# 1AC

## 1AC- Districts

### Contention 1- Rule of Law

#### Afghanistan has adopted detention policies modeled off US law

Rodgers 12 (Chris Rogers is a human rights lawyer for the Open Society Foundations specializing in human rights and conflict in Afghanistan and Pakistan, May 14, “Karzai's bid for a dictatorial detention law”, http://afpak.foreignpolicy.com/posts/2012/05/14/karzais\_bid\_for\_a\_dictatorial\_detention\_law)

As part of the agreement to transfer control of Bagram, the Afghan government is creating the authority to hold individuals without charge or trial for an indefinite period of time on security grounds-a power it has never before said it needed. While such "administrative detention" regimes are permissible under the laws of war, this new detention power is being established in order to hand over a U.S. detention facility, not because changes in the conflict have convinced Afghan officials that it is necessary. A surge in U.S. detention operations like night raids has driven the prison population to over 3,000 detainees, most of whom the United States lacks evidence against for prosecution under Afghans law. Because the Afghan constitution, like the United States', protects individuals from being detained without charge or trial, the Afghan government needs a new detention law, which is now being modeled on deeply problematic U.S. detention policies and practices. As a result, Bagram's real legacy may be the establishment of a detention regime that will be ripe for abuse in a country with pervasive corruption and weak rule of law. Despite potentially far-reaching consequences, the development of this new detention power has been hidden from public view. When I met with leading Afghan lawyers and civil society organizations in Kabul several weeks ago, few knew that the government was proposing to create a new, non-criminal detention regime. Their reaction was disbelief and dismay. None had even seen a copy of the proposed regime, which the Afghan government has not made public and is trying to adopt by presidential fiat. The Open Society Foundations recently obtained a copy of the proposed detention regime, and after review, we have found what it details deeply troubling. The proposed changes leave open critical questions about the nature and scope of this proposed detention regime, which if left unanswered make it ripe for abuse. Who can be held in administrative detention and for how long? Where will it apply? When will the government cease to have this power? How will the government ensure it will not be abused to imprison the innocent or suppress political opposition? Most alarming is the failure to address the serious, long-term risks posed by such a regime. From apartheid South Africa to modern day China, administrative detention regimes adopted on security grounds have too often been used as tools of repression. In Egypt, the former government used administrative detention for decades to commit gross human rights violations and suppress political opposition, relying on a state of emergency declared in 1958, and nominally lifted only after last year's revolution. Across the border in Pakistan, the draconian Frontier Crimes Regulations are another stark reminder of the long, dark shadow that such legal regimes can cast. The ongoing imposition of these British, colonial-era laws, which among other things legalize collective punishment and detention without trial, are cited by many as a key driver of the rise of militancy in the tribal areas of Pakistan. But there is still time for the United States to avoid this legacy in Afghanistan. If the Afghan government cannot be dissuaded from adopting an administrative detention regime, then the United States should urge the Afghan government to include provisions that limit its scope and reduce its vulnerability to abuse. First, a ‘sunset' provision should be adopted, which would impose a time limit on such powers, or require an act by the Afghan Parliament to extend their duration. Second, the regime should be limited to individuals currently held by the United States at Bagram prison. There is no clear reason why the handover of Bagram detainees requires the creation of a nation-wide administrative detention regime. More generally, the scope of who can be detained must be clearly defined and limited. Third, detainees must have right to counsel as well as access to the evidence used against them in order to have a meaningful opportunity to challenge their detention-a fundamental right in international law. At present it seems the government will follow the well-documented due process shortfalls of the U.S. model. The United States and its Afghan partners must be honest about the serious, long-term risks of establishing an administrative detention regime in Afghanistan-particularly one that lacks clear limits and is democratically unaccountable. Protection from arbitrary or unlawful deprivation of life or liberty is at the constitutional core of the United States, and is essential to lasting stability and security in Afghanistan. Living up to the President's promise of responsibly ending the war in Afghanistan requires defending, not betraying this principle.

#### This has prevented rule of law restoration in Afghanistan- judicial modeling makes US action key

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

U.S. detention policy has frequently been cited by Afghan and international legal experts as one of the chief obstacles to restoring balance to the Afghan justice system and citizens’ faith in the rule of law.233 The operation of parallel U.S.-controlled prisons has been problematic from the start. Thousands of Afghans have been detained since the start of Operation Enduring Freedom in 2001 without recourse to trial or the means to challenge their detention. Abuse of prisoners at the U.S.-run Bagram Theatre Internment Facility in the early years of its operation under the Bush administration has been well documented, including the use of harsh interrogation techniques that resulted in the deaths of two Afghans.234 Extrajudicial detentions at Bagram have eroded support for foreign troops and for many Afghans – Pashtuns in particular – stand as a symbol of oppression. Like its sister facility at the U.S. military base in Guantanamo, Cuba, the Bagram prison has provided much grist for Taliban propaganda mills.235 U.S. officials under the Obama administration appear to have begun to recognise that extrajudicial detentions have negatively impacted Afghan perceptions of the rule of law. In January 2009, the U.S. government announced plans to close the facility at Guantanamo and to re-evaluate its detainee programs overall. A U.S. federal district court ruling in April 2009 concluding that non-Afghan detainees held at the Bagram facility have a right to challenge their detention in American courts has hastened the need to find solutions to the legal conundrum posed by the extrajudicial status of prisoners at Bagram.236 In September 2009, the U.S. Department of Defense adopted a new framework for evaluating the status of detainees in U.S. facilities in Afghanistan. Responsibility for detainee policy and operations now falls to Task Force 435, an interagency unit under joint military-civilian leadership whose mission is to bring detention and rule of law practices in line with U.S. strategic goals in Afghanistan. The old Bagram facility has since been replaced by the more modern Detention Facility in Parwan (DFIP), which opened in 2009 at the edge of the Bagram military base. Under this new policy, new detainee review board (DRB) procedures were adopted to bring detention practices in Afghanistan more in line with U.S. and international law. They replaced the Unlawful Enemy Combatant Review Boards, which had been generally deemed inadequate because they afforded detainees few, if any, opportunities to challenge their arrest or to review evidence in cases brought against them in closed hearings. Under the new procedures, a military panel determines if a detainee has been properly captured and poses a future threat to the Afghan government or international security forces. Although the U.S. government is careful not to characterise the proceedings as legal or adversarial in the sense that a trial might be, detainees are allowed to some extent to present their version of events with the help of a U.S.-assigned “personal representative”. Hundreds of detainees have had their cases reviewed since the new review procedures were adopted and a number have been released because of insufficient evidence that they posed a threat to the Afghan government.237 These new guidelines are an important step forward, but they are far from replicating internationally recognised fair trial standards. A number of other actions must be taken to make U.S. detention policy more transparent, humane and fair and to bring it in line with international law. Specifically, U.S. investigation and intelligence gathering standards must be improved and the review board process must incorporate a more vigorous mechanism that allows detainees to review and challenge evidence brought against them, including measures for classified evidence. Transition to Afghan control of specially designated detainees will also necessitate a re-evaluation of classification procedures both at the point of capture and across agencies – both Afghan and U.S. The current process of declassifying information is far too cumbersome and there is a demand for greater clarity on the rules of transfer of information from coalition and Afghan sources to Afghan government sources.238 Changes in declassification policy will necessitate a serious review of current Afghan law and investigative practices and procedures employed by the Afghan National Directorate of Security and other security organs. In January 2010, the U.S. and Afghan government signed a memorandum of understanding calling for the DFIP to pass from U.S. to Afghan control in July 2011. By that time, review proceedings should be conducted entirely by Afghan judges and prosecutors; an Afghan judge in the Parwan provincial courts has already reviewed a number of detainee cases.239 The U.S. has set up a rule of law centre at the new facility with a view to training Afghan legal professionals to build cases against the roughly 1,100 detainees housed at the prison. The training and transition are important first steps toward dismantling the parallel legal systems that have co-existed uneasily in Afghanistan since the start of the U.S. military engagement. The transition could entail some tricky procedural challenges in terms of potential conflicts between Afghan courts and U.S. military authorities over the danger posed by “highrisk” detainees.240 This and other issues should be clarified before the transition in 2011.

#### Starting with US policy leads to Afghan judiciary improvements

Eviatar 12 (Daphne Eviatar Law and Security Program Human Rights First, 1-9, “The Latest Skirmish in Afghanistan: Hate to Say We Told You So”, http://www.humanrightsfirst.org/2012/01/09/the-latest-skirmish-in-afghanistan-hate-to-say-we-told-you-so/)

Responsibility begins with due process. As we wrote in our report in May, based on our observations of the hearings given to detainees at the U.S.-run detention facility at Bagram: “the current system of administrative hearings provided by the U.S. military fails to provide detainees with an adequate opportunity to defend themselves against charges that they are collaborating with insurgents and present a threat to U.S. forces.” As a result, the U.S. hearings “fall short of minimum standards of due process required by international law.” For President Karzai, that’s an argument that the U.S. should immediately turn the thousands of detainees it’s holding over to the government of Afghanistan. But that would do little to solve the problem. TheUnited Nations reported in October that Afghanistan’s intelligence service systematically tortures detainees during interrogations. The U.S. government cannot hand prisoners over to the Afghans if they’re likely to be tortured, according to its obligations under international law. And unfortunately, as we also noted in our report, the Afghan justice system, although improving with the growing introduction of defense lawyers, is still hardly a model of due process. Still, unlike the United States, at least Afghan law does not permit detention without criminal charge, trial and conviction. The United States hasn’t exactly proven itself the best model for the Afghan justice system. Restoring U.S. credibility is going to be key to our ability to withdraw from Afghanistan without it becoming a future threat to U.S. national security. The U.S. government can’t credibly insist that the Afghans improve their justice system and treatment of detainees if the U.S. military doesn’t first get its own detention house in order. Whether for the sake of international law, U.S. credibility, or merely to improve relations with the Karzai government, upon which U.S. withdrawal from Afghanistan depends, the U.S. military needs to start providing real justice to the thousands of prisoners in its custody.

#### Judicial action is key to international credibility and restoring the rule of law

Hecht, 05 (Daryl, Judge for the Iowa Court of Appeals, 50 S.D. L. REV. 78, lexis)  
Americans proclaim with some justification that liberty and human rights are among the crown jewels of their national identity. Claiming the status of human rights watchdogs around the globe, representatives of the United States government commonly criticize human rights failures of other nations. If such criticism is to be taken seriously and carry force abroad when well-founded, the United States government must heed its own admonitions. It should accord due process not only to all persons detained within its borders but also to those it imprisons offshore at locations under the exclusive control of the United States. Affirmation by federal courts of the liberty interests of alien prisoners imprisoned on Guantanamo would give important symbolic assurance to citizens of the United States, foreign nationals, friends, and foes that liberty is a cherished universal human right that does not persist or perish according to technicalities such as geographic boundaries. As they clarify the nature and extent of process due the Guantanamo prisoners, federal courts will consider the Eisentrager Court's concerns about the prospect that thorough judicial review might disrupt war efforts. [288](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n288) The realities [\*111] of war may justify reasonable restriction of the process available to prisoners of war during times of armed conflict and justify some judicial deference allowing the executive to conduct military campaigns with a minimum of distraction. However, the risk that the war effort will be disrupted by judicial or administrative review of the grounds for detention are diminished in these cases because the prison is distant from the present theaters of war. Modern technology will facilitate the presentation of evidence at remote sites in ways not contemplated by the Court in the Eisentrager era and will render unpersuasive many of the Executive's war-powers arguments against meaningful judicial review. The recent commencement of administrative hearings conducted by the Combatant Status Review Tribunals and the discharge of some of the Guantanamo prisoners are positive developments. It remains to be seen whether federal courts will conclude these administrative tribunals within the Executive branch allow for meaningful review of the prisoners' status. Although passage of the Military Tribunals Act of 2003 would, especially with suggested amendments, alleviate many of the most egregious legal infirmities associated with the ongoing detention of uncharged prisoners, a timely legislative solution to the problem through the action of the political branches of government is unlikely. The best and perhaps only prospect for meaningful protection of the uncharged detainees' rights against indefinite imprisonment lies in the litigation pending in federal courts. The remaining uncharged prisoners have languished too long in prison without charge or access to counsel, and the courts must be vigilant to prevent the continuation of arbitrary detentions in violation of international humanitarian and human rights principles. Alien prisoners ought not be disqualified from fundamental constitutional protections solely as a consequence of the government's choice of an off-shore location for their confinement. If deprivation of aliens' property interests may legally be imposed within the United States only in conformity with due process principles, the liberty interests of aliens held on Guantanamo should receive no less protection against state action. It should be understood that arguments in favor of meaningful review of the status of the Guantanamo prisoners is not an argument for the immediate release of all aliens imprisoned on Guantanamo. The evidence presented in habeas proceedings or in fair administrative tribunal hearings may establish reasonable grounds to believe some petitioners are properly designated and detained as enemy combatants. Under international humanitarian law, they may be detained during the conflict, but it seems evident that the GPW did not contemplate perpetual imprisonment without charge during an interminable war. [289](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n289) The [\*112] evidence offered in a meaningful review process may support war crimes charges against some of the prisoners who will be tried before military commissions under the regulations adopted by the Department of Defense. If the evidence establishes that still other prisoners have, as they allege, been improvidently incarcerated, they should be promptly discharged. In Korematsu v. United States, [290](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n290) the Court deferred during a declared war to the Executive's decision to evacuate persons of Japanese ancestry from locations on the west coast and relocate them in internment camps without the benefit of charges or hearings. That decision has since been widely criticized, and at least one member of the Court later publicly regretted his vote to defer to the military's judgment of necessity. [291](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n291) In 1976, as part of the celebration of the Bicentennial of the Constitution, President Gerald Ford issued a proclamation acknowledging that the internment of the Japanese Americans, many of whom were citizens, during World War II was wrong and calling upon the United States to "resolve that this kind of action shall never again be repeated." [292](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n292) Federal courts now have the opportunity to revisit the appropriate balance between precious civil liberties and measures properly taken in furtherance of national security during times of crisis. As the proper balance is recalibrated to fit the circumstances presented in the Guantanamo litigation, the courts can interrupt the "all too easy slide from a case of genuine military necessity ... to one where the threat is not critical and the power [sought to be exercised is] either dubious or nonexistent." [293](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n293)If the Guantanamo litigation forces meaningful review of the prisoners' status, it will advance the rule of law and model a fundamental principle of international leadership. "If the UnitedStates represents values that others want to follow, it will cost us less to lead." [294](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n294) There is, of course, no doubt that the United States has the military power to ignore the prisoners' liberty interests and continue to hold them indefinitely without charge. But the raw power to maintain the status quo provides no legal justification consistent with reason, fundamental human rights, and principles of limited government for doing so.

