# 1

#### A. Interpretation – “War powers authority” is derived from a preexisting congressional statute – an “increase” in “restrictions” can only occur by means of statutory or judicial prohibition on the source Bradley, 2010

[Curtis A., Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School, Harvard Journal of Law & Public Policy, Vol. 33 No. 1,

<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>]

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.¶ 1¶ For the most part, the Supreme Court has also followed this¶ approach in deciding executive power issues relating to the¶ war on terror. In Hamdi v. Rumsfeld, for example, Justice¶ O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on¶ Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2¶ Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush 4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus review in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detain ees.5¶ In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.¶ Statutory authority was also a central issue in the much‐¶ discussed Al‐Marri case in the Fourth Circuit.6¶ Although the Su‐¶ preme Court vacated the Fourth Circuit’s decision as moot, the¶ decision still provides an instructive example. Al‐Marri involved¶ a Qatari citizen, Ali Saleh Kahlah al‐Marri, who came to the¶ United States on September 10, 2001, and was later arrested and¶ charged with various counts of fraud.7¶ Shortly before al‐Marri’s¶ trial, President Bush designated him an enemy combatant, and¶ he was moved to military custody.8¶ As justification for this ac‐¶ tion, the Bush Administration alleged that al‐Marri was an al¶ Qaeda sleeper agent who had come to the United States to await¶ instructions to carry outfurther attacks after September 11.9 ¶ In a closely divided en banc ruling, the Fourth Circuit held¶ that the executive had the authority to detain al‐Marri but that¶ it needed to provide him with additional process by which he¶ could challenge his designation as an enemy combatant.10 The¶ Supreme Court granted review of the decision in December¶ 2008.11 When briefing the case for the Court, al‐Marri focused primarily on statutory arguments, saving a fallback constitu‐¶ tional argument forthe end of his brief.12¶

#### B. Violation:

#### The plan is an implicit delegation of “authority” – a topical plan must stamp the original state in order to “increase restrictions on” Cronogue, 2012

[Graham, Duke University School of Law, J.D. expected 2013; A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol. 22:377 2012] http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

