Over the past few years, I and several other US trade-watchers have lamented the United States' dwindling leadership on global trade and economic issues and warned of that trend's troubling potential ramifications. It appears that at least one of our breathless predictions may finally be coming true. Starting in mid-2009 - when it became depressingly clear that the Obama administration viewed trade in mostly political terms and thus would not be advancing a robust, proactive free trade agenda - we free traders expressed grave concern that US recalcitrance could harm not only US companies and workers, but also the entire global free trade system. As I explained in a 2009 oped urging the President to adopt a robust pro-trade agenda (as outlined in this contemporary Cato Institute paper): Since the 1940s, the US has led the charge to remove international barriers to goods, services and investment. The result: a global trade explosion that has enriched American families, spurred innovation, enhanced our security and helped millions escape poverty. Every US president since Herbert Hoover has championed free trade because of its proven benefits.... Because of today's rules-based multilateral trading system and the interdependence of global markets, US fecklessness on trade shouldn't lead to devastating protectionism akin to the Smoot-Hawley-induced tariff wars of the 1930s. But it's still a problem. In 2008, global trade contracted for the first time since 1982, and protectionist pressures abound. The WTO's Doha Round is comatose, even though an ambitious deal could inject US$2 trillion into the reeling global economy. Considering the US has steered every major trade initiative in modern history, any chance for significant progress on trade will disappear without strong American leadership - in word and deed. Since that time, the President has clearly not taken free traders' advice. The WTO's Doha Round is dead, despite a pretty good opportunity to force the issue back in late 2010. The Obama administration took three years to implement already-dusty FTAs with Korea, Panama and Colombia and actually insisted on watering the deals down with new protectionist provisions in order to finally agree to move them. And while countries around the world are signing new trade agreements left and right, we've signed exactly zero and have eschewed important new participants and demanded absurd domestic protectionism in the one agreement that we are negotiating (the TPP). Meanwhile, on the home front the President has publicly championed mercantilism, as his minions quietly pursued myriad efforts to restrict import competition and consumer freedom, embraced competitive devaluation and maintained WTO-illegal policies (while publicly denouncing protectionism, of course). Pretty stark when you lay it all out like that, huh? Despite this depressing state of affairs, it did not appear that the United States' diversion from its long free trade legacy had resulted in a tangible increase in global protectionism (although the death of Doha certainly isn't a good thing). Unfortunately, a new blog post from the FT's Alan Beattie indicates that those chickens may finally be coming home to roost: One of the very few bright spots in governments’ generally grim recent performance of managing the world economy has been that trade protectionism, rampant during the Great Depression, has been relatively absent. That may no longer be the case. The WTO, fairly sanguine about the use of trade barriers over the past few years, warns today that things are getting worrying. The EU made a similar point yesterday. And this monitoring service has been pointing out for a long time that a lot of the new forms of protectionism aren’t counted under the traditional categories, thanks to gaping holes in international trade law. After glancing at the bi-partisan protectionism on display in the 2012 US presidential campaign, Beattie concludes that, on the global trade stage, "things are looking scarier than they have for a while." I'm certainly inclined to agree, and one need only look South to Brazil's frighteningly rapid transition from once-burgeoning free trade star to economically-stagnant, unabashed protectionist to see a scary example of why. And while I agree with Beattie that the world still isn't likely to descend into a 1930s-style trade war - we can thank the WTO and the proliferation of free market economics for that - the rising specter of global protectionism is undoubtedly distressing. And, of course, it has risen just as America's free trade leadership has faded away. Now, as we all know, correlation does not necessarily mean causation, and it's frankly impossible to know just how much the dearth of US trade leadership has actually affected global trade policies. But I think it's pretty safe to say that it certainly hasn't helped matters. Just ask yourself this: how can the US admonish Brazil or any other country about its distressing mercantilism when the President is himself routinely preaching - and his administration is busy implementing - similar policies? How can we decry the global "currency wars" when we're discretely advocating a similar strategy? How can we push back against nations' increasing use of market-distorting subsidies or regulatory protectionism when we're.... I think you get the idea. As I've frequently noted here, it was a Democrat - Secretary of State Cordell Hull - who over 70 years ago began a global free trade movement that until very recently had been led - in word and deed - by Republican and Democratic administrations alike. And while the distressing recent spike in global protectionism may not have been caused by a lack of American trade leadership, it is very, very likely not going to recede until the United States regains its long-held place at the front of the trade liberalization pack.