#### Only restoring confidence in their judiciary can make our withdrawal successful

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

A substantial course correction is needed to restore the rule of law in Afghanistan. Protecting citizens from crime and abuses of the law is elemental to state legitimacy. Most Afghans do not enjoy such protections and their access to justice institutions is extremely limited. As a result, appeal to the harsh justice of the Taliban has become increasingly prevalent. In those rare instances when Afghans do appeal to the courts for redress, they find uneducated judges on the bench and underpaid prosecutors looking for bribes. Few judicial officials have obtained enough education and experience to efficiently execute their duties to uphold and enforce the law. Endemic problems with communications, transport, infrastructure and lack of electricity mean that it is likely that the Afghan justice system will remain dysfunctional for some time to come. Restoring public confidence in the judiciary is critical to a successful counter-insurgency strategy. The deep-seated corruption and high levels of dysfunction within justice institutions have driven a wedge between the government and the people. The insurgency is likely to widen further if Kabul does not move more swiftly to remove barriers to reform. The first order of business must be to develop a multi-year plan aimed at comprehensive training and education for every judge and prosecutor who enters the system. Pay-and-rank reform must be implemented in the attorney general’s office without further delay. Building human capacity is essential to changing the system. Protecting that capacity, and providing real security for judges, prosecutors and other judicial staff is crucial to sustaining the system as a whole. The international community and the Afghan government need to work together more closely to identify ways to strengthen justice institutions. A key part of any such effort will necessarily involve a comprehensive assessment of the current judicial infrastructure on a province-byprovince basis with a view to scrutinising everything from caseloads to personnel performance. This must be done regularly to ensure that programming and funding for judicial reform remains dynamic and responsive to real needs. More emphasis must be placed on public education about how the system works and where there are challenges. Transparency must be the rule of thumb for both the government and the international community when it comes to publishing information about judicial institutions. Little will change without more public dialogue about how to improve the justice system. The distortions created in the justice system by lack of due process and arbitrary detentions under both Afghan institutions and the U.S. military are highly problematic. Until there is a substantial change in U.S. policy that provides for the transparent application of justice and fair trials for detainees, the insurgency will always be able to challenge the validity of the international community’s claim that it is genuinely interested in the restoration of the rule of law. If the international community is serious about this claim, then more must be done to ensure that the transition from U.S. to Afghan control of detention facilities is smooth, transparent and adheres to international law.

#### There are no alt causes

USAID 13 (February, “Fact Sheet Infrastructure Sector- Feb 2013”, download here- <http://afghanistan.usaid.gov/en/programs/infrastructure#Tab=Description>)

ENERGY Surveys indicate increased electricity supply is a top priority for Afghans. USAID efforts have significantly increased access to electricity among the Afghan population. USAID has supported the Afghan government in coordinating multi-donor efforts to build the North East Power System (NEPS) needed to transmit low-cost power from Uzbekistan to Kabul and other major population centers in Afghanistan. The U.S. has also rehabilitated part of Kajaki hydropower facility resulting in a doubling of the hydropower generation capacity of the dam. In addition, USAID constructed the Tarakhil Power Plant, which provides up to 105 Megawatts (MW) of backup power to Kabul and those living in communities supported by NEPS. USAID’s current priorities in the power sector include the NEPS SEPS connector project, also known as PTEC, planned to bring inexpensive imported grid power to a much wider Afghan population. Another priority is to work with Da Afghanistan Breshna Sherkat (DABS) to install the third turbine at Kajaki Dam and investments to improve distribution and transmission in Kandahar and Helmand provinces. A key component of the U.S.-Afghan energy strategy is increasing the number of Afghans working in the power sector. In concert with this effort, USAID is actively supporting the commercialization of the national state-owned utility, Da Afghanistan Breshna Sherkat (DABS). Collections improvements at DABS has doubled revenues in two years and increased power distribution by 18 percent. In addition to large-scale projects, the U.S. assists more than 300 rural communities gain access to advanced technologies to power their homes, schools, and businesses through clean, renewable energy, such as micro-hydropower, solar, and wind projects. ROADS An expanded and improved road network supports increased economic activity while enabling Afghans to access key services such as healthcare and education. USAID has funded the rehabilitation of more than 2,000 km of regional, national, provincial, and rural roads. Construction of a 105 km road from the city of Keshim to the city of Faizabad was completed in 2011, and highlights the benefits of economic gains from new and improved roads. The number of new businesses such as fuel stations and markets has substantially increased, commercial bus activity has increased, and market prices have declined along the road’s path because of increased efficiency relating to transportation. Ongoing U.S.-funded projects include rehabilitation of a national highway linking Khost and Gardez to the Ring Road. USAID worked closely with the Afghan government and the private-sector to maintain more than 2,500 km of roads nationwide. USAID projects strengthen the capacity of government staff in road design and support national efforts to establish an independent road authority and road fund that will enable efficient long-term management and maintenance of the transportation infrastructure. WATER & SANITATION Currently, only 27 percent of Afghan rural households have access to safe drinking water. In partnership with the Afghan government, USAID has increased access to safe drinking water to rural communities by constructing over 26,000 wells. Where well water has been provided, sanitation facilities have been improved and nearly 33,000 latrines have been built or renovated improving the health of Afghans. USAID also supports the government’s water and sanitation sector reforms, which seek to commercialize the urban water sector, increase cost recovery, and improve management. In addition, USAID is working to develop river basin master plans that will allow the Afghan government to optimize its future water resource development.

#### Unsuccessful drawdown makes nuclear war inevitable

Cronin 13 (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72<http://dx.doi.org/10.1080/0163660X.2013.751650>)

With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it. Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. As the United States draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years\_/except this time the outcome could be not just terrorism but nuclear war.

#### **Great powers will get involved- Afghanistan stability is the key internal link**

Blank 12 (Stephen Blank¶ Strategic Studies Institute, US Army War College- he studies this stuff, January 27, “Whither the new great game in Central Asia?”, pdf)

Although many scholars dislike the term “great game”¶ or “new great game” because to them these terms smack of¶ echoes of the imperial rivalry of the nineteenth and¶ twentieth centuries; the point of the term “new great¶ game” is precisely that we have surmounted the era and¶ what we see now is something entirely different. This¶ difference does not, however, mean that we have seen the¶ end of policies resembling those of the age of imperialism.¶ First, there is an enormous competition among the US,¶ Russia, India, and China for military bases in Central Asia.¶ All of these states either have bases, have had bases, or have¶ sought bases in Central Asia in the last decade and the¶ growth of the CSTO eloquently testifies to the continuation¶ of the military dimension in the great powers’ search for¶ security in Central Asia. The different factor today is that¶ local governments of their own accord are actively soliciting¶ US military involvement if not that of Russia and China¶ for the reasons outlined above (Kucera, 2011a).¶ Similarly we see what amounts to naked land grabs by¶ the great powers, albeit on a relatively small scale in Central¶ Asia. For example, Tajikistan has been induced to surrender¶ to China 1100 square miles (2000 ha of land) to Chinese¶ farmers. Allegedly this “rectification” of the borders¶ ensures Tajikistan’s inviolability of its borders, definitively¶ solves its border problems with China, and ensures its¶ stability “for decades to come.” (Laruelle & Peyrouse, 2011c)¶ But that statement implies that without this agreement¶ Tajikistan’s security vis-à-vis China would have been¶ questioned if not at risk. And the further details of this¶ agreement indicate the visible presence of Chinese power¶ in Dushanbe’s decision-making.¶ This agreement, allegedly based on a prior accord¶ between the two governments in 2002 that was ratified¶ again in 2010 cedes about 1000 square km in the Pamir¶ Mountains to China, about 1 percent of Tajikistan, albeit¶ a sparsely settled area (Singh, 2011; Pannier, 2011a, 2011b).¶ Tajikistan’s government hailed this as a victory because¶ China had actually claimed some 28,000 km and settled for¶ only about 3.5 percent of its claims. Moreover, Shukhrob¶ Sharipov, Director of the Presidential Center for Strategic¶ Studies, argued that, “If we hadn’t decided to transfer the¶ land (at this time), we would not have been able to resist¶ China’s pressure” (Pannier, 2011a, 2011b). This remark¶ basically sums up the nature of Central Asian states’ relationship¶ to China.¶ This agreement clearly also conformed to the pattern we¶ have seen in China’s earlier expansionist activities vis-à-vis¶ Kazakhstan and Kyrgyzstan. Worse yet, the raw material¶ resources in the land ceded by Tajikistan allegedly equals¶ the entire Chinese investment in Tajikistan to date. Thus¶ China has allegedly recouped its investment at no cost to¶ itself and has both the land and its resources as well as¶ maintaining its investments and penetration of Tajikistan¶ (Singh, 2011). On the other hand, these deals triggered¶ a strong political backlash in all three countries against¶ China and its perceived intentions. Perhaps Tajikistan’s¶ backlash was triggered more by the fact that between 1500¶ and 2000 Chinese farmers will settle another 2000 ha of¶ land beyond the border agreement (Pannier, 2011a, 2011b).¶ According to the opposition Tajikistan is becoming¶ increasingly economically dependent on China due to its¶ large investment in the area and this causes great resentment.¶ Attacks on Chinese workers in other countries also¶ testifies to this backlash across Central Asia.¶ At the same time, we might also point to the following¶ likely developments in what presently constitutes the great¶ power rivalry for influence in Central Asia. In the current¶ configuration it is not only the great powers: US, Russia,¶ China, India, and the EU who are pursuing influence, access,¶ and leverage in Central Asia, indeed, middle ranking¶ powers: Pakistan and Iran are clearly enhancing their¶ efforts to improve relations with all the actors in Central¶ Asia as are South Korea and Japan in order to obtain¶ economic-political and possibly even strategic benefits.¶ Third, beyond these aforementioned trends, regional¶ actors like Kazakhstan and Uzbekistan have already begun¶ to take actions to shape their security environment as their¶ power and wealth grows and second, in the expectation of¶ both the US withdrawal and concurrently intensified Sino-¶ Russian pressure upon them and rivalry with each other for¶ precedence in Central Asia. Indeed, we even find Uzbekistan¶ and Kazakhstan thinking of projecting their influence¶ and power into neighboring Central Asian states like¶ Kyrgyzstan either through investments as in Kazakhstan’s¶ case or in more direct military threats and interference in¶ other states’ economic activity as we often see with Uzbekistan¶ (Weitz, 2008b). But we also find that on occasion, e.g.¶ during the Kyrgyz revolution of 2010, these two governments¶ engaged each other in substantive disussions about¶ possible reactions and power projection into Kyrgyzstan.¶ Fourth, international financial institutions (IFI) like the¶ Asian Development Bank, the World Bank, the UN and its¶ agencies like the UN Development Program (UNDP), are¶ also heavily involved in major projects and policies here.¶ Finally, and perhaps most important, as a mark of distinction¶ from the imperial past, each of the Central Asian states¶ is now a fully empowered (at least formally) state and¶ sovereign foreign policy actor. Consequently each one is¶ conducting its own version, insofar as possible, of a multivector¶ or more accurately balancing approach attempting¶ to balance all the multiple external sources of benefits to¶ them to enhance their domestic stability.¶ Therefore, based on the foregoing we can point to¶ certain likely developments regarding interstate rivalry¶ and especially great or major power rivalry and competition¶ in Central Asia for the foreseeable future. First, because the effort to define and gain control over Central Asia or at¶ least gain lasting influence over it coincides with the¶ escalation of the war in Afghanistan since 2008 the stakes¶ involved in the effort to direct the destiny of Central Asia¶ Central Asia have grown. Though the following assertion by¶ Ahmed Rashid may somewhat exaggerate the importance¶ of these stakes, from the standpoint of regional governments¶ this is actually an understatement because they¶ believe their fate is linked with that of Afghanistan. Thus¶ Rashid writes that,¶ The consequences of state failure in any single country¶ are unimaginable. At stake in Afghanistan is not just the¶ future of President Hamid Karzai and the Afghan people¶ yearning for stability, development, and education but¶ also the entire global alliance that is trying to keep¶ Afghanistan together. At stake are the futures of the¶ United Nations, the North Atlantic Treaty Organization¶ (NATO), the European Union, and of course America’s¶ own power and prestige. It is difficult to imagine how¶ NATO could survive as the West’s leading alliance if the¶ Taliban are not defeated in Afghanistan or if Bin Laden¶ remains at large indefinitely.(Rashid, 2009, p. xxxix)¶ Those stakes also involve the other states of Central Asia¶ as well since it is widely believed that a Taliban victory in¶ Afghanistan makes them a prime target for insurgency in¶ the future. Especially in the light of fears for the stability of¶ the Karzai government and the overall region in the light of¶ a US withdrawal, every state, large or small, is jockeying for¶ greater capability and power in the region and some, like¶ Uzbekistan, clearly expect both to have to project power¶ and that they will be asked to project power to neighbors to¶ preserve stability in the area after 2014. Second, as Emelian¶ Kavalski has observed, the nature of what we call the “new¶ great game,” the proliferation of actors in a continuous¶ multi-dimensional struggle for influence in Central Asia¶ precludes any one actor obtaining previous levels of¶ imperial or neo-imperial domination, though Russia still¶ tries for it, and has led to a situation where, given the¶ concurrent proliferation of actors and agents operating in¶ Central Asia,¶ The simultaneity of these two dynamics reveals that the¶ agency of external actors is distinguished not by an¶ imperial desire for the control of territory, but by the¶ establishment of ‘niches of influence.’ Consequently, the¶ notion of the ‘new great game’ comes to characterize the¶ dynamics of processing, selection and internalization of¶ some externally promoted ideas and not others. (Rashid,¶ 2009, p. xxxix).¶ Third, in view of the impending US military withdrawal¶ ssit is not clear that Washington, confronted by wrenching¶ fiscal stresses, either has the vision or the means to develop¶ or implement a coherent post-Afghanistan Central Asian¶ strategy, a vacuum could well develop there with regard to¶ the US position that will inevitably be filled by other actors.¶ Certainly there is no sign yet of what will replace the US¶ military presence after 2014 and no sign of a formal¶ document worked out with Afghanistan that delineates the¶ extent to which a US presence in the region will look like. In¶ the absence of such a policy statement every regional actor¶ is hedging its bets and preparing for the worst in the future,¶ a trend that most likely means intensified competition¶ among the great, regional, and local powers for influence in¶ Central Asia.¶