The AUMF’s broad “all necessary and appropriate force” language ¶ confers on the President complete Congressional authorization to wage war ¶ against the specified groups. First, the AUMF’s “all necessary and ¶ appropriate force” language mirrors that found in a declaration of war and, ¶ far from imposing any constraints, bolsters the President’s powers ¶ significantly.37 In Bas v. Tingy, the Court found that Congress could make ¶ narrow authorizations that are “limited in place, in objects, and in time.”38¶ Yet, the AUMF authorization is much broader than that typically found in a ¶ limited or quasi-war context where the President can only use certain ¶ armed forces against a specific type of target in a specified way.39 In the Quasi-War with France, for example, the President’s actions were limited to a specific place and type of enemy force.40 Indeed, the use of force was restricted to the high seas and armed French vessels.41 In these examples, ¶ the President was not authorized to use force in enemy ports or against ¶ many other members of the enemy’s military.42 In contrast, the AUMF does not explicitly limit where or what kind of force the President may ¶ use.43 Rather, it leaves this determination open to the President and merely ¶ names the class of targets.44¶ Second, the AUMF’s language illustrates congressional acquiescence ¶ or approval of broad presidential authority to use force. “[T]he enactment ¶ of legislation closely related to the question of the President’s authority in a ¶ particular case which evinces legislative intent to accord the President ¶ broad discretion may be considered to ‘invite’ ‘measures on independent ¶ presidential responsibility.’”45 The language in the AUMF is very similar to ¶ declarations of war and authorizations, in which presidents have exercised ¶ plenary power in determining the means and type of force.46 In these ¶ “perfect” wars, “all the members act[ed] under a general authority, and all ¶ the rights and consequences of war attach to their condition.”47 For ¶ instance, the Gulf of Tonkin Resolution allowed the President to “take all ¶ necessary measures” and was used as broad authority to wage combat and ¶ detain enemies.48 Similarly, the AUMF allows for the use of “all necessary ¶ and appropriate force.” Presidents have commonly exercised broad ¶ authority under similar grants of power, and Congress’s failure to act in ¶ limiting these powers here suggests acquiescence to this interpretation.49¶ More convincingly than in Dames & Moore, where Congress failed to ¶ object to executive action, there are numerous comments from the ¶ legislature that the President should have broad authority under the ¶ AUMF.50 Given these statements and Congress’s ample opportunity to ¶ limit the scope or type of force, Congress must have acquiesced to past ¶ executive practice and interpretation. Furthermore, the plurality in Hamdi also treated the AUMF as a broad ¶ authorization to use force.51 In upholding the President’s power to detain ¶ enemy combatants, the Court leaned heavily on the similarities between the ¶ current authorization and that of broad authorizations characteristic of full ¶ wars.52 The Court found that the President had many of the same powers ¶ usually granted to the President by war declarations.53 Then, it looked to ¶ past exercises of presidential power to find what actions Congress would ¶ have implicitly authorized.54 Specifically, the Court found that detention ¶ was as “fundamental and accepted an incident to war as to be an exercise of ¶ the ‘necessary and appropriate force’ Congress has authorized the President ¶ to use.”55¶ Given that the AUMF does not contain any specific limitation on the ¶ type of force and that the language describing this force is hashed in the ¶ extremely broad terms, the AUMF must grant the President significant ¶ authority to act. This authority is certainly still constrained by the laws of ¶ war and other independent constitutional checks on the Executive, but it ¶ appears that Congress delegated the President extremely broad powers. ¶ Finally, based on the plurality’s opinion in Hamdi, the exact scope of these ¶ powers will be interpreted in light of past actions by the Executive but still ¶ remains far from clear.56¶ D. Where? ¶ Another significant issue not addressed by the AUMF is where this ¶ “force” may be applied. Again, the text of the statute offers little guidance, ¶ as it does not mention any geographic limitation. The statute does confirm ¶ the existence of a threat to American citizens at home and abroad.57 Of ¶ course, one plausible reading is that there is no limitation whatsoever. ¶ Under this reading, if an organization that satisfies the 9/11 requirement is ¶ in the United States or in a foreign country, the President is always ¶ authorized to use force against that target. Given the President’s duty to protect Americans and the context in ¶ which the AUMF was passed, the AUMF seemingly authorizes force at home. The AUMF passed after an attack on American soil, and the United ¶ States seemed in a very real sense part of the theater of war. Furthermore, ¶ force under the AUMF is designed to “prevent any future acts of ¶ international terrorism against the United States” and its citizens at home.58¶ Since al-Qaeda could have small cells in the United States, a territorial ¶ limitation precluding force at home might hamstring this objective. Despite ¶ these factors, the plurality in Hamdi limited its holding to apply the AUMF ¶ to an American citizen captured in the traditional battlefield.59 However, it ¶ seems that the need to detain enemy combatants picked up on the foreign ¶ battlefield and prevent them from engaging in conflict is at least as strong ¶ as when the enemy is in the United States.60 Later, the Court in Padilla¶ upheld the application of the AUMF to an American citizen captured on ¶ American soil, suggesting the AUMF should apply at home.61¶ The true difficulty with the AUMF’s geographical limitation comes ¶ when the organization or person is in another country. The AUMF does ¶ authorize actions against “nations,” so it clearly is not limited to domestic ¶ threats. However, what happens if the target is in a state that is not an ¶ eligible target? This issue implicates fundamental questions of sovereignty ¶ that have become especially important in the case of targeted killings in ¶ Pakistan and Yemen. Despite the importance of this issue, the AUMF ¶ remains silent on this point. ¶ II. THE IMPORTANCE OF CONGRESSIONAL AUTHORIZATION ¶ In order to evaluate the significance of the AUMF, we must first ¶ determine whether the President actually needs authorization to defend the ¶ United States against these terrorist threats or if he can use his inherent ¶ constitutional authority to accomplish the same goal. The President’s ¶ inherent powers as Commander in Chief are at their height during times of ¶ war and emergency. Therefore, I will first examine the question of “were ¶ we at war.” In light of this answer and the President’s inherent authority, I ¶ will look at whether the AUMF provides any benefits in the prosecution of ¶ this conflict. A. Were We at War? ¶ The text of the AUMF confers on the President strong authorization to ¶ combat a category of enemies for an undefined period of time and in an unspecified location. His powers are much broader than that typically ¶ authorized in limited or quasi-wars. Moreover, the President has ordered ¶ transnational air strikes, electronic surveillance, detentions, and military ¶ invasions pursuant to his powers under the AUMF.62 Yet, the AUMF is not ¶ a formal declaration of war and its targets are not all states or state actors. ¶ This absence of a formal declaration might suggest that we are not in a ¶ state of war. However, if the United States was not in a state of war with alQaeda, the President’s inherent authority to act might be severely limited, ¶ making the AUMF an essential component to the use of force. ¶ The Court held in the Prize cases that a “state of actual war may exist ¶ without any formal declaration of it by either party; and this is true of both ¶ a civil and a foreign war.”63 Rather, a state of war can exist de facto.64 In ¶ the Prize cases, the Court considered President Lincoln’s order of a ¶ blockade against the South “official and conclusive evidence . . . that a ¶ state of war existed which demanded and authorized a recourse to such a ¶ Here, President Bush proclaimed that al-Qaeda’s attacks on American ¶ soil were “acts of war.”69 Even prior to September 11, al-Qaeda had ¶ attacked American embassies, ships, and military bases on several ¶ occasions, leading President Clinton to declare a state of armed conflict ¶ against al-Qaeda.70 But on September 11, 2001, the conflict escalated ¶ dramatically. Al-Qaeda inflicted massive casualties against American ¶ civilians, caused catastrophic economic damage, and fundamentally altered¶ measure.”65 In addition to the President’s declaration, the Court found that ¶ the Queen of England’s proclamation of neutrality after the firing on Fort ¶ Sumter was also adequate evidence of war.66 The Court acknowledged its ¶ deference to the President’s characterization of the conflict and ¶ classification of the enemy as “belligerents.”67 Thus, the President’s ¶ characterization of the conflict and the actions of the enemy can create a ¶ state of war even absent congressional action.68¶ America’s security and foreign policy goals. The President has framed the ¶ conflict as a war and the subsequent invasions, detentions, and killings ¶ confirm this view. These actions as well as the ongoing threat from alQaeda elevate the conflict to a de facto state of war. ¶ It is important to note, however, that the Prize cases dealt with a ¶ defensive war during a national crisis; the confederate rebels severely ¶ threatened the territorial integrity of the United States.71 In the immediate ¶ aftermath of 9/11 and given the ease with which foreign militants can ¶ inflict damage across state borders, the United States could probably claim ¶ that actions at home and overseas were part of a defensive war. Though the ¶ Prize cases should authorize the executive actions immediately following ¶ the attack, it is not clear whether they would authorize executive action ¶ today.72 With the death of the 9/11 mastermind and increased security ¶ measures, actions against al-Qaeda are looking less defensive and more ¶ offensive. Furthermore, the passage of time has made the scenario seem ¶ less like the emergency that required rapid executive action. For these ¶ reasons, it is unclear whether the United States today is actually in a ¶ defensive war with al-Qaeda under the Prize cases framework.73¶ B. Importance of Congressional Authorization¶ Though the President’s inherent authority to act in times of emergency ¶ and war can arguably make congressional authorization of force ¶ unnecessary, it is extremely important for the conflict against al-Qaeda and ¶ its allies. First, as seen above, the existence of a state of war or national ¶ emergency is not entirely clear and might not authorize offensive war ¶ anyway. Next, assuming that a state of war did exist, specific congressional authorization would further legitimate and guide the executive branch in the prosecution of this conflict by setting out exactly what Congress authorizes and what it does not. Finally, Congress should specifically set out what the President can and cannot do to limit his discretionary authority and prevent adding to the gloss on executive power. ¶ Even during a state of war, a congressional authorization for conflict ¶ that clearly sets out the acceptable targets and means would further ¶ legitimate the President’s actions and help guide his decision making ¶ during this new form of warfare. Under Justice Jackson’s framework from ¶ Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization.74 In ¶ this zone, the President can act quickly and decisively because he knows ¶ the full extent of his power.75 In contrast, the constitutionality of ¶ presidential action merely supported by a president’s inherent authority ¶ exists in the “zone of twilight.”76 Without a congressional grant of power, ¶ the President’s war actions are often of questionable constitutionality ¶ because Congress has not specifically delegated any of its own war powers ¶ to the executive.77¶ This problem forces the President to make complex judgments ¶ regarding the extent and scope of his inherent authority. The resulting ¶ uncertainty creates unwelcome issues of constitutionality that might hinder ¶ the President’s ability to prosecute this conflict effectively. In timesensitive and dangerous situations, where the President needs to make splitsecond decisions that could fundamentally impact American lives and ¶ safety, he should not have to guess at the scope of his authority. Instead, ¶ Congress should provide a clear, unambiguous grant of power, which ¶ would mitigate many questions of authorization. Allowing the President to ¶ understand the extent of his authority will enable him to act quickly, ¶ decisively but also constitutionally. ¶ Finally, a grant or denial of congressional authorization will allow ¶ Congress to control the “gloss” on the executive power. There is ¶ considerable tension between the President’s constitutional powers as ¶ Commander in Chief and Congress’s war making powers.78 This tension is ¶ not readily resolved simply by looking at the Constitution.79 Instead courts look to past presidential actions and congressional responses when evaluating the constitutionality of executive actions.80 Indeed Justice ¶ Frankfurter noted in Youngstown that “a systematic, unbroken, executive ¶ practice, long pursued to the knowledge of the Congress and never before ¶ questioned . . . may be treated as a gloss on ‘executive Power’ vested in the ¶ President by § 1 of Art. II.”81 Thus, congressional inaction can be deemed as implicit delegation of war making power to the executive.82 Whether the United States is in a state of war or not, an authorization ¶ of force provides legitimacy and clarity to the war effort. If the President ¶ acts pursuant to such an authorization his authority is at its height; ¶ consequently, he can operate with greater certainty that his actions are ¶ constitutional.83 Absent such a declaration, the President’s power is much less clear. While the President has the authority to frame the conflict and he might still be able to act pursuant to his inherent powers, he is operating in ¶ the zone of twilight.84 Congressional authorizations remove this uncertainty by stamping specific acts with congressional approval or disapproval. This ¶ process also allows Congress to exert control over what the President can do in the future and prevents the “gloss” that comes from congressional ¶ acquiescence.85