### 1NR A2: Uniqueness

#### Framing Issue-Their uniqueness arguments just prove the importance of political capital on this issue-History proves this is true in the trade context and now is the make or break time for a TPA push

Wall Street Journal 2/4/14–

William Galston: Obama's Moment of Truth on Trade

Bill Clinton bucked his own party to get Nafta. Will this president do the same to get agreements with Europe and Asia?

http://online.wsj.com/news/articles/SB10001424052702303942404579361110464290196?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303942404579361110464290196.html–

That ended the debate—for a while. It started up again not long after he entered the Oval Office, among congressional Democrats and within the White House. In August 1993, President Clinton ended the internal debate by delivering a ringing defense of Nafta and appointing William Daley to spearhead the drive for its ratification. Although House Speaker Tom Foley supported the treaty, he said that in view of divisions within his caucus, the Democratic leadership would take no position. Within two weeks, House Democratic Whip David Bonior had become the floor leader of the Nafta opposition. A few weeks later, House Majority Leader Richard Gephardt announced that he too was opposed, a decision widely regarded as the death knell for the treaty. That was Mr. Clinton's moment of truth, and he did not flinch. After an all-out White House push in which the president participated extensively, the House approved Nafta, voting 234-200. Democrats were deeply divided: While 102 voted in favor, 156 opposed the treaty. With the support of a bare majority of Democrats, Nafta passed easily in the Senate. With Harry Reid's blunt rebuke last week, Barack Obama's moment of truth has arrived. His administration is now negotiating two major regional trade deals—the Trans-Pacific Partnership among 12 Asian nations that account for about 40% of global trade, and the Transatlantic Trade and Investment Partnership with the European Union. Without trade-promotion authority, often called fast-track, granted by Congress to the administration, concluding and ratifying these deals becomes much more difficult. Our negotiating partners will be much less willing to reach agreements without the assurance that the texts of these agreements are final and not subject to change. If the authority is not granted, Congress will be free to amend the draft agreements, upsetting the delicate balance among their provisions and scuttling ratification by other governments. In an interview with the Financial Times after Mr. Reid's announcement, U.S. Trade Representative Michael Froman argued that once the administration reaches deals of "high standards, ambition, and comprehensiveness," it can persuade Congress that the proposed agreements will promote growth, job creation and the well-being of the middle class, and congressional support will increase. It is hard to find anyone outside the administration who gives this strategy much chance of succeeding in the absence of trade-promotion authority. Many observers believe that without fast-track, progress toward the nearly completed Asian trade deal may stall short of the finish line, and the December 2014 target for completing the deal with the EU will be unattainable. According to Mr. Froman, "The president . . . is fully committed to a robust trade agenda and doing what's necessary to execute on that." In the coming months, we'll find out whether he is right. During Mr. Obama's first presidential campaign in 2008, he was hardly a full-throated free trader. He told the Texas Fair Trade Coalition that he "never supported Nafta." He told the Iowa Fair Trade Coalition that he wanted to reopen negotiations on the agreement, so alarming our neighbor to the north that Austan Goolsbee, his senior economic adviser, thought it necessary to offer Canadian diplomats back-channel reassurances. And Mr. Obama told the Wisconsin Fair Trade coalition that he would "replace fast-track with a process that includes criteria determining appropriate negotiating partners that includes an analysis of labor and environmental standards as well as the state of civil society in those countries." If Mr. Obama is serious about his trade agenda, he will—at a minimum—address the nation on the advantages of ratifying new regional trade agreements, make it clear that he intends to fight for trade-promotion authority, appoint a high-profile point-person to lead that fight in Congress, and personally lobby wavering lawmakers. In all probability, he will not be able to rally the support of a majority of Democrats in either the House or the Senate, which means that to get trade-promotion authority, he must be willing to accept truly bipartisan majorities tilted toward Republicans in both chambers.