#### There’s no check on escalation- 2014 is the key year for stability- unsuccessful withdrawal makes war inevitable

Gupta 14 -- Anubhav, Asia Society, Senior Program officer for the Asia Society Policy Institute, 2014, asiasociety.org/blog/asia/2014-south-asias-make-or-break-year

2013 was a difficult year for South Asia. The year, which began portentously with the beheading of an Indian soldier, saw over 150 ceasefire violations between India and Pakistan. Violence along their border brought high-level diplomatic dialogue to a halt. There was trouble brewing inside Kashmir as well. The militancy, which had cooled considerably over the past decade, began to smolder once again. For the first time in ten years, terrorism-related deaths in the state were higher than the previous year. And Afghanistan continued to struggle with instability and weak governance, so much so that at the end of 2013 a U.S. intelligence assessment predicted an especially bleak future for the country.¶ This year could define the fate of the region for years to come. The leaders of India, Pakistan, Afghanistan, and the United States have an opportunity to secure a more stable future or risk the outbreak of greater conflict. As is often the case in South Asia, success is far from certain. Before the United States draws down its military presence in Afghanistan, it must redouble its diplomatic engagement with South Asia and pursue a regional strategy to enhance stability.¶ The Tough Road Ahead for India, Pakistan, and Afghanistan¶ With presidential elections and the end of NATO’s combat mission coming up, 2014 is perhaps most critical for Afghanistan. Unfortunately, there remains uncertainty on both fronts. After months of negotiating, the U.S. and Afghanistan finally brokered a bilateral security agreement in November, providing a legal framework for a small number of U.S. troops to remain in the country post-2014 to train, advise, and support Afghan forces as well as carry out some counterterrorism operations.¶ Shortly after the agreement was finalized, President Hamid Karzai stymied U.S. plans by deciding to delay signing the agreement until after the 2014 elections or until the U.S. agrees to certain preconditions it finds unacceptable. Though U.S. troops have largely handed off security responsibilities to the Afghan National Security Forces, there is a general consensus that a small contingent of U.S. troops is necessary to ensure stability. Military planning for the troop draw down and a limited presence post-2014 requires time. If this issue is not resolved soon, the U.S. could withdraw all troops in 2014, which could be calamitous for stability in the country.

### Contention 2- Geneva

#### The courts failure to apply Geneva to detention policy has eviscerated the conventions credibility

Gruber 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As President Obama inches ever closer to embracing the “twilight zone” model of terrorism law, it would be wise to keep in mind the reputational harm the Bush administration’s war on terror caused the United States. One human rights advocate warned the Obama administration, “The results of the cases [tried in military commissions] will be suspect around the world. It is a tragic mistake to continue them.”200 More than just a source of embarrassment, there are real consequences to America’s sullied international reputation. Our experiments with “alternative” military justice not only affect our high court’s world influence, they operatively prevent the United States from assuming a leadership role in defining and defending international human rights. For example, in 2007, the Chinese government responded to the U.S. State Department’s annual human rights report by stating that America had no standing to comment on others’ human rights violations given its conduct of the war on terror. Specifically, the Chinese characterized the United States as “pointing the finger” at other nations while ignoring its “flagrant record of violating the Geneva Convention.”201 Supreme Court validation of treaty law would no doubt help repair the international reputation of the United States.202 The lesson here is about fear and missed opportunity. Guantánamo stands as a stark reminder of the great importance of international humanitarian law during times of crisis. The Geneva Conventions were the very barrier between terrorism detainees and a government regime singularly committed to national security through any means possible. Unfortunately, when international law mattered most, even the liberal Supreme Court justices avoided cementing its legal status. By contrast, Medellín, a convicted murderer, was apparently afforded the full panoply of constitutional protections, and in all likelihood, his inability to confer with consular officials did not prejudice his case. Much less was at stake, and those on the Supreme Court critical of humanitarian law impediments to waging the war on terror could fashion anti-internationalist rules with little public fanfare or liberal resistance. Consequently, although Hamdan will likely go down in history as evidence of the Court’s willingness to protect individual rights in the face of massive public fear and executive pressure, it also represents a failure to truly support the comprehensive international regime governing war-time detention, a regime in which the United States long ago vowed to participate. But all may not be lost. The Supreme Court might have another chance to rule on the status of the Geneva Conventions, and Medellín leaves some wiggle room on self-execution. If the Supreme Court is once again to be a beacon of judicial light, it must move beyond the xenophobic exceptionalism of the Bricker past and embrace the straightforward and fair principle that signed and ratified treaties are the law of the land.

#### Credible US lead of Geneva key to prevent hotspot escalation

Koh 4, dean of Yale Law School and professor of international agreement, 9/20/2004

(Harold, “On America's Double Standard,” http://prospect.org/article/americas-double-standard)

When the United States holds Taliban detainees at Guantanamo Bay, Cuba, without Geneva Convention hearings, then decries the failure of others to accord Geneva Convention protections to their American prisoners, it supports a double standard. When George W. Bush tries to “unsign” the International Criminal Court (ICC) treaty that Bill Clinton signed in 2000, yet expects other nations to honor signed treaties, he does the same. When U.S. courts ignore an International Court of Justice decision enjoining American execution of foreign nationals, even as we demand that other countries obey international adjudications that favor American interests, the United States is using its vast power and wealth to promote a double standard. In these and other instances, the United States proposes that a different rule should apply to itself than to the rest of the world. U.S. officials say that they must act to protect our security and to avoid unacceptable constraints on national prerogative. But to win the illusion of unfettered sovereignty, they are actually undermining America's capacity to participate in international affairs. Over the past two centuries, the United States has become party not just to a few treaties but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to bend or break one treaty commitment thus rarely end the matter; rather, they usually trigger vicious cycles of treaty violation. Repeated insistence on a double standard creates the damaging impression of a United States contemptuous of both its treaty obligations and its treaty partners, even as America tries to mobilize those same partners to help it solve problems it simply cannot solve alone -- most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, and the renewed nuclear militarization of North Korea. \* \* \* Historically, American administrations have tended to distance and distinguish themselves from the rest of the international community; human-rights advocates have often condemned this “American exceptionalism.” But while the promotion of double standards is indeed corrosive, not all forms of exceptional American behavior are equally harmful. America's distinctive rights culture, for example, sometimes sets it apart. Due to our particular history, some human rights, such as the norm of nondiscrimination based on race or First Amendment protections for speech and religion, have received far greater emphasis and judicial protection in the United States than in Europe. But our distinctive rights culture is not fundamentally inconsistent with universal human-rights values. Nor is America genuinely exceptional because it sometimes uses different labels to describe synonymous concepts. When I appeared before the UN Committee Against Torture in Geneva, Switzerland, to defend the first U.S. report on U.S. compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I was asked the reasonable question of why the United States does not “maintain a single, comprehensive collation of statistics regarding incidents of torture and cruel, inhuman or degrading treatment or punishment,” a universally understood concept. My answer, in effect, was that we applied different labels, not different standards. The myriad bureaucracies of the federal government, the 50 states, and the territories did gather statistics regarding torture and cruel, inhuman, or degrading treatment, but we called that practice different things, including “cruel and unusual punishment,” “police brutality,” “section 1983 actions,” applications of the exclusionary rule, violations of civil rights under color of state law, and the like. Refusing to accept the internationally accepted term reflected national quirkiness, somewhat akin to our continuing use of feet and inches rather than the metric system. A third form of American exceptionalism, our penchant for non-ratification (or ratification with reservations) of international treaties, is more problematic -- but for the United States, not for the world. For example, it is a huge embarrassment that only two nations in the world -- the United States and Somalia, which until recently did not have an organized government -- have not ratified the international Convention on the Rights of the Child. But this is largely our loss. In no small part because of its promiscuous failure to ratify a convention with which it actually complies in most respects, the United States rarely gets enough credit for the large-scale moral and financial support that it actually gives to children's rights around the world. In my view, by far the most dangerous and destructive form of American exceptionalism is the assertion of double standards. For by embracing double standards, the United States invariably ends up not on the higher rung but on the lower rung with horrid bedfellows -- for example, such countries as Iran, Nigeria, and Saudi Arabia, the only other nations that have not in practice either abolished or declared a moratorium on the imposition of the death penalty on juvenile offenders. This appearance of hypocrisy sharply weakens America's claim to lead globally through moral authority. More important, by opposing global rules in order to loosen them for our purposes, the United States can end up -- as it has done with the Geneva Conventions -- undermining the legitimacy of the rules themselves, just when we need them most.