#### Vote to require a statutory source:

#### Stabilizes topical authority and both restriction mechanisms – best chance of predictable aff limits and complementary neg ground

#### pleas for reasonability just warrant precision – only check on bi-directionality and Commander-in-Chief affs

Colby P. Horowitz 2013 “CREATING A MORE MEANINGFUL ¶ DETENTION STATUTE: LESSONS LEARNED ¶ FROM HEDGES V. OBAMA,” FORDHAM L.R. Vol. 81, http://fordhamlawreview.org/assets/pdfs/Vol\_81/Horowitz\_April.pdf

Thus, there at least two ways to interpret section 1021 under Justice ¶ Jackson’s framework. The government believes that section 1021 places ¶ the executive firmly in Zone 1. It has argued on appeal in Hedges that ¶ section 1021 is “an essentially verbatim affirmation by Congress of the ¶ Executive Branch’s interpretation of the AUMF.”335 This is supported by ¶ the government’s 2009 brief to the D.C. District Court, which is almost ¶ identical to the description of detention authority in section 1021.336 If ¶ section 1021 places the President in Zone 1, he has clear statutory authorization and does not need to rely on his general Commander-in-Chief powers (which courts view more narrowly).337 Additionally, in Zone 1, any ¶ ambiguities or vague terms in the statute might actually expand the President’s authority.338

338. See Chesney, supra note 33, at 792–93 (explaining that some observers view ambiguities in detention statutes as constituting “an implied delegation of authority to the executive to provide whatever further criteria may be required”).

# 2

#### Counterplan

#### The United States federal government should provide traditional Article III courts exclusive jurisdiction over the United States’ indefinite detention policy in the area prescribed by the 2001 Authorization for Use of Military Force and ensure that sufficient resources are available for training, preparation and trial.

#### Article III courts solve detention problems—aff kills due process

David Cole 08, Professor of Law, Georgetown University Law Center, David Keene, Chairman, American Conservative Union, 6/23/08, “A Critiuqe of ‘National Security Courts’,” http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle these cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brought in the federal courts over the past fifteen years. It finds that established federal courts were able to try these cases without sacrificing either national security or the defendants’ rights to a fair trial.3 The report documents how federal courts have successfully dealt with classified evidence under the Classified Information Procedures Act (CIPA) without creating any security breaches. It further concludes that courts have been able to enforce the government’s Brady obligations to share exculpatory evidence with the accused, deal with Miranda warning issues, and provide means for the government to establish a chain of custody for physical evidence, all without jeopardizing national security. Of course, our traditional federal courts have not always done everything that the government would like them to do. They are, after all, constrained by well-established constitutional limits on prosecutorial power. For example, no federal court would permit the prosecution to present witnesses without protecting the defendant’s constitutional right to confront those witnesses against him or her.4¶ Nor would a federal court permit the prosecution to rely on a coerced confession in violation of a defendant’s Fifth Amendment right against self-incrimination. But creating a new set of courts would not repeal existing constitutional rights. Conversely, to the extent that the existing rules are not constitutionally compelled, ordinary federal courts (or Congress, where applicable) can modify them when it is shown that the modification is necessary to accommodate the government’s legitimate interests.¶ Most importantly, there is the intrinsic and inescapable problem of definition. Whereas the argument for specialized courts for tax and patent law is that expert judges are particularly necessary given the complex subject-matter, proposals for specialized courts for terrorism trials are based on the asserted need for relaxed procedural and evidentiary rules and are justified on the ground that terrorists do not deserve full constitutional protections.5 This creates two fundamental constitutional problems. First, justifying departures from constitutional protections on the basis that the trials are for terrorists undermines the presumption of innocence for these individuals. Second, if a conviction were obtained in a national security court using procedural and evidentiary rules that imposed a lesser burden on the government, then the defendant would be subjected to trial before a national security court based upon less of a showing than would be required in a traditional criminal proceeding. The result would be to apply less due process to the question of guilt or innocence, which, by definition, would increase the risk of error. And, if the government must make a preliminary showing that meets traditional rules of procedure and evidence in order to trigger the jurisdiction of a national security court, such a showing would also enable it to proceed via the traditional criminal process.

#### Plan destroys US legitimacy, rule of law, and fuels terrorism

Deborah Colson 09, Acting Director, Law & Security Program at Human Rights First, March, “The Case Against A Special Terrorism Court,” http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Human Rights First believes that all indefinite detention and special court proposals—whatever form they might take—are unwise, unnecessary and should be rejected. The federal criminal courts have proven to be fully capable of handling the challenges posed by complex terrorism cases without compromising national security or sacrificing standards of fairness and due process. Our procedural safeguards and evidentiary standards comprise the bedrock of American justice. A decision to jettison them, even for a small number of suspects, would weaken our system as a whole, undermine America’s efforts to forge an international coalition to combat terrorism, and perpetuate the damage to America’s reputation for fairness and transparency done by unjust trials and prolonged detention without charge at Guantánamo. ¶ Moreover, the problems that plagued the military commission system—with prolonged litigation over the applicable procedures and rules and increasingly widespread dissention within the military command structure—do not favor the creation of a new court to deal with these cases. Establishing another separate, and secondary, system for terrorism suspects would only result in more legal challenges and would negate many of the strategic advantages of closing Guantánamo and ending military commissions. ¶ Just as importantly, a special terrorism court is not smart counterterrorism policy. Current U.S. counterinsurgency doctrine underscores the important strategic value of treating terrorism suspects as criminals, rather than as military combatants, in order to deprive them of legitimacy and undermine their support in the societies from which they seek recruits to their cause. Unjust detentions and trials at Guantánamo have fueled animosity toward the United States. These decisions also have undermined U.S. efforts to advance the rule of law around the world, which is critical to confronting the threat of terrorism. Creating a special terrorism court and a substitute system of detention without charge would perpetuate these errors rather than solve them. ¶ The new Congress and the Obama Administration have a window of opportunity to signal to the American people and the world that the policies of the Bush Administration were an aberration and that, as it confronts the threat of terrorism, the United States is prepared to uphold the Constitution, restore the rule of law, and honor its international obligations. At stake are the effectiveness of our counterterrorism strategy and the integrity of the American justice system.