TPA will pass-state of the union created bipartisianship that overcomes democratic and tea party unions

The Economist 2/1/14

HEADLINE: Deal or no deal?;

Barack Obama's state-of-the-union speech

American politics may be becoming a bit less dysfunctional IN HIS big annual speech to Congress, Barack Obama made several promises. He pledged to raise the minimum wage for those contracted to the federal government, to create a new tax-free savings bond to encourage Americans to save, to work for the closure of the Guantánamo Bay prison, to push immigration reforms and to veto any sanctions that Congress might pass designed to derail his deal with Iran over its nuclear programme. But for anybody listening from abroad, his most startling promise to America's legislature was to bypass it. "Wherever and whenever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do," he vowed. This year, he said, will be "a year of action". That in America this pledge was not regarded as the most remarkable element of the speech shows how inured the country has become to dysfunctional government. After years of gridlock, Americans have got used to the idea that the gerrymandering of the electoral system and the polarisation of their two political parties have set the branches of government against each other, and that the checks and balances originally intended to keep the country's polity healthy have condemned it to sclerosis. Government shutdowns, fiscal cliffs and presidents who promise to do their best to ignore the legislature are no longer much of a surprise. Yet Americans may have become too gloomy: Mr Obama's speech could be the latest in a series of small signs that things are getting better. Last year's shutdown was such a public-relations disaster for politicians in general and the Republicans in particular that it is unlikely to happen again. The Tea Party's kamikaze tactics have been discredited; that is why, without much fuss, Congress recently managed to pass a budget. Mr Obama knows that he can do nothing of interest without co-operation: when parsed, the promises of unilateral action in his speech amounted to not much more than a few low-level government workers getting paid a sliver more. No one expects 2014 to be a year of bipartisan chumminess, but several deals are possible. Take inequality, Mr Obama's new theme. Higher minimum wages are a less effective way to help poorer Americans than expanding the earned income tax credit (a negative income tax for workers on low pay). Several Republicans are open to this idea. Senator Marco Rubio, a rising star, recently said so; a fact Mr Obama alluded to in a speech that was uncharacteristically—and encouragingly—short of partisan sniping. On immigration, too, a deal is doable. House Republicans are about to release a list of principles for reforming a system everyone agrees is broken. Mr Obama said he wants to sign a bill this year; if he handles Congress delicately, he may get his wish. The same goes for his request for lawmakers to give him "fast track" authority to negotiate trade deals. This is an essential tool for promoting free trade: if Asians and Europeans think Congress will rewrite trade pacts after the haggling is over, they will not take Mr Obama seriously as a dealmaker. It is still sad that this is the best that can be said of the world's most powerful democracy. It is hard to imagine the citizens of emerging economies looking at these compromises and finding them inspiring. But they are a start—and the political winds may be changing. If Mr Obama is to be remembered for anything at home but the botched roll-out of his health reform, he needs to get some measures through Congress. The Republicans need to be seen as something other than obstructionist if they want to win the White House. For once, they both have something in common: they need government to work.

TPA will pass-Compromise will turn Reid

Economist 2/8/14

When Harry mugged Barry

http://www.economist.com/news/united-states/21595958-harry-reid-threatens-impoverish-world-least-600-billion-year-when-harry

Harry Reid threatens to impoverish the world by at least $600 billion a year

Barely had he left the podium when Mr Reid mugged him. Answering questions from reporters, he reiterated his opposition to fast-track and advised its backers “not [to] push this right now”. Insiders doubt that Mr Reid would kill the bill outright. Haggling in the Senate may yield a new version with enough about labour standards and the environment to satisfy the protectionists. If so, Mr Reid will probably allow a vote, and the bill should pass. The White House remains publicly optimistic.