#### These scenarios outweigh- escalation is guaranteed

Ratner, 8 (Law Prof-Michigan, “Think Again: Geneva Conventions,” 2/19, http://www.foreignpolicy.com/articles/2008/02/19/think\_again\_geneva\_conventions?page=0,6)

“No Nation Flouts the Geneva Conventions More than the United States” That’s absurd. When bullets start flying, rules get broken. The degree to which any army adheres to the Geneva Conventions is typically a product of its professionalism, training, and sense of ethics. On this score, U.S. compliance with the conventions has been admirable, far surpassing many countries and guerrilla armies that routinely ignore even the most basic provisions. The U.S. military takes great pride in teaching its soldiers civilized rules of war: to preserve military honor and discipline, lessen tensions with civilians, and strive to make a final peace more durable. Contrast that training with Eritrea or Ethiopia, states whose ill-trained forces committed numerous war crimes during their recent border war, or Guatemala, whose army and paramilitaries made a policy of killing civilians on an enormous scale during its long civil conflict. More importantly, the U.S. military cares passionately that other states and nonstate actors follow the same rules to which it adheres, because U.S. forces, who are deployed abroad in far greater numbers than troops from any other nation, are most likely to be harmed if the conventions are discarded. Career **U.S. military commanders and lawyers have** **consistently opposed the various reinterpretations of the conventions** by politically appointed lawyers in the Bush White House and Justice Department for precisely this reason. It is enormously important that the United States reaffirms its commitment to the conventions**, for the sake of the country’s reputation and that of the conventions**. Those who rely on the flawed logic that because al Qaeda does not treat the conventions seriously, neither should the United States fail to see not onlythe chaos the world will suffer in exchange for these rules; they also miss the fact that the United States will have traded basic rights and protections harshly learned through thousands of years of war for the nitpicking decisions of a small group of partisan lawyers huddled in secret. Rather than advancing U.S. interests by following an established standard of behavior in this new type of war, the United States—and any country that chooses to abandon these hard-won rules—risks basing its policies on narrow legalisms. In losing sight of the crucial protections of the conventions, the United States invites a world of warsin which laws disappear. And the horrors of such wars would far surpass anything the war on terror could ever deliver.

#### Credibility on detention solves terror and the environment

Wexler 8 (Lesley, Assistant Professor, Florida State University College of Law, “HUMAN RIGHTS IMPACT STATEMENTS: AN IMMIGRATION CASE STUDY,” 22 Geo. Immigr. L.J. 285, Lexis)

Enhancing our reputation for human rights compliance is especially important given current political realities. Many countries hold a declining opinion of the United States.53 The international community would welcome America’s affirmation of the continuing importance of human rights in the wake of many post-September 11th actions such as torture, extraordinary rendition, increased domestic surveillance, and harsher and more frequent detention of immigrants. Moreover, the international community would benefit from the assurance that the concept of “human rights” means more than a justification for regime change.54 American exceptionalism to human rights law angers our allies and complicates efforts to secure their cooperation.55 Not surprisingly, many countries view the United States’ silence about its own human rights failings as hypocritical.56 In particular, the international community strongly criticizes the State Department’s annual human rights reports for omitting an assessment of domestic performance as well as omitting “actions by governments taken at the request of the United States or with the expressed support of the United States . . . .”57 Human rights advocates suggest that U.S. leadership on human rights faces a severe credibility gap - for instance, other countries perceive the United States as a laggard on human rights treaty compliance in regards to migrants58 - but that repudiation of past abuses and momentum for policy changes could restore its leadership.59¶ As many have suggested, good international relations are vital to winning the War on Terror.60 Moreover, international cooperation is essential to address immigration related issues such as human trafficking. A visible commitment to migrants’ human rights might bolster the United States’ credibility when it seeks better treatment for the approximately 2 million American émigrés.61 Other international problems, such as climate change and related environmental issues, also require cooperation and leadership. An increased willingness to participate in global human rights discourse and demonstrate adherence to human rights treaties might enhance our ability to lead and participate in other arenas.

#### Terrorism leads to extinction

Hellman, 08 [Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf]

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

#### Risk of theft is high, and attack escalate quickly

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Environmental degradation risks extinction

Coyne 7 (Jerry and Hopi Hoekstra , \*professor in the Department of Ecology and Evolution at the University of Chicago AND Associate Professor in the Department of Organismic and Evolutionary Biology at Harvard University, New Republic, “The Greatest Dying,” 9/24, http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying)

But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile, with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster. In many ways, oceans are the most vulnerable areas of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from both sides. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion. In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace. Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant). Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends. Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years. Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul. But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water. In the end, we must accept the possibility that we ourselves are not immune to extinction. Or, if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet. Global warming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, but perhaps the greatest dying of them all.

#### Precautionary principle means any risk of this impact outweighs

Cerutti 7, Professor of Political Philosophy at the University of Florence, 2007  
(Furio Cerutti, “Global Challenges for Leviathan: A Political Philosophy of Nuclear Weapons and Global Warming.” Lexington Books. p. 31)

The second feature of the impasse is irreversibility, which is peculiar to the worst outcomes of global challenges and to some more ordinary issues of environmental policy as well, for example, the extinction of a species. We cannot completely undo the hole in the ozone layer (it will take decades to re­cover, even if we totally and immediately stop using chlorofluorocarbons); nor can we be confident that, after a large nuclear war, we would be able to reconstruct world society as we did after World War II. Not addressing the global challenges is not a risk that can be taken in the expectation that, if something goes wrong, we pay the price owed and go back to business as usual, or nearly as usual, as happened after Hiroshima and Chemobyl. The difference is-and this is the third aspect of the impasse-even greater, at least with regard to nuclear weapons: if something goes wrong, it could be not just "something," but everything and everyone that is doomed. Among the casualties there would probably be the very actor (humanity as a civilized species) who calculated and decided to take the risk (even if the calculation and decision were actually made by few leading members of our kind, a fact whose relevance we will soon assess). This is a circumstance that is not considered in any theory or philosophy of risk and is rather likely to outmaneuver this altogether. Whoever would counter this argument with reference to an established game like Russian roulette, should bear in mind that in this game 1. the player has something to gain, if s/he wins and does not lose her/his life (money, self-esteem, or social esteem because of her/his "courage"); 2. if s/he kills himself, s/he only kills her/himself and not others (a collective version of the game has not been proposed); 3. others (family, group) could even reap benefit from the money or the fame s/he may leave behind. None of these circumstances or opportunities apply to our risky game with lethal weapons. If we want to preserve our modem ability to rationally take risks, we should not deal with global and ultimate menaces as if they were risks to be taken. There is nothing to be gained by taking them. The unprecedented severity of the possible losses and the uncertainty in which these issues are enveloped request a different approach, which will be looked into in the last three chapters.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain by ruling that Third Geneva Convention Article Five rights are self-executing for those combatants found in adherence to the Third Geneva Convention.

### Contention 3- Solvency

#### A selective interpretation is key- expansive interpretations anger our allies, and erode the credibility of the treaty

CSP 2 (Center for Security Policy, Excerpts from articles written by History Profs at Oxford & Sarah Lawrence and WSJ Editorial, Worried About Civilian Casualties in the War on Terror? Don’t Allow Terrorists to Masquerade as Non-Combattants, 2/13, http://www.centerforsecuritypolicy.org/2002/02/13/worried-about-civilian-casualties-in-the-war-on-terror-dont-allow-terrorists-to-masquerade-as-non-combattants-2/)

Fortunately, in recent days, two published items have helpfully clarified the compelling reasons for the U.Sgovernment to continue rejecting appeals to call the detainees POWsThe first is an excellent White Paper by the Foundation for Defense of Democracies co-authored by Andrew Apostolou, an historian at Oxford University, and Fredric Smoler, a professor of history at Sarah Lawrence CollegeThe second appeared as an editorial in the Wall Street Journal on 11 FebruaryBoth should be required reading for everyone participating in the debate over those incarcerated at GitmoExcerpts from The Geneva Convention Is Not a Suicide Pact by Andrew Apostolou and Fredric Smoler, Foundation for the Defense of Democracy Maintaining a strict distinction between lawful combatants (conscripts, professionals, militiamen and resistance fighters) and unlawful combatants (such as bandits and terrorists) not only protects the dignity of real soldiers, it safeguards civiliansBy defining who can be subject to violence and capture, the horror of war is, hopefully, focused away from civilians and limited to those willing put themselves in the line of fire, and seek no cover other than that acquired by military skill If we want soldiers to respect the lives of civilians and POWs, soldiers must be confident that civilians and prisoners will not attempt to kill them Civilians who abuse their non-combatant status are a threat not only to soldiers who abide by the rules, they endanger innocents everywhere by drastically eroding the legal and customary restraints on killing civiliansRestricting the use of arms to lawful combatants has been a way of limiting war’s savagery since at least the Middle AgesIn addition to the legal and military practicalities, there is an obvious moral danger in setting the precedent that captured terrorists are soldiers Not only does that elevate Mohammad Atta from a calculating murderer into a combatant, it puts the IRA, ETA and the Red Brigades on a par with the Marine Corps and the French ResistanceThe U.Sis trying hard to find the most humane way to wage, and win, this warThere is no precedent for this challenge and no perfect legal model that can be taken off the shelfYet it is precisely because the U.Stakes the Geneva Convention seriously, with both its protections for combatants and the line it draws between combatants and civilians, that the U.Sis being so careful in the use of the POW labelSome of the detainees may yet be termed POWs, but restricting the Geneva Convention’s protections to those who obey its rules is the only mechanism that can make the Geneva Convention enforceable Supreme Court Justice Robert Jackson once said that the U.S Constitution is not a suicide pact Neither is the Geneva Convention If well-meaning but misguided human rights activists turn the Geneva Convention into a terrorist’s charter and a civilian’s death warrant, the result will be that it will be universally ignored, with all that implies for the future of the international rule of law Geneva Conviction Review & Outlook The Wall Street Journal, 11 February 2002 If international human rights groups had the courage of their convictions, they’d applaud President Bush’s decision last week that the Geneva Convention applies to Taliban, but not al Qaeda, fighters captured by the U.SIn doing so, he is showing more respect for the Convention than his criticsThe core purpose of the Geneva Convention is to encourage the conduct of war in a way that minimizes violence to civiliansAnother aim is to encourage respect for basic human dignities — toward civilians, combatants and captivesYet another goal is to encourage warring powers to set up chains of command to ensure that combatants are held responsible for their actionsOne of the most important ways the Convention accomplishes these goals is to require that warring parties make a distinction between combatants and civiliansSoldiers are supposed to be subject to a chain of command, wear insignia and carry their arms openly; they are required to abide by the laws of war, which forbid attacks on civiliansIf they don’t, then they’re not soldiers; they are illegal combatants, not entitled to the protections of the Convention Breaking down this distinction — as the human rights groups wish to do — would have the effect of legitimatizing terrorists and giving them more incentives to hide among civilians and go after civilian targets.

#### Application of the conventions solves credibility, roadblocks and circumvention

Feldman 13 (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

To deepen the argument beyond executive power, the president is also in charge of foreign affairs. Keeping the detainees at Guantanamo is very costly to international relations, since most nations see the prison there as a reminder of the era of waterboarding and abuses at the Abu Ghraib prison in Iraq. Surely the president should be able to salvage the U.S.’s reputation without being held hostage by Congress?¶ The answer from Congress would have several elements. First, Congress has the power to enact a law defining who can come into the U.S., and the American public doesn’t want the detainees in the country either for trial or in a new Supermax facility. Second, Congress has the power to declare war and could conceivably assert that this should include the right to tell the president how to treat prisoners. Then there’s the power of the purse: Congress could make things difficult by declining to authorize funds for a sui table new stateside detention facility.¶ Faced with a standoff between two branches, the system allows an orderly answer: turning to the third branch, the courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials. Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners.¶ How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style.¶ Geneva Conventions¶ The reasoning could look like this: The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.¶ Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations.

#### Observer effect solves circumvention- this card assumes all your empirics and warrants

Deeks 10/21 (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.” Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them. In the national security context, the “observer effect” can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive’s awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take, for example, U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so.

#### No disads- Congress removed transfer restrictions for detainees- Obama signing it proves he won’t circumvent

ACLU 12/20 (Senate Eases Transfer Restrictions for Guantánamo Detainees <https://www.aclu.org/national-security/senate-eases-transfer-restrictions-guantanamo-detainees>)

WASHINGTON – The Senate late last night passed the National Defense Authorization Act for fiscal year 2014, which will ease transfer restrictions for detainees currently held at the military detention camp at Guantánamo Bay, Cuba, most of whom have been held without charge or trial for over a decade. The bill, which passed the House of Representatives last week, cleared the Senate by a vote of 84-15. The improved transfer provisions were sponsored by Senate Armed Services Committee Chairman Carl Levin and were strongly supported by the White House and the Defense Department. "This is a big step forward for meeting the goal of closing Guantánamo and ending indefinite detention. For the first time ever, Congress is making it easier, rather than harder, for the Defense Department to close Guantánamo – and this win only happened because the White House and Defense Secretary worked hand in hand with the leadership of the congressional committees," said Christopher Anders, senior legislative counsel at the ACLU’s Washington Legislative Office. "After years of a blame-game between Congress and the White House, both worked together to clear away obstacles to transferring out of Guantánamo the vast majority of detainees who have never been charged with a crime." The current population at Guantánamo stands at 158 detainees, approximately half of whom were cleared for transfer to their home or third-party countries by U.S. national security officials four years ago. Also, periodic review boards have recently started reviews of detainees who have not been charged with a crime and had not been cleared in the earlier reviews. While the legislation eases the transfer restrictions for sending detainees to countries abroad, it continues to prohibit the transfer of detainees to the United States for any reason, including for trial or medical emergencies. "There has been a sea change on the Guantánamo issue, both in Congress and at the White House. With the president’s renewed commitment to closing it, and the support of Congress, there now is reason to hope that the job of closing Guantánamo and ending indefinite detention can get done before the president leaves office," said Anders. "As big as this win is, there is more work left to be done. The Defense Department has to use the new transfer provisions to step up transfers out of Guantánamo, and Congress needs to remove the remaining ban on using federal criminal courts to try detainees."