# 3

#### Budget negotiations and short debt ceiling will pass now- avoids a U.S. default

**Daily News, 10-10** (Republicans blink over US shutdown?, October 10, 2013, <http://india.nydailynews.com/business/f9d620ca63c2e3fec88bb24ed5f86214/republicans-blink-over-us-shutdown>, F.A.B)

Just a week away from a looming debt default deadline amid a federal shut down, Republicans are reported to have warmed to the idea of a short-term increase in the country's borrowing limit.¶ Key Republican leaders, who had earlier linked passage of a spending bill and raising the US debt ceiling to dumping or delaying President Barack Obama's signature healthcare law, were also said to be ready to abandon the idea and instead are scrambling for a fallback strategy.¶ The development came Wednesday as conservative Republicans and leaders of the Republican controlled House prepared for their first meeting Thursday with Obama since the government shutdown began ten days ago.¶ Paul Ryan, 2012 Republican vice presidential candidate and chairman of the House Budget Committee, has outlined a plan to extend the nation's borrowing limit for four to six weeks, paired with a framework for broader deficit-reduction talks, the Wall Street Journal reported.¶ The greater the spending reduction the talks produced, the longer the next extension of the debt ceiling would be under Ryan's plan outlined Wednesday to fellow conservatives, it said.¶ Ryan's proposal for a short-term debt-limit increase drew broad support from conservatives at the Capitol Hill meeting, the Journal reported citing lawmakers who attended.¶ According to Washington Post Republican Party leaders, now widely acknowledge that their effort to kill Obama care by forcing a government shutdown has been a **failure** and they are now looking for a way out of the impasse.¶ Instead, they are regrouping for a longer battle over the health-care law, the influential daily said. They also are trying to refocus the upcoming debt-ceiling showdown on fiscal issues, including entitlements and tax reform.¶ Obama had invited the entire House Republican caucus to the White House as part of a series of meetings with legislators, but Republicans are sending only 18 members representing the party leadership and committee chairmen to¶ Thursday's meeting.¶ "It is our hope that this will be a constructive meeting and that the president finally recognizes Americans expect their leaders to be able to sit down and resolve their differences," an aide of House speaker John Boehner said in a statement.

#### B) Obama would push the plan --- costs tons of political capital

Matthew Waxman 7/30/13, law professor at Columbia Law School, where he co-chairs the Roger Hertog Program on Law and National Security. He is also Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations and a member of the Hoover Institution Task Force on National Security and Law. He previously served in senior policy positions at the State Department, Defense Department, and National Security Council, “Closing Guantanamo Would Still Leave Some Toughest Decisions for the Next President,” http://www.lawfareblog.com/2013/07/closing-guantanamo-would-still-leave-some-toughest-decisions-for-the-next-president/

Although pulling this off will require that President Obama spend tremendous political capital, it would actually push some very difficult decisions onto his successor’s shoulders, too. ¶ Even if it closes Guantanamo along the lines laid out above, it’s very unlikely that the Obama administration will have prosecuted or found alternative security solutions abroad for some number of the most dangerous detainees (by most credible estimates, at least a few dozen). It’s also very unlikely that they’ll simply release them – especially because whatever political deal Obama strikes to close Guantanamo will probably include assurances that he won’t do that.¶ To deal with these toughest cases, one possibility is that the Obama administration closes Guantanamo but does not declare the armed conflict with al Qaida to have ended during this presidential term. The most dangerous detainees who are not prosecuted could then continue simply to be held under existing law-of-war detention authorities. This will anger many Guantanamo-closure advocates who see that facility as merely a manifestation of the much larger problem of detention without trial, but some of those advocates are willing to give a little ground on this issue, at least for what they sometimes refer to as Bush-era “legacy” detainees. Alternatively, President Obama might declare an end to the war with al Qaida (that would allow him to claim he ended three wars) but assert a continuing “wind-up” legal authority to deal with some remaining cases. Either way, the ultimate decisions whether to release some of the hardest detainee cases will very likely be deferred to the next presidential term.¶ Besides the obvious point that we don’t know what that next president’s detention policy or campaign promises will be, several factors will shape that next administration’s decision-making in ways that differ from Obama’s.¶ First, in closing Guantanamo, President will have declared those remaining detainees — in his own judgment and in the judgment of his national security cabinet — too dangerous to release. That is, the very security arguments that President Obama makes in the course of closing Guantanamo will constrain the next president.¶ At the same time, the arguments that it’s in our national security interest to close Guantanamo (such as propaganda and terrorist-recruiting value) will be significantly diluted. Presumably Obama will have justified his decision to move detainees into the United States on the grounds that it’s dangerous to national security to keep Guantanamo open but not dangerous to national security to continue keeping some detainees without trial in the United States.¶ Additionally, assuming that President Obama closes Guantanamo but doesn’t declare a cessation of hostilities with al Qaida, the remainder of these non-prosecutable-but-dangerous detainees will put pressure — from both sides — on the President’s (and perhaps Congress’s, as well as courts’) decision about whether the armed conflict persists. It will be harder to characterize continuing detention versus release/transfer as a policy judgment about individual detainees; instead it will be framed as a legal one about the conflict as a whole. If President Obama does declare an end to the war but claims a continuing “wind-up” detention authority, the same will be true, but the legal debate will be about the extent and duration of that authority.¶ Finally, as just alluded to, it’s not clear what the other branches will do once detainees are moved into the United States, and how that might either box in or relieve pressure on the next president. Even if President Obama wouldn’t want it, maybe Congress will enact aggressive new detention legislation that applies to these remaining detainees — especially if the next president asks for it. Perhaps political support for new detention powers might be greater with releasable detainees inside the United States than if they were outside it, or perhaps continuing detainee transfers and movement of some detainees into the United States will demonstrate that the risks of further releases or transfers are quite manageable. Maybe courts will take a tougher line against the government with respect to law-of-war detention (or post-conflict detention) than they have so far. It’s hard to predict, but I doubt we’ll know the final answers to these questions during the Obama presidency, even if he succeeds in closing Guantanamo on his own watch.¶ In other words, any plan to close Guantanamo will be very difficult politically for Obama to pull off during the remainder of his term, but it will also still probably involve kicking to the next president and his or her counterparts in the other branches of government some equally difficult decisions.¶ Advocates inside and outside the government of closing Guantanamo will be emphasizing in coming months that the second-term Obama is willing to take upon himself political accountability for transfer or release decisions, and that Obama does not want to leave this issue for the next president. Especially with so much to do in so little time, that’s probably impossible.

#### Obama pressure is key to debt ceiling passage:

Milbank 9-27-2013

Dana is a Washington Post Columnist, “Obama Should Pivot to Dubya’s Playbook,” <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>

If President Obama can stick to his guns, he will win his October standoff with Republicans.¶ That’s an awfully big “if.”¶ Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd.¶ But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered.¶ Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone.¶ Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions.¶ But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare.¶ To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after.¶ Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note.¶ In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently.¶ The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.”¶ This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers.¶ Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator.¶ Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Failure to raise the debt ceiling causes a DEPRESSION:

Jeff Cox, 10/3/2013 (staff writer, “First a default, then a depression? Some think so”

<http://www.cnbc.com/id/101084623>, Accessed 10/3/2013, rwg)