#### Reid will bring it up for a vote before the midterms and it’ll pass

Inside U.S. Trade 1/17/14

HEADLINE: Reid Says No Commitment To TPA Floor Time, Citing Controversy Among Dems

But National Foreign Trade Council President Bill Reinsch on Jan. 8 downplayed the notion that Reid may hold off on TPA because he is worried it could hurt Democrats in the polls. Senators are unlikely to ask Reid to "save them" from a TPA vote so they can perform better in the midterms since very few of the major races are in states where trade is a campaign issue, he told reporters at a press briefing on this year's trade agenda. Reinsch said that he was not persuaded that TPA was a decisive issue among the broader electorate. "TPA is inside baseball. It's how the Congress organizes itself to deal with trade policy," he said. He added that he believes Congress will pass a TPA bill but that he is worried it could end up being a partisan fight within Congress. He argued that it would be much better to get a "critical mass" of support from both parties.

#### Their own evidence indicates Reid can capitulate – PC is key

Washington Post, 2-2-’14 (“Reid can undermine Obama on TPP” http://www.sltrib.com/sltrib/opinion/57477685-82/obama-trade-reid-tpp.html.csp)

Mr. Reid has never supported trade promotion authority, and he has never been much for free-trade deals, either. He has nevertheless permitted such legislation to move through the Senate in the past, and he stopped short of an explicit threat to block it this time.

### 1NR A2: Trade Deals Won’t Pass

#### TPA solves – plan derails it

Business Roundtable 12/11/13 States News Service

HEADLINE: SOLID PROGRESS ON TRANS-PACIFIC PARTNERSHIP

Negotiators have made solid progress toward completing a Trans-Pacific Partnership trade agreement, reinforcing the need for Congress to pass Trade Promotion Authority. From The Hill, "Fast-track authority, currency manipulation remain top trade issues amid TPP delay": Business groups and lawmakers are making a two-pronged push for completion of fast-track authority and the addition of currency manipulation provisions into a delayed Asia-Pacific trade deal. Trade advocates used the announcement on Tuesday that negotiators of the 12-nation Trans-Pacific Partnership (TPP) had failed to reach an agreement in time to make a self-imposed year-end deadline to keep up their pressure on other initiatives. House and Senate leaders are nearing the end of talks on the details of a trade promotion authority (TPA) bill but an agreement remained elusive, so far, this week, and may get pushed until next year, according to a House aide. "Concluding these negotiations, as well as other trade agreements, will require congressional passage of Trade Promotion Authority legislation," said House Ways and Means Committee Chairman Dave Camp (R-Mich.). The House is expected to recess for the year this week, and since negotiators did not nail down a final TPP agreement, a vote on Trade Promotion Authority (TPA) will probably be scheduled for early next year. The TPA legislation enjoys bipartisan support in both chambers of Congress. In any case, better to get this important trade agreement right than to rush it through because of a goal set earlier in the negotiations (involving the United States and 11 other countries Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam). The Hill notes Business Roundtable's call for Trade Promotion Authority as reiterated in our news release, "Americas Business Leaders Commend Significant Progress on Trans-Pacific Partnership" that quotes Business Roundtable President John Engler, who first notes that the 11 other TPP countries comprise the largest market for U.S. goods and services exports in the world. Trade Promotion Authority is an essential partnership between Congress and the Administration to complete trade agreements such as the TPP, TTIP and TISA that benefit the U.S. economy and support American jobs, said Engler. We urge Congress and the Administration to work together to act on updated Trade Promotion Authority legislation as soon as possible Indeed, BRT operates the Trade Benefits America website, which features a fact sheet on the importance of TPA: Since President Franklin D. Roosevelt in the 1930s, every President through 2007 has had authority from Congress to negotiate trade agreements that open new markets for American companies and workers and help ensure a rules-based system for two-way trade. More recently known as Trade Promotion Authority (TPA), or fast track, this type of authority was last enacted in 2002, and it lapsed in 2007. Over the last decade, many new challenges to doing business in the global marketplace have emerged. Updating TPA and its negotiating objectives would help to address strategically such issues across the range of current U.S. trade negotiations, as well as in the future.