#### Citations on article 3 and 75 should have triggered the link to your DA’s

Tony Ginsburg et al\* 9, law prof at Chicago, “brief of international law experts as amici curiae in support of petitioners”, <http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_08_1234_PetitionerAmCuIntlLawExperts.authcheckdam.pdf>

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The law of war creates an independent legal obligation that the District Court be permitted to order Petitioners’ release. The law of war does not displace the obligations under the Covenant outlined above, but creates an additional international legal obligation on the United States to permit the District Court to order Petitioners’ release.10 Common Article 3 of the Geneva Conventions, which the United States has ratified, requires that detainees be treated humanely. This principle is appropriately interpreted in light of recognized customary international law that requires the release of detainees when the reason for their detention has ceased. In the case at hand, the District Court must have the authority to order the release of Petitioners, whose detention is unlawful and who pose no threat to the United States.¶ Article 3 of the Geneva Conventions – often called Common Article 3 because it appears in all four of the Geneva Conventions – requires that all persons taking no active part in the hostilities, including detainees, be “treated humanely.” Common Article 3, supra. In Hamdan v. Rumsfeld, 548 U.S. 557, 630 (2006), the Supreme Court held that Common Article 3 is legally binding on the United States and enforceable in U.S. courts 1 Common Article 3 provides that in a “conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum,” certain provisions. Common Article 3, supra. Among these provisions is the requirement that “[p]ersons taking no active part in the hostilities, including . . . those placed hors de combat by . . . detention . . . shall in all circumstances be treated humanely.” Id. (second emphasis added).¶ The obligation that detained civilians be “treated humanely” must be read in light of Article 75 of Protocol I to the Geneva Conventions, see Article 75, supra. Article 75, which is “indisputably part of the customary international law

,” 548 U.S. at 634 (plurality opinion),12 provides that all detainees held in connection with armed conflict “shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.” Article 75, supra, § 3 (emphasis added).13¶ Although the United States has not ratified Protocol I, the Protocol’s status as customary international law renders it an appropriate interpretive tool for the Court. See Hamdan, 548 U.S. at 633 (plurality opinion) (noting that Common Article 3 “must be understood to incorporate at least the barest of those trial protections that have been recognized by customary international law,” many of which are “described in Article 75 of Protocol I”). Under Article 75, civilians initially detained because they were thought to pose a security risk must be released as soon as it is clear that they pose no such risk. This reading of Common Article 3 in light of Article 75 is consistent with the conclusions of a 2005 study on Customary International Humanitarian Law by the International Committee of the Red Cross, which concludes that as a matter of treaty law, “arbitrary deprivation of liberty is not compatible” with humane treatment under Common Article 3. See Int’l Comm. Red Cross, I Customary International Humanitarian Law 344 (Jean-Marie Henckaerts & Louise DoswaldBeck eds., 2007).¶ State Department Legal Advisers have repeatedly stated that the fundamental guarantees expressed in Article 75 are part of the law of war.14¶ While serving as Legal Adviser to President George W. Bush, William H. Taft, IV wrote that the “customary law notion of fundamental guarantees found more expansive expression in Article 75 of Additional Protocol I to the Geneva Conventions” and that the United States “does regard the provisions of Article 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled.” William H. Taft, IV, The Law of Armed Conflict After 9/11: Some Salient Features, 28 Yale J. Int’l L. 319, 321-22 (2003). His successor, John Bellinger, argued for a public statement recognizing Article 75 as customary international law binding on the United States, noting in the process that U.S. practice conforms to Article 75. See Letter from John B. Bellinger, III, Legal Adviser, Dep’t of State, to William J. Haynes, II, Gen. Counsel, Dep’t of Def. (Jan. 16, 2008) (on file with the Yale Law School Library). These Legal Advisers were reaffirming a position declared more than two decades ago under then-Deputy Legal Adviser Michael Matheson. See Michael J. Matheson, The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U. J. Int’l L. & Pol’y 419, 427 (1987) (“We support in particular the fundamental guarantees contained in article 75. . . .”). It is therefore appropriate to interpret the binding legal obligations on the United States under Common Article 3 in light of Article 75’s obligation to release detainees as soon as the reason for their detention has ceased.¶ The United States’ obligation under Common Article 3 to ensure the courts have the authority to order release of detainees when there is no lawful basis for detention can be enforced by this Court through the habeas statute. Section 2241 expressly provides that habeas relief is available where detention is contrary to U.S. treaty obligations. 28 U.S.C. § 2241(c)(3) (2006) (noting that writ extends to prisoners held “in custody in violation of the Constitution or laws or treaties of the United States”); see Mali v. Keeper of the Common Jail, 120 U.S. 1, 17 (1887) (holding that because a “treaty is part of the supreme law of the United States,” the power to issue writs of habeas corpus applies to prisoners held in violation of treaties). At a minimum, Common Article 3 should be used to interpret the domestic habeas corpus statute. See Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).

#### That only leaves the affs application- trails in regular courts are key

Ratner, 8 (Law Prof-Michigan, “Think Again: Geneva Conventions,” 2/19, http://www.foreignpolicy.com/articles/2008/02/19/think\_again\_geneva\_conventions?page=0,6)

“The Geneva Conventions Are Obsolete” Only in the minor details. The laws of armed conflict are old; they date back millennia to warrior codes used in ancient Greece. But the modern Geneva Conventions, which govern the treatment of soldiers and civilians in war, can trace their direct origin to 1859, when Swiss businessman Henri Dunant happened upon the bloody aftermath of the Battle of Solferino. His outrage at the suffering of the wounded led him to establish what would become the International Committee of the Red Cross, which later lobbied for rules improving the treatment of injured combatants. Decades later, when the devastation of World War II demonstrated that broader protections were necessary, the modern Geneva Conventions were created, producing a kind of international “bill of rights” that governs the handling of casualties, prisoners of war (POWs), and civilians in war zones. Today, the conventions have been ratified by every nation on the planet. Of course, the drafters probably never imagined a conflict like the war on terror or combatants like al Qaeda. The conventions were always primarily concerned with wars between states. That can leave some of the protections enshrined in the laws feeling a little old-fashioned today. It seems slightly absurd to worry too much about captured terrorists’ tobacco rations or the fate of a prisoner’s horse, as the conventions do. So, when then White House Counsel Alberto Gonzales wrote President George W. Bush in 2002 arguing that the “new paradigm” of armed conflict rendered parts of the conventions “obsolete” and “quaint,” he had a point. In very specific—and minor—details, the conventions have been superseded by time and technology. But the core provisions and, more crucially, the spirit of the conventions remain enormously relevant for modern warfare. For one, the world is still home to dozens of wars, for which the conventions have important, unambiguous rules, such as forbidding pillaging and prohibiting the use of child soldiers. These rules apply to both aggressor and defending nations, and, in civil wars, to governments and insurgent groups. The conventions won’t prevent wars—they were never intended to—but they can and do protect innocent bystanders, shield soldiers from unnecessary harm, limit the physical damage caused by war, and even enhance the chances for cease-fires and peace. The **fundamental bedrock** of the conventions is to prevent suffering in war, and that gives them a legitimacy for anyone touched by conflict, anywhere and at any time. That is hardly quaint or old-fashioned. “The Conventions Don’t Apply to Al Qaeda” Wrong. The Bush administration’s position since Sept. 11, 2001, has been that the global war on terror is a different kind of war, one in which the Geneva Conventions do not apply. It is true that the laws do not specifically mention wars against nonstate actors such as al Qaeda. But there have always been “irregular” forces that participate in warfare, and the conflicts of the 20th century were no exception. The French Resistance during World War II operated without uniforms. Vietcong guerrillas fighting in South Vietnam were not part of any formal army, but the United States nonetheless treated those they captured as POWs. So what treatment should al Qaeda get? The conventions contain one section—Article 3—that protects all persons regardless of their status, whether spy, mercenary, or terrorist, and regardless of the type of war in which they are fighting. That same article prohibits torture, cruel treatment, and murder of all detainees, requires the wounded to be cared for, and says that **any trials** must be conducted by regular courts respecting due process. In a landmark 2006 opinion, the U.S. Supreme Court declared that at a minimum Article 3 applies to detained al Qaeda suspects. In other words, the rules apply, even if al Qaeda ignores them. And it may be that even tougher rules should be used in such a fight. Many other governments, particularly in Europe, believe that a “war” against terror—a war without temporal or geographic limits—is complete folly, insisting instead that the fight against terrorist groups should be a law enforcement, not a military, matter. For decades, Europe has prevented and punished terrorists by treating them as criminals. Courts in Britain and Spain have tried suspects for major bombings in London and Madrid. The prosecutors and investigators there did so while largely complying with obligations enshrined in human rights treaties, which constrain them far more than do the Geneva Conventions.

# 2AC

## Afghan

### 2AC China

#### No impact to collapse- no fallout

Kaplan ’13 (Robert D. Kaplan, Chief Geopolitical Analyst at Stratfor, a geopolitical analysis firm, and author of the bestselling book The Revenge of Geography, “China's Geopolitical Fallout”, <http://www.realclearworld.com/articles/2013/07/25/chinas_geopolitical_fallout_105342.html>, July 25, 2013)