Traders work the floor on the NYSE the first day of the government shutdown.¶ Damage from a U.S. credit default would be more than bad public relations—it could affect everyone from bankers to pensioners to holders of supposedly sacrosanct money market funds.¶ In a research note analyzing the various consequences of a debt default, banking analyst Dick Bove pointed to a variety of areas:¶ Money market funds, which would "break the buck" and deliver negative returns; banks, which would not be able to lend because of the plunging value of the debt securities they own; and Social Security recipients and pensioners, for whom there would be a shrinking pool of funds, also because of the declining value of Treasurys, which are heavily owned by SS funds and institutional retirement plans.¶ Indeed, dismissal of the government shutdown as a threat to markets has turned to dismay over the potential of a debt default that could have far worse consequences.¶ The Treasury Department is raising serious concerns regarding a possible U.S default. Michael Feroli, JPMorgan, shares his concerns for the economy.¶ For the first three days of the shutdown, equity market prices experienced just a mild net selloff while bond yields held tight.¶ Thursday brought a change to that trend, though, as investors heeded a dire message from President Barack Obama, who intimated in a CNBC interview Wednesday that Wall Street was taking the crisis too lightly.¶ Consequently, stocks sold off sharply and the Treasury Department warned of the dire consequences that might result from a full-blown debt default.¶ Picking up on that message, Bove said the situation could be more dramatic: A Depression that would cause severe and lasting economic damage.¶ "The devastation to the United States would be so severe that it would take decades to recover from the Depression caused by a default and the attendant dumping of trillions of dollars of U.S. Treasury securities on the global financial markets," said Bove, vice president of equity research at Rafferty Capital Markets.

#### **Global economic collapse causes multiple scenarios for nuclear conflict:**

Friedberg and Schoenfeld 8

(Aaron, professor of politics and international relations at Princeton University's Woodrow Wilson School and Gabriel, senior editor of Commentary, is a visiting scholar at the Witherspoon Institute in Princeton, N.J., October 21, 2008, Wall Street Journal, “The Dangers of a Diminished America”, <http://online.wsj.com/article/SB122455074012352571.html>, June 27, 2012) ALK

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures. As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power. What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

# ADV 1

#### Legitimacy’s inevitable and not key to heg

Brooks and Wohlforth, 9 (Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

#### Unipolarity causes policy failure---they can’t access any impact

Charles L. Glaser 11, professor in the Elliott School of International Affairs and the Department of Political Science at the George Washington University and the director of the Elliott School’s Institute for Security and Conﬂict Studies, June 2011, “Why unipolarity doesn’t matter (much),” Cambridge Review of International Affairs, Vol. 24, No. 2, p. 135-147

A still different type of argument holds that unipolar powers tend to adopt expanded interests and associated goals that unipolarity then enables them to achieve. To the extent that these goals are actually in the unipole’s true interest, unipolarity is good for the unipole. In broad terms, this argument follows the claim that states’ interests and goals grow with their power. 19¶ These expanded goals can be attributed to three different types of factors. 20 The ﬁrst is a permissive structure, which allows the state to pursue more ambitious goals. The state’s interests do not change, but its increased ability to pursue them results in a redeﬁnition of its goals. A state could have goals that were previously unachievable at acceptable cost; by lowering the costs, unipolarity places these goals within reach, enabling the state to make itself better off. A unipole’s desire for a higher degree of security can be an example of this type of expanded goal, reﬂecting the means that it can wield. Second, the state can acquire new interests, which are generated by the unipole’s greater territorial and institutional reach. For example, a state that controls more territory may face new threats and, as a result, conclude that it needs to control still more territory, acquire still more power, and/or restructure international institutions to further protect its interests. Third, the unipole’s goals can be inﬂuenced by what is commonly described as human nature and by psychology. A unipolar state will be inclined to lose track of how secure it is and consequently pursue inappropriate policies that are designed to increase its security but turn out to be too costly and/or to have a high probability of backﬁring. One variant of this type of argument expects unipolar powers to conclude that they need to spread their type of governance or political ideology to be secure. These dangers can be reinforced by a tendency for a unipolar power to see its new interests, which are optional, as necessary ones.¶ The ﬁrst two types of expanded interests and goals can make the unipole better off. The question here is whether the interests the United States might ﬁnd within its reach due to its unipolar position are very valuable. With respect to security, the answer is ‘no’. For the reasons summarized above, the United States can be very secure in bipolarity, and unipolarity is important only in an extreme and unlikely case. Other US goals, for example, spreading democracy and free markets, do not depend on unipolarity, at least not its military dimension. Instead, whether these liberal systems spread will depend most heavily on their own effectiveness. Regarding the down side, there does not appear to be an overwhelming reason that the United States cannot avoid the dangers of unipolar overreach. The Bush administration certainly proved itself vulnerable to these dangers and the United States is continuing to pay for its ﬂawed judgments. Arguably, strands of overreach can be traced back to the Clinton administration’s emphasis on democratic enlargement, although the means that it chose were much more in line with US interests. 21 And the Obama administration’s decision to escalate the war in Afghanistan may well be an example of striving for too much security. Nevertheless, none of the basic arguments about unipolarity explain why these errors are unavoidable. The overreach claim is more an observation about the past than a well-supported prediction about the future. We do not have strong reasons for concluding that the United States will be unable to beneﬁt from analyses of its grand strategy options, learning to both appreciate how very secure it is and at the same time to respect the limits of its power.¶ In sum, then, under current conditions, unipolarity does little to enable the United States to increase its security. Given the limited beneﬁts of unipolarity and the not insigniﬁcant dangers of unipolar overreach, the United States will have to choose its policies wisely if it is going to be better off in a unipolar world than a bipolar one.

#### No climate multilateralism — nationalism ensures gridlock

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation

Gridlock exists across a range of different areas in global governance today, from security arrangements to trade and finance. This dynamic is, arguably, most evident in the realm of climate change. The diffusion of industrial production across the world—a process enabled by economic globalization—has created a situation in which the basic consumption of each individual directly affects the life chances of every other individual on the planet, as well as the life chances of future generations.¶ This is a powerful and entirely new form of global interdependence. Bluntly put, the future of our civilization depends on our ability to cooperate across borders. And yet, despite twenty years of multilateral negotiations under the UN, a global deal on climate change mitigation or adaptation remains elusive, with differences between developed countries, which have caused the problem, and developing countries, which will drive future emissions, forming the core barrier to progress. Unless we overcome gridlock in climate negotiations, as in other issue areas, we will be unable to continue to enjoy the peace and prosperity we have inherited from the postwar order.¶ There are, of course, several forces that might work against gridlock. These include the potential of social movements to uproot existing political constraints, catalysed by IT innovation and the use of associated technology for coordination across borders; the capacity of existing institutions to adapt and accommodate factors such as emerging multipolarity (the shift from the G-5/7 to the G-20 is one example); and efforts at institutional reform which seek to alter the organizational structure of global governance (for example, proposals to reform the Security Council or to establish a financial transaction tax). ¶ Whether there is the political will or leadership to move beyond gridlock remains a pressing question. Social movements find it difficult to convert protests into consolidated institutional change. At the same time, the political leadership of the great power blocs appears dogged by national concerns: Washington is sharply divided, Europe is preoccupied with the future of the Euro and China is absorbed by the challenge of sustaining economic growth as the prime vehicle of domestic legitimacy. Against this background, the further deepening of gridlock and the continuing failure to address global collective action problems appears likely.