### 1NR Link Wall

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### The plan drains political capital and derails agenda

**Shane, Ohio State law school chair 2011**

(Peter, “ARTICLE: The Obama Administration and the Prospects for a Democratic Presidency in a Post-9/11 World”, 56 N.Y.L. Sch. L. Rev. 27, lexis, ldg)

The second is politics. With the country still grappling with the effects of a devastating recession, as well as the need for pressing action on healthcare, climate change, and immigration, the President might well want to avoid the appearance of diluting his focus. Moreover, since the Johnson administration, Republicans have consistently--and with some success--cowed the Democrats by portraying them as soft on national security issues. The partisan pushback against any Obama administration effort to reinvigorate the rule of law in the national security context is likely to be vicious, threatening to erode whatever modicum of goodwill might otherwise be available to accomplish seemingly more concrete and immediate objectives. This, of course, is not hypothetical. We can see it in Republican efforts to derail the closing of Guantanamo and in proposals to prohibit the trial of foreign terrorists in civilian courts n108--a practice that Republicans seemed happier to live with under George W. Bush. n109

#### Plan’s a perceived as a loss-saps capital

**Loomis, Georgetown government professor, 2007**

(Andrew, “Leveraging legitimacy in the crafting of U.S. foreign policy”, 3-2, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>, ldg)

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

#### Having to defend authority derails the agenda

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

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

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy

**Posner and Vermeule, 8 -** \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, “Constitutional Showdowns” 156 U. Pa. L. Rev. 991, lexis)

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

### 1NR Winners Win

#### **Capital is finite**

Schultz 1/22/13 (David Schultz is a professor at Hamline University School of Business, where he teaches classes on privatization and public, private and nonprofit partnerships. He is the editor of the Journal of Public Affairs Education (JPAE) “Obama's dwindling prospects in a second term” http://www.minnpost.com/community-voices/2013/01/obamas-dwindling-prospects-second-term)

Presidential power also is a finite and generally decreasing product. The first hundred days in office – so marked forever by FDR’s first 100 in 1933 – are usually a honeymoon period, during which presidents often get what they want. FDR gets the first New Deal, Ronald Reagan gets Kemp-Roth, George Bush in 2001 gets his tax cuts. Presidents lose political capital, support But, over time, presidents lose political capital. Presidents get distracted by world and domestic events, they lose support in Congress or among the American public, or they turn into lame ducks. This is the problem Obama now faces. Obama had a lot of political capital when sworn in as president in 2009. He won a decisive victory for change with strong approval ratings and had majorities in Congress — with eventually a filibuster margin in the Senate, when Al Franken finally took office in July. Obama used his political capital to secure a stimulus bill and then pass the Affordable Care Act. He eventually got rid of Don’t Ask, Don’t Tell and secured many other victories. But Obama was a lousy salesman, and he lost what little control of Congress that he had in the 2010 elections. Since then, Obama has be stymied in securing his agenda. Moreover, it is really unclear what his agenda for a second term is. Mitt Romney was essentially right on when arguing that Obama had not offered a plan for four more years beyond what we saw in the first term. A replay wouldn't work Whatever successes Obama had in the first term, simply doing a replay in the next four years will not work. First, Obama faces roughly the same hostile Congress going forward that he did for the last two years. Do not expect to see the Republicans making it easy for him. Second, the president’s party generally does badly in the sixth year of his term. This too will be the case in 2014, especially when Democrats have more seats to defend in the Senate than the GOP does. Third, the president faces a crowded and difficult agenda. All the many fiscal cliffs and demands to cut the budget will preoccupy his time and resources, depleting money he would like to spend on new programs. Obama has already signed on to an austerity budget for his next four years – big and bold is not there. Fourth, the Newtown massacre and Obama’s call for gun reform places him in conflict with the NRA. This is a major battle competing with the budget, immigration, Iran and anything else the president will want to do. Finally, the president is already a lame duck and will become more so as his second term progress. Presidential influence is waning One could go on, but the point should be clear: Obama has diminishing time, resources, support and opportunity to accomplish anything. His political capital and presidential influence is waning, challenging him to adopt a minimalist agenda for the future. What should Obama do? Among the weaknesses of his first term were inattention to filling federal judicial vacancies. Judges will survive beyond him and this should be a priority for a second term, as well as preparing for Supreme Court vacancies. He needs also to think about broader structural reform issues that will outlive his presidency, those especially that he can do with an executive order. Overall, Obama has some small opportunities to do things in the next four years – but the window is small and will rapidly close.