But what if the opposite occurred? What if an economic and political crisis ignited a downward trend in Chinese military procurements, or at least a less steep growth curve? This is also quite possible: to assuage public anger at poverty and lack of jobs, China's leaders might, for political reasons, ask the military to make sacrifices of its own. After all, a Chinese Spring might be all about demanding more freedom and not about nationalism. Over time, this could affect the foundations of the Eurasian maritime order, albeit to a lesser extent than the collapse of the Berlin Wall shook the foundations of the European continental order. Stalled Chinese defense budgets would reinvigorate a Pax Americana from the Sea of Japan to the Persian Gulf, despite the debacles of the Iraq and Afghanistan wars, and despite the U.S. military budget crunch. The U.S. Navy would own the seas as though World War II had just ended. Japan, which continues to modernize its air force and navy (the latter is several times larger than the British Royal Navy), would emerge as an enhanced air and sea power in Asia. The same goes for a future reunified Korea governed from Seoul, which, in the event of a weakened China, would face Japan as a principal rival, with the United States keeping the peace between the two states. Remember that Japan occupied Korea from 1910 to 1945, and the hostility between Japan and Korea is thus much greater than the hostility between Korea and China. Turmoil in China would slow the economic and security integration of Taiwan with the mainland. With more than 1,500 ballistic missiles aimed at Taiwan from the mainland and 270 commercial flights per week between the two Chinas, U.S. military aid to Taipei is designed to defend Taiwan against a sudden Chinese attack, but not necessarily to postpone an inevitable unification of sorts. But the inevitable unification might not happen in the event of a prolonged political crisis in Beijing: a likelier scenario in this case would be for different regional Chinas, democratic to greater or lesser extents, more loosely tied to Beijing, to begin to emerge. This, too, translates into a renewed Pax Americana as long as U.S. defense cuts don't go too far. The South China Sea is where the effects of U.S. military decline would, in a geopolitical sense, be most keenly felt. China's geographical centrality, its economic heft (still considerable), and its burgeoning air and naval forces translate into Finlandization for Vietnam, Malaysia, the Philippines, and Singapore in the event of large-scale U.S. defense cuts. However, internal disarray in China, combined with modest U.S. defense cuts that do not fundamentally affect America's Pacific forces, could unleash the opposite effect. Emboldened by a continued American presence and a less than dominant Chinese military, countries such as Singapore and Australia, which are already spending impressively on arms relative to the size of their populations, could emerge, in a comparable military sense at least, as little Israels in Asia, without having to spend more on defense than they already are. Vietnam, meanwhile, with a larger population than Turkey or Iran, and dominating the South China Sea's western seaboard, could become a full-fledged middle-level power in its own right were Beijing's regional grip to loosen, and were Vietnam to gradually gets its own economic house in order. India, like Vietnam and Taiwan, gains most from a profound economic and political crisis inside China. Suddenly China would be more vulnerable to ethnic unrest on the Tibetan plateau abutting the Indian subcontinent. This would not necessarily alleviate the Chinese threat on India's northern borderlands (given the possibility of heightened ethnic unrest inside an economically weakened China), but it would give India greater diplomatic leverage in its bilateral relations with Nepal, Bangladesh, Sri Lanka, and Myanmar, all of which have been venues for the quiet great game India has been playing with China. Myanmar has historically been where Indian and Chinese political and cultural influences overlap. Though China has been the dominant outside economic influence in Myanmar in recent decades, prior to World War II Indian economic middlemen were a major force in the capital of Yangon. Look for the Indian role in Myanmar to ramp up in the event of a partial Chinese political meltdown. Given Myanmar's massive stores of natural gas, coal, zinc, copper, precious stones, timber and hydropower, this would not be an insignificant geopolitical development. If India were among the biggest winners in the event of severe Chinese internal turmoil, Pakistan would be the biggest loser. China has been Pakistan's greatest and surest patron in recent decades, and has given Pakistan stores of infrastructure aid -- highways in the north and a port in the south -- without lectures about human rights and terrorism, or threats about withdrawing aid. China has balanced against India, Pakistan's principal enemy, even as China keeps Pakistan from becoming friendless in the event of a rupture with the United States. A weakened China would leave Pakistan facing a strengthened India and a United States in a measurably better position to influence the future of Afghanistan over the next decade or so. Pakistan's options would still be considerable, on account its geographic centrality to southern Central Asia and Afghanistan in particular. But otherwise, without a strong China, Pakistan would be lonely in a hostile world. Such a bleak scenario for China overall would leave the United States and its allies -- both de facto like India and Vietnam, and de jure like Japan and Australia -- in a commanding position around Eurasia's navigable southern rimland. But such a scenario is unlikely, even if the Chinese economy significantly slows and domestic unrest follows. More likely will be a tumultuous period of consolidation and readjustment within China, with China's strategic and military planners able to weather the storm with adjustments of their own for the long term. But there is a larger point: geopolitics, while ostensibly about the geographically-constrained interactions of states, rests also on the internal conditions of states themselves, in which the actions of individuals are crucial and so much hangs on a thread. While both the United States and China face epochal budgetary and economic crises -- which in both countries bleed over into the political realm -- the crisis in China is far more profound than in the United States. After all, the system of governance in Washington simply enjoys so much more legitimacy than the one in Beijing, with the American public institutionally better equipped to vent its frustrations than the Chinese one. Such internal realities will remain the overriding geopolitical facts in Asia.

## Geneva

### Middle East War

#### Yes ME war---D too old

Michael Singh 11, Washington Institute director, 9/22, “What has really changed in the Middle East?”, http://shadow.foreignpolicy.com/posts/2011/09/22/what\_has\_really\_changed\_in\_the\_middle\_east

Third, and most troubling, the Middle East is likely to be a more dangerous and volatile region in the futureFor the past several decades, a relatively stable regional order has prevailed, centered around Arab-Israeli peace treaties and close ties between the United States and the major Arab states and TurkeyThe region was not conflict-free by any means, and Iran, Iraq, and various transnational groups sought to challenge the status quo, albeit largely unsuccessfullyNow, however, the United States appears less able or willing to exercise influence in the region, and the leaders and regimes who guarded over the regional order are gone or under pressureSensing either the need or opportunity to act autonomously, states like Turkey, Saudi Arabia, and Iran are increasingly bold, and all are well-armed and aspire to regional leadershipEgypt, once stabilized, may join this groupWhile interstate conflict is not inevitable by any means, the risk of it has increased and the potential brakes on it have deterioratedLooming over all of this is Iran's quest for a nuclear weapon, which would shift any contest for regional primacy into overdrive

### 2AC HR Cred

#### Gruber says we are key to credible human rights promotions- that is a conflict suppressor, solves the DA impact

Burke-White 4 (William W., Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University The Harvard Environmental Law Review Spring, 2004 LN,<https://www.law.upenn.edu/cf/faculty/wburkewh/workingpapers/17HarvHumRtsJ249(2004).pdf>)

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

## Solvency

### 2AC Drone Shift DA

#### Drone Shift Locked-In- false trade off

Jay Lefkowitz 13, senior lawyer and former domestic policy advisor to President George W. Bush and John O'Quinn, former DOJ official in the Bush administration, Financial Times, "Drones are no substitute for detention", March 4, www.ft.com/cms/s/0/dae6552c-84c2-11e2-891d-00144feabdc0.html#axzz2dZnIVyqb

Memo to all those critics of Guantánamo Bay: beware what you wish for. The nomination of John Brennan to head the CIA was put on hold, in no small part because of the growing debate over the use of drone strikes to kill suspected high-value al-Qaeda operatives and other alleged terrorists. President Barack Obama’s administration defends these strikes as “legal”, “ethical”, “wise” and even “humane”. Opponents characterise them as an aggrandisement of executive power in which the president becomes judge, jury and executioner. Sound familiar? It should – because it parallels the debate over the policy of detaining terrorist suspects at Guantánamo that punctuated most of George W. Bush’s time in office.¶ In the past four years, there has been a dramatic shift from detention to drone strikes as the tool of choice for removing al-Qaeda operatives from the field of battle. They have reportedly been used more than 300 times in Pakistan alone by the Obama administration, at least six times more than under Mr Bush. They inevitably come with collateral damage. Meanwhile, not one detainee has been transferred to Guantánamo, and the US has largely outsourced the running of the detention facility at Bagram air base to the Afghan government. Rather than capture enemies and collect valuable information, this administration prefers to pick them off. In short, every successful drone strike is another wasted intelligence-gathering opportunity.¶ Lost amid recent hysteria over the drone programme is the question of why – when detention produces little collateral damage – there appears to be little appetite for capturing and questioning suspects. The answer: it poses hard choices for an administration fearful of the criticism directed at its predecessors – one that in effect abandoned its efforts to close Guantánamo, and came round largely to defending Bush-era policies regarding detention, but only very reluctantly.¶ Detention requires the government to decide: when is a detainee no longer a threat? Should they be tried, and where? When, where and how can they can be repatriated? What intelligence can be shared with a court or opposing counsel? And, one of the hardest questions of all: what if you release a detainee and they take up arms again?¶ On top of that, it raises questions about intelligence-gathering, a primary mission at Guantánamo. Indeed, it has been widely reported that intelligence from detainees helped lead the US to Osama bin Laden. But how is it to be gathered? What techniques are permissible? Moreover, accusations of torture are easily made – it is literally part of the al-Qaeda play book to do so – but hard to debunk without compromising intelligence.¶ By contrast, drone strikes are easy. With a single key stroke, a suspected enemy is eliminated once and for all, with no fuss, no judicial second-guessing and no legions of lawyers poised to challenge detention. Indeed, one of the unintended consequences of the criticism of Guantánamo is to make drone strikes more attractive than detention for removing al-Qaeda operatives from the field of battle.¶ Yet, even as potential intelligence assets are bombed out of existence, the information trail from detainees captured 10 years ago grows cold. At the same time, al-Qaeda evolves and expands. What could we have learnt from even a handful of the high-value operatives killed in drone strikes?¶ We do not dispute that use of drones against al-Qaeda is a legitimate part of the president’s powers as commander-in-chief, and we have doubts about some proposals that purport to circumscribe that authority. But it is clear this administration is using them as a substitute for capture, detention and intelligence-gathering. The current debate highlights the need for Congress and the administration to refocus their efforts on developing a sensible, sustainable policy for detention of foreign enemy combatants – in which enemies are safely held far from US soil, intelligence is actively gathered and justice promptly administered through military courts – instead of taking the easy way out.

### 2AC AT: Rendition

#### Plan’s precedent solves—deference is the legal justification of rendition

Richards 06 [Nelson, JD Cand @ Berkeley, “The Bricker Amendment and Congress’s Failure to Check the Inflation of the Executive’s Foreign Affairs Powers,” 94 Calif. L. Rev. 175, January, LN//uwyo-ajl]

H. Jefferson Powell has posited that the Supreme Court has all but ceded the creation of a foreign affairs and national security legal framework to the OLC. Indeed, he goes so far as to assert that OLC legal opinions, not Supreme Court opinions, are the first sources the executive branch looks to when researching foreign affairs and national security law. Another set of John Yoo's writings support the validity of Powell's claim: the infamous memos declaring enemy combatants outside the protection of the Geneva Conventions. These, combined with the "Torture Memos," the expanding practice of "extraordinary rendition," and the current Administration's blase response to the Supreme Court's ruling that prisoners held at Guantanamo Bay are entitled to judicial access, have brought peculiar focus to the weight and seriousness of the OLC's legal authority. In the realm of foreign affairs, the Court has written off its obligation, claimed in Marbury, as the authoritative interpreter of the Constitution. While it may have reviewed some of the legal premises put forth in the above-mentioned OLC opinions, it has not curbed the OLC's claim to power over foreign affairs. The Court is more than capable of challenging the President. It has the power to send messages to the President, but it has done so only in two narrow contexts: when U.S. citizens are labeled enemy combatants (Hamdi v. Rumsfeld ) and when prisoners are held in U.S. facilities (Rasul v. Bush). The Hamdi and Rasul decisions, which amount to piecemeal restraints on the President's freedom to act, accord with the Court's general failure to check the executive's use of power abroad.

## T

### 2AC JSPEC

#### Counterinterp- Federal Judiciary is the judiciary of the United States which is responsible for interpreting and enforcing federal laws- that’s a Quote from Free-dictionary.com

(http://www.thefreedictionary.com/Federal+Judiciary)

Federal Judiciary - the judiciary of the United States which is responsible for interpreting and enforcing federal laws

judicatory, judicial system, judiciary, judicature - the system of law courts that administer justice and constitute the judicial branch of government

federal court - a court establish by the authority of a federal government

### 2AC T-Prohibition

#### We meet-

#### 1) indefinite detention is detaining an arrested person without trail that’s a quote from

US LEGAL 13 (<http://definitions.uslegal.com/i/indefinite-detention/>, “Indefinite Detention”)

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seema to violate many national and international laws. It also violates human rights laws.

#### 2) Ruling on the Geneva Conventions is a restriction

Wolensky 9 (Spring, 2009¶ Chapman Law Review¶ 12 Chap. L. Rev. 721¶ LENGTH: 10495 words Comment: Discretionary Sentencing in Military Commissions: Why and How the Sentencing Guidelines in the Military Commissions Act Should be Changed\* \* This article was initially written and published when the state of military commissions were in flux. It reflects the events regarding military commissions up to and through April 2009. However, an important decision was made by President Obama in May of 2009. See William Glaberson, Obama Considers Allowing Please by 9/11 Suspects, N. Y. Times, June 6, 2009, at A1, A12. Obama decided to continue the use of military commissions under a new set of rules which provide more protections for detainees. Id. Due to the timing of publication, this decision is not incorporated in this article. Although Obama has decided to continue the military commissions, he has not finalized a set of rules. Id. This article serves as a recommendation for changes to the rules of the Military Commissions Act, which Congress and the Obama Administration should consider. NAME: Brian Wolensky\*\*)

One of the main treatises included in the Law of War is the Third Geneva Convention, which was enacted in 1949 to regulate the treatment of prisoners of war**.** [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n31) The Law of War places restrictions on the way certain countries can act during times of war and the United States is bound by it when it establishes and uses military commissions. [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n32)

#### Restriction means a limit or qualification, and includes conditions on action

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

## Cheating

### 2AC Process CP

#### Circuit courts don't publish their opinions. This destroys solvency-3 reasons.

Richman and Reynolds ‘96 (William M., Professor of Law, University of Toledo School of Law, Toledo, Ohio., & William R., Jacob A. France Professor of Judicial Process, University of Maryland School of Law, Baltimore, Maryland, “Elitism, Expediency, and the New Certiorari: Requiem For the Learned Hand Tradition”, Cornell Law Review, 81 Cornell L. Rev. 273) <Will>