#### No impact---mitigation and adaptation will solve---no tipping point or “1% risk” args

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

The heart of the debate about climate change comes from a number of warnings from scientists and others that give the impression that human-induced climate change is an immediate threat to society (IPCC 2007a,b; Stern 2006). Millions of people might be vulnerable to health effects (IPCC 2007b), crop production might fall in the low latitudes (IPCC 2007b), water supplies might dwindle (IPCC 2007b), precipitation might fall in arid regions (IPCC 2007b), extreme events will grow exponentially (Stern 2006), and between 20–30 percent of species will risk extinction (IPCC 2007b). Even worse, there may be catastrophic events such as the melting of Greenland or Antarctic ice sheets causing severe sea level rise, which would inundate hundreds of millions of people (Dasgupta et al. 2009). Proponents argue there is no time to waste. Unless greenhouse gases are cut dramatically today, economic growth and well‐being may be at risk (Stern 2006).

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

#### **No extinction from climate change**

NIPCC 11 – the Nongovernmental International Panel on Climate Change, an international panel of nongovernment scientists and scholars, March 8, 2011, “Surviving the Unprecedented Climate Change of the IPCC,” online: http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html

In a paper published in Systematics and Biodiversity, Willis et al. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2 will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas et al., 2004; Solomon et al., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford et al., 2008)."

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos et al., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records."

Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world."

In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."

#### US engagement in multilat will never be strong enough to make it effective --- they can’t change this

Vezirgiannidou, 13 - Lecturer in International Organizations, University of Birmingham (SEVASTI-ELENI, “The United States and rising powers in a post-hegemonic global order,” International Affairs, May, Wiley Online)

The current US approach to rising powers, which engages them as equals in informal forums with little ‘hard’ law capabilities, while being passive or hesitant in reforming international institutions where it has a primary role (and a veto), exemplifies its own commitment to sovereignty and freedom of action in international politics. The US is just as reluctant as the BRICS to be bound by hard law commitments. It also indicates a lukewarm commitment to sharing its power with rising powers in hard law institutions. Some of this reluctance may be attributable to the constraints of congressional politics (and American exemptionalism); its strength can also depend on who sits in the White House and who his advisers are.118 Irrespective of the cause, this reluctance to share power formally while promoting multilateralism in informal settings is likely to have transformative implications on global order if it continues.¶ Specifically, the resulting order will become more plurilateral than multilateral, with the exclusion of minor powers and most decision­making moving into forums like the G20. It will also shift to more ‘soft law’ policy­making, as informal institutions will be less intrusive on sovereignty but also less able to move far beyond political declarations followed up on a voluntary basis. Finally, it is also likely to be more fragmented, as each power establishes a ‘sphere of influence’ in its region. This kind of order will not necessarily be more unstable, but even in such an order the US will have to accept some limits to its exercise of power abroad; it will not, though, be limited in its domestic policies, thus satisfying the exemptionalists in Congress. However, US policy­makers should be aware of the direction in which their current choices are moving global order; if they do not desire such an order, they should question their strategy towards both rising and minor powers and should show more leadership in the reform of formal institutions.

#### Multilateral coop will always structurally fail regardless of their internal link

Barma et al., 13 (Naazneen, assistant professor of national-security affairs at the Naval Postgraduate School; Ely Ratner, a fellow at the Center for a New American Security; and Steven Weber, professor of political science and at the School of Information at the University of California, Berkeley, March/April 2013, “The Mythical Liberal Order,” The National Interest, http://nationalinterest.org/print/article/the-mythical-liberal-order-8146)

Assessed against its ability to solve global problems, the current system is falling progressively further behind on the most important challenges, including financial stability, the “responsibility to protect,” and coordinated action on climate change, nuclear proliferation, cyberwarfare and maritime security. The authority, legitimacy and capacity of multilateral institutions dissolve when the going gets tough—when member countries have meaningfully different interests (as in currency manipulations), when the distribution of costs is large enough to matter (as in humanitarian crises in sub-Saharan Africa) or when the shadow of future uncertainties looms large (as in carbon reduction). Like a sports team that perfects exquisite plays during practice but fails to execute against an actual opponent, global-governance institutions have sputtered precisely when their supposed skills and multilateral capital are needed most. ¶ WHY HAS this happened? The hopeful liberal notion that these failures of global governance are merely reflections of organizational dysfunction that can be fixed by reforming or “reengineering” the institutions themselves, as if this were a job for management consultants fiddling with organization charts, is a costly distraction from the real challenge. A decade-long effort to revive the dead-on-arrival Doha Development Round in international trade is the sharpest example of the cost of such a tinkering-around-the-edges approach and its ultimate futility. Equally distracting and wrong is the notion held by neoconservatives and others that global governance is inherently a bad idea and that its institutions are ineffective and undesirable simply by virtue of being supranational. ¶ The root cause of stalled global governance is simpler and more straightforward. “Multipolarization” has come faster and more forcefully than expected. Relatively authoritarian and postcolonial emerging powers have become leading voices that undermine anything approaching international consensus and, with that, multilateral institutions. It’s not just the reasonable demand for more seats at the table. That might have caused something of a decline in effectiveness but also an increase in legitimacy that on balance could have rendered it a net positive.¶ Instead, global governance has gotten the worst of both worlds: a decline in both effectiveness and legitimacy. The problem is not one of a few rogue states acting badly in an otherwise coherent system. There has been no real breakdown per se. There just wasn’t all that much liberal world order to break down in the first place. The new voices are more than just numerous and powerful. They are truly distinct from the voices of an old era, and they approach the global system in a meaningfully different way.¶

#### No disease extinction

Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease.

# ADV 2

#### No evidence that I/D biggest instance---no ev that says it’s the biggest motivater.

#### No risk of terror attack—organizations weak

Zenko and Cohen 2013(Micah, Fellow in the Center for Preventive Action at the Council on Foreign Relations, and Michael, Fellow at the Century Foundation, March 14, "Clear and Present Safety", Foreign Affairs, Accessed from http://yaleglobal.yale.edu/content/clear-and-present-safety)

None of this is meant to suggest that the United States faces no major challenges today. Rather, the point is that the problems confronting the country are manageable and pose minimal risks to the lives of the overwhelming majority of Americans. None of them -- separately or in combination -- justifies the alarmist rhetoric of policymakers and politicians or should lead to the conclusion that Americans live in a dangerous world.¶ Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States’ vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States. ¶ According to U.S. officials, al Qaeda’s leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is “within reach.” The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies.

#### Their studies are flawed- no empirical evidence terrorists will get nukes

Keir A. Lieber and Daryl G. Press 2013 (Keir A. Lieber is Associate Professor in the Edmund A. Walsh School of Foreign Service and the Department of Government at Georgetown University. Daryl G. Press is Associate Professor of Government at Dartmouth College. “Why States Won’t Give Nuclear Weapons to

Terrorists” International Security, Vol. 38, No. 1 (Summer 2013), pp. 80–104 accessed 8/18/13 NB)

Despite the issue’s importance, the danger of deliberate nuclear weapons¶ transfer to terrorists remains understudied.6¶ Scholars have scrutinized many other proliferation concerns more extensively. Analysts have investigated the¶ deductive and empirical bases for claims that new nuclear states would be¶ deterrable;7¶ the likelihood that Iran, in particular, would behave rationally and¶ avoid using nuclear weapons recklessly;8¶ and the risks of proliferation cascades,9¶ “loose nukes,”10 and nuclear-armed states using their weapons as a¶ shield for aggression or blackmail.11 To the extent that analysts have debated the possibility of covert state sponsorship of nuclear terrorism, however, the¶ arguments have consisted mostly of competing deductive logics—with little¶ empirical analysis.