**Replenishment takes too long.**

Lashof 10 Director of the Climate Center at NRDC

(Dan, “Coulda, Shoulda, Woulda: Lessons from Senate Climate Fail”, http://switchboard.nrdc.org/blogs/dlashof/coulda\_shoulda\_woulda\_lessons.html)

Lesson 2: Political capital is **not** necessarily a renewable resource. Perhaps the most fateful decision the Obama administration made early on was to move healthcare reform before energy and climate legislation. I’m sure this seemed like a good idea at the time. Healthcare reform was popular, was seen as an issue that the public cared about on a personal level, and was expected to unite Democrats from all regions. White House officials and Congressional leaders reassured environmentalists with their theory that success breeds success. A quick victory on healthcare reform would renew Obama’s political capital, some of which had to be spent early on to push the economic stimulus bill through Congress with no Republican help. Healthcare reform was eventually enacted, but only after an exhausting battle that eroded public support, drained political capital and created the Tea Party movement. Public support for healthcare reform is slowly rebounding as some of the early benefits kick in and people realize that the forecasted Armageddon is not happening. But this is occurring **too slowly to rebuild** Obama’s political capital in time to help push climate legislation across the finish line.

### 1NR A2: Klaidman – Obama Won’t Push

#### And obama will fight the plan

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

## 2NR

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### 2NR UQ

TPA will pass, Reid will compromise – our evidence is better than thiers – it cites insiders and is predictive

CNN Wire 2/1/14

HEADLINE: Kerry, Hagel rebuke Reid on fast-track trade bill

In a rare joint appearance at the Munich Security Conference, Secretary of State John Kerry and Defense Secretary Chuck Hagel dismissed Senate Majority Leader Harry Reid's opposition to renewing fast-track trade authority and predicted that the bill will ultimately pass in spite of Reid's opposition. "I've heard plenty of statements in the Senate on one day that are categorical, and we've wound up finding accommodations and a way to find our way forward," Kerry told the audience of European allies. "I respect Harry Reid, worked with him for a long time," Kerry said. "I think all of us have learned to interpret a comment on one day in the United States Senate as not necessarily what might be the situation in a matter of months." Reid said Wednesday he is unlikely to consider a bill on the issue anytime soon. "I'm against fast track," said Reid, who controls which bills get to the Senate floor. "I think everyone would be well-advised not to push this right now." With several outstanding trade pacts -- including a major deal with the European Union -- securing President Barack Obama's "trade promotion authority" remains a priority for the administration. The power would limit Congress' ability to influence American trade policy, only allowing them up or down votes on massive trade deals while leaving negotiations with other nations entirely under the purvey of the President. Proponents of the measure say the TPA prevents crucial trade agreements from getting bogged down in the bureaucratic slog and would help open new markets for U.S. goods. Democrats oppose the measure, arguing past trade deals led companies to ship jobs overseas. Heralding the ability as something that could "have a profound impact" on the American economy, Kerry said the extension of President Obama's authority could pay dividends and help further drive down the unemployment rate. "It's worth millions of jobs," he said. Kerry also was emphatic that Reid's opposition would not stall progress.