The court's tangible work product also has changed dramatically in recent years. "Published opinions," Judge Jones wrote recently, "were once the hallmark of the appellate courts' work." [38](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n38) The traditional expectation was that an appellate decision would be expressed  [[\*282]](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all)  in a written and fully reasoned opinion, and that the opinion would be published and added to the stock of precedent. [39](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n39) That expectation no longer exists. Rather, each circuit has a local rule identifying those opinions that it will publish. [40](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n40) Although the actual criteria differ among the circuits, the publication decision is based on the assumption that opinions which do not "make law" do not need formal publication; as a corollary, unpublished opinions are said to lack "precedential value" and usually cannot be cited as precedent. Given this underlying assumption, it is hardly surprising that published opinions today account for less than a third of federal circuit terminations. [41](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n41) The decline in publication is unfortunate because the traditional, fully reasoned written opinion [42](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n42) serves a number of vital functions. [43](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n43) For instance, a published opinion enhances predictability. Even if the opinion does no more than restate existing legal doctrine, it can show how the doctrine applies to different facts. Publication thus increases certainty by increasing the stock of precedents. [44](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n44) Publication also hardens precedents because it is easier for a court to ignore one inconvenient precedent than ten. [45](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n45) Publication also serves to hold judges accountable for their opinions. [46](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n46) Accountability encourages well-reasoned decisions. When a judge makes no attempt to provide a satisfactory explanation of the result, neither the actual litigants nor subsequent readers of an opinion can know whether the judge paid careful attention to the case and decided the appeal according to the law or whether the judge relied on impermissible factors such as race, sex, political influence, or merely the flip of a coin. Perhaps few losing litigants will be persuaded by a carefully reasoned explanation, but that explanation will often reveal whether the judge treated the case seriously. [47](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n47) Moreover, full publication helps to insure that judicial opinions are readily accessible, certainly a necessary condition for the realistic evaluation of either a judge or a court. Similarly, the signed opinion assigns responsibility. The author of a bad opinion cannot hide behind the shield of anonymity; blame, or praise-worthiness, is there for all to see. "By signing his name to a judgment or opinion the judge assures the parties that he has thoroughly participated in that process and assumes individual responsibility for the decision." [48](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n48) In contrast, the unpublished opinion (or order) rarely has an author other than that noted Norwegian jurist, "Per Curiam." [49](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n49) In per curiam decisions, blame or praise is spread out among three judges with the pernicious consequence of diffusing the judges' responsibility and accountability. Judges who cannot be held individually responsible either for the reasoning or the result have far less incentive to insure that they "get it right." More accurately, given the increasing reliance on staff to prepare opinions, the anonymous judge has far less incentive to see that they get it right. Non-publication also diminishes the possibility of additional review. For all practical purposes, the courts of appeals are the courts of last resort in the federal system; fewer than one percent of their decisions receive plenary review by the Supreme Court. The limited appellate capacity of the Supreme Court makes it extremely unlikely that it will review an unpublished opinion. After all, a cogent explanation also makes it possible for a reviewing court to understand the case. [50](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n50) Without that explanation, the likelihood of discretionary review by an en banc court or by the Supreme Court decreases to the vanishing point. [51](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all#n51) Moreover, a reviewing court is far less likely to spend its own  [[\*284]](http://www.lexis.com/research/retrieve?_m=7f3450601d8d0a68c85b476de788193a&docnum=3&_fmtstr=FULL&_startdoc=1&wchp=dGLbVtb-zSkAb&_md5=465aec0e6795f6dcfa010b13af44e982&focBudTerms=%2522circuit%20court%2522%20w/10%20%2522cert%2522%20w/15%20%2522deny%2522%20or%20%2522denies%2522&focBudSel=all)  resources on a case already determined to be without precedential value. Although review is very unlikely anyway, a litigant should not have the chances of review further reduced merely because a panel did not think the case worthy of an opinion.

## Politics

### 2AC Economy Impact

#### No impact to economic decline – prefer new data

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

### Uniqueness

#### Won’t pass, trade agreements will fail independently, and Obama’s not pushing

Raum, 2-18 -- Associated Press

[Tom, "Obama, fellow Dems are at odds on big trade bills," Boston Globe, 2-18-14, www.boston.com/2014/02/18/obama-fellow-dems-are-odds-big-trade-bills/r5Qv6NdY04BupuexeGfmaN/singlepage.html, accessed 2-18-14]

Many Democrats up for re-election in November are fearful of drawing primary-election opposition over the trade talks. Concerned about lost jobs that are important to labor unions, they’re abandoning Obama on this issue. Late last year in fact, 151 House Democrats, roughly three quarters of the chamber’s Democratic membership, signed a letter to Obama signaling their opposition to granting him fast-track trade authority. Obama said his goal in requesting such authority was ‘‘to protect our workers, protect our environment and open new markets to new goods stamped ‘Made in the USA.'’’ But the president, never known as an enthusiastic free-trader in the past, has yet to make an all-out push for the authority, which was last approved by Congress in 2002 for President George W. Bush but expired in 2007. Meanwhile, some European allies are pushing back, still peeved over disclosures of National Security Agency surveillance of them. Obama had hoped an agreement could be reached on the trans-Pacific talks before he visited Japan and other Asian nations in April. The Pacific talks are further along than the Atlantic ones. But the trans-Pacific talks have been complicated by disputes over environmental issues and resistance in some Asian countries to a wholesale lowering of trade barriers. Also, U.S. standing in the region took a hit when Obama missed the Asia-Pacific Economic Cooperation meeting last October because of the American government shutdown. At home, clearly more Republicans support free-trade agreements than do Democrats. Business interests generally favor such pacts, while labor unions tend to oppose them. Lower-priced imported goods and services may be welcomed by U.S. consumers, but one consequence can be the loss of U.S. manufacturing and service jobs. Fast-track authority speeds up congressional action on trade deals by barring amendments. Boehner, R-Ohio, taunts Obama by asserting that ‘‘Trade Promotion Authority is ready to go. So why isn’t it done?’’ ‘‘It isn’t done because the president hasn’t lifted a finger to get Democrats in Congress to support it,’’ Boehner said, answering his own question. ‘‘And with jobs on the line, the president needs to pick up his phone and call his own party, so that we can get this done.’’ It isn’t yet clear whether Boehner’s retreat from years of political brinkmanship in pushing a debt limit increase through the House last week will help to forge a bipartisan consensus on the trade deals. A fast-track bill may be ‘‘ready to go’’ in the GOP-controlled House but certainly isn’t in the Democratic-led Senate, where Senate Majority Leader Harry Reid has given it a thumbs-down. ‘‘I'm against fast track,’’ Reid says flatly. ‘‘Everyone would be well advised just to not push this right now.’’ White House press secretary Jay Carney says the president’s team has been aware of Reid’s opposition for some time but ‘‘will continue to work to enact bipartisan trade-promotion authority.’’ The top House Democrat, Nancy Pelosi, also opposes fast track President Bill Clinton, a Democrat, used the powers to speed congressional approval of the North American Free Trade Agreement (NAFTA) with the United States, Mexico and Canada in 1993. The landmark pact had been negotiated under his predecessor, President George H.W. Bush. George W. Bush used the same authority to push through Congress the Central American Free Trade Agreement in 2005. Even without fast track, Obama was able to win congressional passage of free-trade agreements with Colombia, Panama and South Korea the old-fashioned way in 2011. But the stakes are higher now. And, little by little, the politics of approaching midterm elections are intruding. ‘‘Neither political party at this point has any appetite for taking on an issue that would divide that party’s caucus in Congress,’’ said William Galston, Clinton’s domestic-policy adviser when NAFTA was passed. ‘‘That being said, I suspect that very little is going to happen between now and November’’ on the trade front.

### Link Turn

#### Winners win on detention issues

Klaidman 12/12 (Daniel, Congress Cooperates, Obama Pushes Hard, and Closing Gitmo Has a Chance<http://www.thedailybeast.com/articles/2013/12/12/congress-cooperates-obama-pushes-hard-and-closing-gitmo-has-a-chance.html>)

The real test of Obama’s legislative muscle came in the fall when Republican Senator Kelly Ayotte tried to kill the Levin language with an amendment that would have kept all of the Gitmo restrictions in place. Monaco and White House lobbyists continued to work the phones, while the White House organized a barrage of letters to the Hill from top national security officials, including Hagel, Kerry, and Attorney General Eric Holder Jr. Meanwhile Obama continued to signal that the initiative was a presidential priority. On November 4 he met with both of his Gitmo envoys. During the meeting, according to a source who was present, Obama told Sloan and Lewis that he was prepared to do whatever they needed to help them succeed in their mission–whatever “blocking and tackling” that was necessary, as Obama put it. But in some ways it was the visual image of the meeting that was most important. The White House released a picture of Obama with his envoys, and National Security Council spokesperson Caitlin Hayden tweeted out news of the meeting. The lobbying offensive lasted right up until the vote. On November 19, the White House was able to beat back the Ayotte amendment. Crucially they won three Republicans to their side, including McCain, whose position wasn’t known until shortly before the vote. McCain told colleagues that he had been in discussions with the highest levels of the White House, which colleagues interpreted to mean Obama himself, according to one Senate staffer. For his part, Graham didn’t take to the Senate floor to attack the administration’s position, as he had on other occasions. Having McCain on board gave Senate Democrats momentum going into negotiations with the House earlier this month. And while supporters of the prison’s closure hardly got everything they wanted (the ban on transferring detainees to the U.S was maintained) the administration now has a freer hand to start emptying out the facility. For a president who believes in playing the long game, this was an inflection point. “Momentum begets momentum,” one of Obama’s senior advisers observes, savoring the rarest of things for this White House: a victory on Guantanamo.

### Courts Shield

#### Courts shield the link on detention policy

Stimson 9 (Charles "Cully" D. Stimson is a leading expert in criminal law, military law, military commissions and detention policy at The Heritage Foundation's Center for Legal and Judicial Studies.Punting National Security To The Judiciary <http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/>)

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities.

## Court Capital

### 2AC Warming

#### Feedbacks already triggered, developing countries outweigh, and methane releases cause the impact

Mims ’12 (Christopher, Science and technology correspondent – BBC and Grist, “Climate scientists: It’s basically too late to stop warming,” http://grist.org/list/climate-scientists-its-basically-too-late-to-stop-warming/, March 26, 2012)

If you like cool weather and not having to club your neighbors as you battle for scarce resources, now’s the time to move to Canada, because the story of the 21st century is almost written, reports Reuters. Global warming is close to being irreversible, and in some cases that ship has already sailed. Scientists have been saying for a while that we have until between 2015 and 2020 to start radically reducing our carbon emissions, and what do you know: That deadline’s almost past! Crazy how these things sneak up on you while you’re squabbling about whether global warming is a religion. Also, our science got better in the meantime, so now we know that no matter what we do, we can say adios to the planet’s ice caps. For ice sheets — huge refrigerators that slow down the warming of the planet — the tipping point has probably already been passed, Steffen said. The West Antarctic ice sheet has shrunk over the last decade and the Greenland ice sheet has lost around 200 cubic km (48 cubic miles) a year since the 1990s. Here’s what happens next: Natural climate feedbacks will take over and, on top of our prodigious human-caused carbon emissions, send us over an irreversible tipping point. By 2100, the planet will be hotter than it’s been since the time of the dinosaurs, and everyone who lives in red states will pretty much get the apocalypse they’ve been hoping for. The subtropics will expand northward, the bottom half of the U.S. will turn into an inhospitable desert, and everyone who lives there will be drinking recycled pee and struggling to salvage something from an economy wrecked by the destruction of agriculture, industry, and electrical power production. Water shortages, rapidly rising seas, superstorms swamping hundreds of billions of dollars’ worth of infrastructure: It’s all a-coming, and anyone who is aware of the political realities knows that the odds are slim that our government will move in time to do anything to avert the biggest and most avoidable disaster short of all-out nuclear war. Even if our government did act, we can’t control the emissions of the developing world. China is now the biggest emitter of greenhouse gases on the planet and its inherently unstable autocratic political system demands growth at all costs. That means coal. Meanwhile, engineers and petroleum geologists are hoping to solve the energy crisis by harvesting and burning the nearly limitless supplies of natural gas frozen in methane hydrates at the bottom of the ocean, a source of atmospheric carbon previously considered so exotic that it didn’t even enter into existing climate models.

### 2AC EPA

#### Gay marriage rulings coming- thump the link

USA Today 2/15 (Same Sex Marriage on Winning Streak Towards High Court http://www.usatoday.com/story/news/nation/2014/02/14/supreme-court-gay-lesbian-marriage-virginia/5485119/)

Same-sex marriage is on a roll in the nation's courts, signaling a mad dash back to the Supreme Court just months after its victories there last June. A federal judge's decision late Thursday striking down Virginia's sweeping ban on gay and lesbian unions was but the latest in a string of rulings in some of the nation's most conservative states. The rapid-fire opinions from federal judges in Virginia, Oklahoma and Utah striking down gay marriage bans, and from Kentucky and Ohio on more narrow issues, come on top of state court rulings in New Jersey and New Mexico in recent months, as well as Nevada's decision not to defend its gay marriage ban in court. One after another, judges have used decades of Supreme Court opinions to back up their findings that gay and lesbian couples deserve the same marriage rights as heterosexuals. Judge Arenda Wright Allen even quoted Mildred Loving, whose case in Virginia struck down bans on interracial marriage, at the beginning of her eloquent 41-page decision. But more than anything else, it was last June's ruling in United States v. Edith Windsorthat has sent judges ever since to one side of the argument — just as Justice Antonin Scalia predicted in angry dissent. That 5-4 decision, written by Justice Anthony Kennedy, said the Defense of Marriage Act's ban on federal benefits for legally married same-sex couples was unconstitutional.