#### No nuclear terrorism. If they haven’t done it with more power over 15 years, they won’t now.

Sigger, 10 (Jason, Defense Policy Analyst focusing on Chemical, Biological, Radiological and Nuclear Defense issues, “Terrorism Experts Can Be Alarmists, Too”, http://armchairgeneralist.typepad.com/my\_weblog/2010/01/terrorism-experts-can-be-alarmists-too-1.html)

You find the famous bin Laden 1998 quote about WMDs, references from George "slam dunk" Tenet's book on al Qaeda intentions and actions in the desert, meetings between Muslim scientists and suppliers, statements by terrorists that were obtained under "interrogations," and yes, even Jose Padilla's "dirty bomb" - a charge which people may remember the US government dropped because it had no evidence on this point. And no discussion about AQ would be complete without the "mobtaker" device that never really emerged in any plot against the West. That is to say, we have a collection of weak evidence of intent without any feasible capability and zero WMD incidents - over a period of fifteen years, when AQ was at the top of their game, they could not develop even a crude CBRN hazard, let alone a WMD capability. Mowatt-Larsen doesn't attempt to answer the obvious question - why didn't AQ develop this capability by now? He points to a June 2003 article where the Bush administration reported to the UN Security Council that there was a "high probability" that al Qaeda would attack with a WMD within two years. The point that the Bush administration could have been creating a facade for its invasion into Iraq must have occurred to Mowatt-Larsen, but he dodges the issue. This is an important report to read, but not for the purposes that the author intended. It demonstrates the extremely thin thread that so many terrorist experts and scientists hang on when they claim that terrorists are coming straight at the United States with WMD capabilities.

#### No impact to bioterror

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

#### No risk of a bioterror attack, and there won’t be retaliation - their evidence is hype

MATISHAK ‘10 (Martin, Global Security Newswire, “U.S. Unlikely to Respond to Biological Threat With Nuclear Strike, Experts Say,” 4-29, <http://www.globalsecuritynewswire.org/gsn/nw_20100429_7133.php>)

WASHINGTON -- The United States is not likely to use nuclear force to respond to a biological weapons threat, even though the Obama administration left open that option in its recent update to the nation's nuclear weapons policy, experts say (See GSN, April 22). "The notion that we are in imminent danger of confronting a scenario in which hundreds of thousands of people are dying in the streets of New York as a consequence of a biological weapons attack is fanciful," said Michael Moodie, a consultant who served as assistant director for multilateral affairs in the U.S. Arms Control and Disarmament Agency during the George H.W. Bush administration. Scenarios in which the United States suffers mass casualties as a result of such an event seem "to be taking the discussion out of the realm of reality and into one that is hypothetical and that has no meaning in the real world where this kind of exchange is just not going to happen," Moodie said this week in a telephone interview. "There are a lot of threat mongers who talk about devastating biological attacks that could kill tens of thousands, if not millions of Americans," according to Jonathan Tucker, a senior fellow with the James Martin Center for Nonproliferation Studies. "But in fact, no country out there today has anything close to what the Soviet Union had in terms of mass-casualty biological warfare capability. Advances in biotechnology are unlikely to change that situation, at least for the foreseeable future." No terrorist group would be capable of pulling off a massive biological attack, nor would it be deterred by the threat of nuclear retaliation, he added. The biological threat provision was addressed in the Defense Department-led Nuclear Posture Review, a restructuring of U.S. nuclear strategy, forces and readiness. The Obama administration pledged in the review that the United States would not conduct nuclear strikes on non-nuclear states that are in compliance with global nonproliferation regimes. However, the 72-page document contains a caveat that would allow Washington to set aside that policy, dubbed "negative security assurance," if it appeared that biological weapons had been made dangerous enough to cause major harm to the United States. "Given the catastrophic potential of biological weapons and the rapid pace of biotechnology development, the United States reserves the right to make any adjustment in the assurance that may be warranted by the evolution and proliferation of the biological weapons threat and U.S. capacities to counter that threat," the posture review report says. The caveat was included in the document because "in theory, biological weapons could kill millions of people," Gary Samore, senior White House coordinator for WMD counterterrorism and arms control, said last week after an event at the Carnegie Endowment for International Peace. Asked if the White House had identified a particular technological threshold that could provoke a nuclear strike, Samore replied: "No, and if we did we obviously would not be willing to put it out because countries would say, 'Oh, we can go right up to this level and it won't change policy.'" "It's deliberately ambiguous," he told Global Security Newswire. The document's key qualifications have become a lightning rod for criticism by Republican lawmakers who argue they eliminate the country's previous policy of "calculated ambiguity," in which U.S. leaders left open the possibility of executing a nuclear strike in response to virtually any hostile action against the United States or its allies (see GSN, April 15). Yet experts say there are a number of reasons why the United States is not likely to use a nuclear weapon to eliminate a non-nuclear threat. It could prove difficult for U.S. leaders to come up with a list of appropriate targets to strike with a nuclear warhead following a biological or chemical event, former Defense Undersecretary for Policy Walter Slocombe said during a recent panel discussion at the Hudson Institute. "I don't think nuclear weapons are necessary to deter these kinds of attacks given U.S. dominance in conventional military force," according to Gregory Koblentz, deputy director of the Biodefense Graduate Program at George Mason University in Northern Virginia. "There's a bigger downside to the nuclear nonproliferation side of the ledger for threatening to use nuclear weapons in those circumstances than there is the benefit of actually deterring a chemical or biological attack," Koblentz said during a recent panel discussion at the James Martin Center. The nonproliferation benefits for restricting the role of strategic weapons to deterring nuclear attacks outweigh the "marginal" reduction in the country's ability to stem the use of biological weapons, he said. In addition, the United States has efforts in place to defend against chemical and biological attacks such as vaccines and other medical countermeasures, he argued. "We have ways to mitigate the consequences of these attacks," Koblentz told the audience. "There's no way to mitigate the effects of a nuclear weapon." Regardless of the declaratory policy, the U.S. nuclear arsenal will always provide a "residual deterrent" against mass-casualty biological or chemical attacks, according to Tucker. "If a biological or chemical attack against the United States was of such a magnitude as to potentially warrant a nuclear response, no attacker could be confident that the U.S. -- in the heat of the moment -- would not retaliate with nuclear weapons, even if its declaratory policy is not to do so," he told GSN this week during a telephone interview. Political Benefits Experts are unsure what, if any, political benefit the country or President Barack Obama's sweeping nuclear nonproliferation agenda will gain from the posture review's biological weapons caveat. The report's reservation "was an unnecessary dilution of the strengthened negative security and a counterproductive elevation of biological weapons to the same strategic domain as nuclear weapons," Koblentz told GSN by e-mail this week. "The United States has nothing to gain by promoting the concept of the biological weapons as 'the poor man's atomic bomb,'" he added.