#### Political capital gets democrats and the opposition on board

Japan Times 2/8/14

http://www.japantimes.co.jp/opinion/2014/02/08/editorials/democrat-rocks-obamas-boat/#.UvfbxfldWPs

TPA is known as “fast-track authority,” which allows trade bills submitted to Congress to have limited debate and no amendments, the second of which is critical — or so the administration, like many of its predecessors, argues — to the U.S. ability to conclude such agreements. In theory, say TPA proponents, no other country will finalize a deal with the U.S. if it knows the details can be later changed by Congress. Reid is unwilling to cede his authority to protect the trade and environmental groups that he sees as critical constituencies. As Senate majority leader, Reid is in a position to kill any trade legislation by refusing to let it get to the floor. While it is difficult to believe that he would sabotage one of the president’s signature initiatives, he is going to play hardball since he enjoys the support of other Democrats on this issue. The week before last, 550 labor, environmental and consumer advocacy groups, which have previously backed free trade deals, cosigned a letter to Congress calling on it to reject the TPA. Ironically this is one of the few issues on which the Republican Party is prepared to back Obama, and the GOP relishes the prospect of a fight within the Democratic Party. They have accused the president of lukewarm support for the TPA and are eager to goad Obama into challenging his base. A divided Democratic Party will strengthen Republican prospects in November’s midterm elections regardless of the outcome of the TPA squabble. Nevertheless, the chief U.S. trade negotiator, Michael Froman, insists that a deal on the TPA and the TPP is possible. While securing Congressional passage will not be easy, he is convinced that a deal can be negotiated that will protect the interests that Reid is worried about and still pass muster with U.S. trade partners. As U.S. Secretary of State John Kerry has noted, many categorical statements in Congress get muted during the legislative process. He may be right, but it appears as though Obama has another front on the fight for freer trade.

Bipartisan support-Obama will flip younger members

Wall Street Journal 2/4/14

TPP Would 'Upgrade' U.S. Trade Pacts, Says U.S. Commerce Chief

Obama Administration Working to Educate Congress on Why Fast-Track Path Is Necessary

By LAURENCE ILIFF AND ANTHONY HARRUP

MEXICO CITY—U.S. Commerce Secretary Penny Pritzker said Tuesday that the proposed 12-nation Trans-Pacific Partnership would be an "upgrade" to older deals like the North American Trade Agreement, and that the Obama administration was working to educate some members of Congress on why a fast-track negotiating path is necessary. "There's bipartisan support for trade promotion authority on the Hill," Ms. Pritzker said in an interview, referring to the "fast-track" process that allows trade agreements to be voted on more quickly. "There's also a process of education that needs to go on," she said, among Congress members who weren't yet elected when the last fast-track process was approved.

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### 2NR No strip

#### Congress will defer to court rulings—politicians will only talk

Devins 6, Goodrich Prof of Law

[2006, Neal Devins is a Goodrich Professor of Law and Professor of Government, College of

William and Mary, “Should the Supreme Court Fear Congress?”, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1158&context=facpubs&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3Dcourt%2Bcongress%2Bstripping%2Bdetention%26btnG%3D%26hl%3Den%26as_sdt%3D0%252C5#search=%22court%20congress%20stripping%20detention%22>]

That the Roberts Court need not worry about jurisdiction stripping legislation is important, but ultimately does not answer the question of whether the Court should fear Congress. Congress, after all, can slap the courts down in other ways.132 Nevertheless, changes in Congress over the past twenty years suggest that the Roberts Court has less reason to fear Congress than did the Warren or Burger Courts. As detailed in Part II, today's lawmakers are less engaged in constitutional matters and less interested in asserting their prerogative to independently interpret the Constitution. Correspondingly, lawmakers place relatively more emphasis on expressing their opinions than on advancing their policy preferences. Consequently, even though the Rehnquist Court invalidated more federal statutes than any other Supreme Court, Congress did not see the Court's federalism revival as a fundamental challenge to congressional power. 133 Lawmakers, instead, preferred to appeal to their base by speaking out on divisive social issues-launching rhetorical attacks against lower federal courts and state courts.