# Solvency

#### (--) No solvency: President will choose military tribunals irrevocably

McNeal 8 (Gregory S, visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law, served as an academic consultant to the former Chief Prosecutor, Department of

Defense Office of Military Commissions, “BEYOND GUANTÁNAMO, OBSTACLES AND

OPTIONS” Northwestern University School of Law, 2008, [http://www.law.northwestern.edu/lawreview/ colloquy/2008/28/LRColl2008n28McNeal.pdf accessed 9/14/13](http://www.law.northwestern.edu/lawreview/%20colloquy/2008/28/LRColl2008n28McNeal.pdf%20accessed%209/14/13))

Consistent with the theme of this Essay, I theorize that protecting intelligence equities enjoys primary importance in the eyes of the Executive, and ¶ that trial outcomes are a close second. Since September 11, 2001, 1,562 individuals have been charged in Article III courts with terrorism-related offenses,¶ 116 while only a handful of individuals have been charged in military ¶ commissions. The number of detainees tried in Article III courts reveals ¶ that Article III courts are adequate in most cases. The system though, is ¶ under strain. A recent NPR report indicated that while the number of counterterrorism-related FISA warrants requested by the federal government has ¶ increased, the number of counterterrorism prosecutions has decreased.117¶ Reinforcing the intelligence protection principle discussed above, a former ¶ FBI official interviewed by NPR stated that once prosecutors indict a terrorism suspect, ―you start rolling a public process that after a point you can no ¶ longer really control. It becomes very public what you knew about this person, and that avenue of gathering more information or creating new sources ¶ is kind of cut off.‖¶ 118 This fact, coupled with the continued use of Guantánamo suggests that the Executive perceives some value in the military commission system. Clearly, some specific factors must influence the Executive to prefer trial by military commission over trial in Article III court. ¶ Otherwise those cases would be brought in Article III courts as many others ¶ have. I argue that two benefits of military commissions explain this phenomenon.¶ First, military commissions provide a marginal intelligence protection ¶ benefit over Article III courts. The language of the MCA related to protecting intelligence is nearly identical to the procedures detailed in the ¶ U.C.M.J.119 Despite these similarities, military commissions provide the intelligence protection benefit of: security cleared counsel for the parties, security cleared panel members (jurors), security cleared administrative staff,¶ and regimented procedures for reviewing all documents offered in pleadings or field with the court. Perhaps most importantly, military commissions do not require as many disclosures as those required in Article III ¶ courts and allow for the admission of hearsay.120 These procedures enable ¶ evidence to be admitted in a manner which protects intelligence (such as ex ¶ parte affidavits) and are also more likely to secure a conviction.¶ Consider the intelligence protection benefit of these procedures as ¶ compared to Article III courts. In the 1993 World Trade Center bombing ¶ case, a letter was revealed to the defense during discovery listing ―200 ¶ names of people who might be alleged as unindicted co-conspirators.‖¶ 121¶ Six years later, that letter turned up as evidence in the trial of those who ¶ bombed U.S. embassies in Africa. Within days ―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 gotten it from ¶ one of his associates.‖¶ 122 Based on this information, bin Laden was able to ¶ determine which of his operatives had been compromised. Disclosures ¶ such as this, which are mandated in Article III courts, threaten the protection of intelligence, and also provide defendants with greater rights which ¶ may result in an acquittal. Protecting intelligence and securing convictions are considerations that weigh heavily on the mind of the Executive, who ¶ will seek to maximize both.¶ Congressional reformers must be aware of executive forum-discretion ¶ and limit the availability of alternative fora, especially in any transition to a ¶ national security court. Otherwise, the benefits of trial in military commissions will prove too alluring to the Executive, making any new forum underutilized.

#### (--) Turn: readiness

#### A) Judicial review of detainment decisions decimates military readiness:

Greg Jacob, 2012 (former US Solicitor of Labor, *Patriots Debate*, 222)

Until the new kind of war presented by the War on Terror came along, the courts uniformly recognized that war is a matter best handled by the political branches, and that at least in active theaters of combat operations, the judiciary should stay out. That is why the D.C. Circuit’s decision in *al-Maqaleh* is so important: It recognizes there are times and places in which the substantial costs in time, energy, and resources that necessarily accompany the judiciary’s error-correcting function simply aren’t worth it, and to which the Framers accordingly never intended to extend constitutional habeas protections. To be sure, the circumstances in which constitutional habeas protections do not apply are carefully circumscribed, U.S. citizens for example, will always be entitled to habeas review, and after *Boumediene*, most if not all aliens detained domestically will be as well. But within that narrow sphere from which the judiciary has been excluded, and has by and large accepted its exclusion, the time, energy, and resources at stake can literally be a matter of life or death for our troops, and for the nation as a whole.

#### B) Readiness is key to solve nuclear war:

#### Kagan, 7

(Robert, senior fellow at the Carnegie Endowment for International Peace, “End of Dreams, Return of History”, 7/19, <http://www.hoover.org/publications/policyreview/8552512.html>)

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying — its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic.

#### (--) Turn: restrictions on detention lead to worse forms of punishment with non-detention alternatives:

Stephen Vladeck, 2012 (professor American University Washington College of Law, *Patriots Debate*, 206-207)

Judge Brown’s rhetoric provides a useful lens for thinking about the future of U.S. detention policy, for it can fairly be seen as suggesting that the Supreme Court’s various interventions into detainee policy in the War on Terrorism have been directly responsible for the “shrinking category of cases” arising out of Guantanamo and related reality that “[t]he ranks of Guantanamo detainees will not be replenished. Put another way, faced with the specter of judicial review, Latif suggests that the Bush and Obama administrations were compelled to resort to other measures for handling terrorism suspects, whether detention at other overseas locations (to which the Suspension Clause might not run); indictment and trial by civilian U.S. courts; or more lethal forms of incapacitation—including targeted killings. Indeed, if Judge Brown is right, then the result would be profoundly unsettling: The true lesson of the past decade with regard to military detention is that judicial review is ultimately self-defeating, provoking responses by the political branches that largely eliminate the need for (or availability of) judicial review in future cases.

#### (--) Turn: whitewashing—judicial review of detention policy decisions only justifies Guantanomo Bay:

Stephen Vladeck, 2012 (professor American University Washington College of Law, *Patriots Debate*, 220-221)

Reasonable minds may well disagree about the result in Maqaleh. The larger question that I’m left with after Jacob’s response, though, is why we should be so afraid of judicial review. After all, no one has identified a single example in the Guantanamo litigation in which classified information was improperly disclosed by a detainee’s counsel. Add that to the fact that the government has prevailed in every case in which it appealed a district court’s grant of habeas relief or in which the detainee appealed the denial. Taken together, these points bespeak a record in which judicial review has done exceedingly little to jeopardize the government’s interests. Indeed, it may have had the opposite effect, as I described in my initial contribution, of lending legitimacy to our detention program both at Guantanamo and elsewhere. At minimum, it has had the salutary effect of requiring the government to make its case before a neutral magistrate, something that, in the case of an overwhelming majority of the men who since have been released from Guantanamo, it declined even to attempt.