#### No impact to EPA regs- funding cuts

Davenport, 13 -- National Journal energy and environmental correspondent

[Coral, formerly covered energy and environment for Politico, and before that, for Congressional Quarterly, "EPA Funding Reductions Have Kneecapped Environmental Enforcement," National Journal, 3-3-13, www.nationaljournal.com/daily/epa-funding-reductions-have-kneecapped-environmental-enforcement-20130303, accessed 3-26-13, mss]

EPA Funding Reductions Have **Kneecapped** Environmental Enforcement

Republicans have spent the past two years on the warpath against the Obama administration’s Environmental Protection Agency. As the EPA rolled out an ambitious slate of rules aimed at stopping climate change and curbing power-plant pollution, Republicans on the campaign trail and Capitol Hill slammed the agency as the embodiment of government overreach and so-called “job-killing regulations.” Despite the outrage, the GOP’s efforts to stop the agency’s agenda haven’t succeeded—all of the many bills to block or delay EPA’s new regulations have failed in Congress. But lawmakers have found another way to strike out at the agency they love to hate—by slashing its budget. Over the past two years, Congress has cut EPA’s budget by a whopping 18 percent, from $10.3 billion to $8.5 billion. And that’s not counting the effects of the across-the-board spending cuts that took effect with sequestration Friday. Cutting the agency’s budget doesn’t take away its obligation to enforce environmental laws and implement new regulations, but it has dramatically weakened and slowed EPA’s ability to fulfill its mandate. And the cuts have come just as President Obama is preparing to ramp up efforts to tackle climate change. That will be a huge struggle—**EPA’s budget cuts** have already **sapped the agency of money for the staff, training, travel, and tech**nology **needed to enforce** existingenvironmental-protection **rules**. “Enforcement has really taken it on the chin,” said Adam Kushner, a former director of EPA’s Office of Civil Enforcement who now practices at the law firm Hogan Lovells. Kushner and others point out that in order to enforce environmental regulations, staffers must be able to travel to sites such as coal plants or water bodies; to use high-tech tools to determine pollution levels; to review complex technical documents; and more. At least some of that work requires in-house training. And money to do all of it is declining. “It means laws about environmental enforcement are just paper,” Kushner said. Budget-cutting is an age-old means for lawmakers to influence the executive branch. “One of the ways you can affect policy is by denying money,” said Steve Ellis, vice president of the watchdog group Taxpayers for Common Sense. “They couldn’t undo the regulations. So they bled the funding. It’s not a new tactic. It’s been done at other agencies in other times.” Republicans have made clear this is exactly their strategy. Here’s what Rep. Mike Simpson, R-Idaho, chairman of the House Appropriations subcommittee that funds EPA, said about last year’s spending bill: “Wherever I go, the biggest complaint I hear about the federal government is how the EPA is creating economic uncertainty and killing jobs. This bill includes provisions to address some of these issues.” While the Democratic majority in the Senate has restored some of the EPA funding cut by the Republican-controlled House, the agency has still taken a bigger hit than many others. For example, over the past two years funding for EPA’s climate-change and clean-air programs dropped 9 percent, from $1.1 billion to $1 billion, while funding for water quality fell 29 percent, from $5.6 billion to $4 billion. Those cuts appear to have had a measurable impact on levels of environmental cleanup. According to agency data, EPA programs stripped 410 million pounds of pollutants from the air in 2010; the amount dropped to 250 million pounds in 2012. In the same two-year period, the volume of contaminants removed from U.S. waters was cut in half, from 1 billion pounds to 500 million pounds. Hazardous wastes eliminated from the environment fell from 11.8 billion pounds in 2010 to 4.4 billion pounds in 2012. Reduced environmental enforcement has real consequences, said Frank O’Donnell, president of the group Clean Air Watch. “It’s a fundamental problem,” he said. “EPA has been given more and more responsibility, but not the adequate resources." “In theory, it’s been given all this power,” O’Donnell said. “In reality, it’s a paper tiger.”

#### Capital is bulletproof

Gibson 12 (James L. Gibson, Sidney W. Souers Professor of Government (Department of Political Science), Professor of African and African-American Studies, and Director of the Program on Citizenship and Democratic Values (Weidenbaum Center on the Economy, Government, and Public Policy) at Washington University in St. Louis; and Fellow at the Centre for Comparative and International Politics and Professor Extraordinary in Political Science at Stellenbosch University (South Africa), 7/15/12, “Public Reverence for the United States Supreme Court: Is the Court Invincible?”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107587>)

Political scientists and legal scholars continue to be obsessed with the so-called countermajoritarian dilemma created by the United States Supreme Court’s lack of accountability, particularly when coupled with its immense policy-making powers. Especially when the Supreme Court makes decisions that seem to fly in the face of public preferences—as in Kelo v. New London 1 and Citizens United v. Federal Election Commission 2—concerns about the function of the institution within American democracy sharpen. Indeed, some seem to believe that by making policies opposed by the majority of the American people the Court undermines its fundamental legitimacy, its most valuable political capital. The underlying assumption of these worries about the Supreme Court’s legitimacy is that dissatisfaction with the Court’s decisions leads to the withdrawal, or at least diminution, of support for the institution. So when the Court decides a high profile case like Citizens United in a widely unpopular direction, it is logical to assume that the Court’s legitimacy suffers. Again, the assumption is that legitimacy flows from pleasing decisions, but it is undermined by displeasing decisions. At least some empirical evidence directly contradicts this assumption. In what is perhaps the most salient and politically significant decision of the last few decades, the Supreme Court’s decision in Bush v. Gore 3 effectively awarded the presidency to George W. Bush. One might have expected that this decision would undermine the Court’s legitimacy, at least with Democrats and probably with African-Americans as well. Yet several empirical research projects have indicated that, if anything, the Court’s legitimacy was boosted by this decision, even among Democrats and African-Americans. 4 Bush v. Gore had great potential to chip away at the Court’s legitimacy—it was a deeply divided 5-4 decision; divided by the justices’ partisanships as well; it extended the Court’s authority into an area of law in which the Court had generally deferred to the states; the decision was severely criticized by some, with many in the legal academy describing the decision as a “self-inflicted wound”; 5 and, of course, it was a decision of immense political importance. If Bush v. Gore did not subtract from the Court’s institutional legitimacy, it is difficult to imagine less momentous decisions undermining judicial legitimacy. Political scientists have been studying the legitimacy of the Supreme Court for decades now, and several well-established empirical findings have emerged. The findings relevant to the countermajoritarian dilemma can be summarized in a series of nutshells: ● The Supreme Court is the most legitimate political institution within the contemporary United States. Numerous studies have shown that the American mass public extends great legitimacy to the Court; typically, Congress is depicted as being dramatically less legitimate than the Supreme Court. Indeed, some have gone so far as to describe the Supreme Court as “bulletproof,” and therefore able to get away with just about any ruling, no matter how unpopular. And indeed, the United States Supreme Court may be one of the most legitimate high courts in the world.

#### Ruling on human rights makes the decision popular

Soohoo and Stolz, ’08 [Cynthia Soohoo\* and Suzanne Stolz Director, U.S. Legal Program, Center for Reproductive Rights \*\* Staff Attorney, U.S. Legal Program ‘8, Center for Reproductive Rights 2008 Fordham Law Review Fordham Law Review November, 2008 77 Fordham L. Rev. 45]

A recent poll conducted by The Opportunity Agenda indicates that most Americans identify with human rights as a value and think that human rights violations are occurring in the United States. n1 Eighty-one percent of Americans polled agreed that "we should strive to uphold human rights in the United States because there are people being denied their human rights in our country." n2 And approximately three quarters (seventy-seven percent) of the public expressed that they would like the United States to work on making regular progress to advance and protect human rights. n3 Globalization and recent political events have played an important role in educating the American public about human rights standards and in thinking about the United States as a country in which human rights violations can occur. However, public attitudes about domestic human rights also reflect, and are being promoted by, two shifts in advocacy work. International human rights organizations are increasingly focusing on the United States, and domestic public interest lawyers and activists are integrating human rights strategies into their work. n4

#### Controversial decisions increase court capital

Nelson **Lund**, George Mason University School of Law Professor of Law, March, 20**02**, “SYMPOSIUM: VOTES AND VOICES: REEVALUATIONS IN THE AFTERMATH OF THE 2000 PRESIDENTIAL ELECTION: THE UNBEARABLE RIGHTNESS OF BUSH V. GORE,” 23 Cardozo L. Rev. 1219

Breyer forgot to mention that this argument about avoiding the "political thicket" was exactly the argument that the Court had rejected in the vote-dilution cases on which the majority relied. 118 [\*1256] Moreover, the notion of a general duty to avoid decisions that might undermine the public's confidence in the Court is not one that anybody actually believes. In fact, many of the Court's most intensely admired decisions are exactly those that were most controversial when decided. Brown v. Board of Education, 119 which forbade racially segregated schools. Engel v. Vitale, 120 which forbade prayer in the schools. Miranda v. Arizona, 121 which forbade the use of voluntary confessions at trial unless preceded by a series of judicially created warnings. Reynolds v. Sims, 122 which required equality of population in state legislative districts. Roe v. Wade, 123 which established a right to abortion. Texas v. Johnson, 124 which protected a right to desecrate the American flag. Notwithstanding the sound of Breyer's rhetoric, the theory underlying his call for judicial restraint is actually not one that would preclude any of the decisions in this list. On the contrary, it is a theory meant to foster just such controversial decisions, along with their frequently profound political effects, even or perhaps especially when those effects are so profound as to shake the public's confidence in the Court. The real theory, well known to sophisticated students of law and political science, is that the Supreme Court should refuse to decide certain politically sensitive cases, especially those involving the constitutional allocation of power between the federal and state governments, in order to conserve the Court's political resources for more important tasks, especially those involving the protection of certain "individual liberties." 125 In practice, what this means is that the Court should [\*1257] sometimes allow the Constitution to be violated when Congress infringes on the rights of the states, while protecting judicially selected "individual liberties" that often have no basis in the Constitution.

# 1AR

### **Should**

Should not must – doesn’t imply certainty – prefer this ev it indicts the thesis of their definition

Dilip 11, Aron Dilip (Contributing Editor – India) – Professor in Social Science Difference Between Should and Must Mar 17th, 2011 http://www.differencebetween.com/difference-between-should-and-vs-must/#ixzz1yLDjLmkx BK

**Should and Must** are two modal auxiliary verbs in English language that **should be used correctly and with difference**. Both the verbs differ in their forms and their meanings as well. **The verb ‘must’ is** generally used **expressive of certainty** as in the sentence ‘I must get up at five tomorrow.’ In this sentence the modal auxiliary verb ‘**must’ is used expressive of certainty** regarding getting up at five in the morning. ‘**Must’ is used to indicative of strong advice to oneself or to others** as in the sentences: 1. I really must stop drinking alcohol. 2. You must be here by 9 o’clock at the latest. In both the sentences given above you will find that ‘**must’ is used supportive of an advice or order**. Sometimes ‘must’ is used in questions too. In such cases it seems to ask about the intentions of the person who is spoken to as in the sentences: 1. Must I write down everything? 2. Why must you read till late in the night this week? You seem to ask about the intentions of the person who is spoken to in both the sentences by the usage of the verb ‘must’. The modal auxiliary verb ‘should’ can be used as the past form of ‘shall’ as in the sentence ‘I said I should be in the temple before eleven.’ **The verb ‘should’ sometimes is used** after ‘if’ **to suggest some sort of possibility or chance** as in the sentence ‘If you should see Julie, give her my wishes.’ The meaning that you get from the sentence is that in case you meet her you convey my wishes to her. The verb ‘should’ is very frequently used to express obligation and duty as in the sentence ‘You should meet him today.’ **Thus the two verbs are to be used with precision**.

### 1ar linkturn

#### The plan generates PC for Obama

#### Extend all of our Klaidman— 3 arguments

#### the plan is popular- most recent evidence on this question, not even a month old-Senate already transferred detainees and it was bipartisan deal watershed moment—econ troubles like the debt ceiling and sequestration make the plan appealing because republicans all know about high cost of indefinite detention

#### The cost of Guantanamo alone means ending detention is bipartisan

Klaidman 12/12 (Daniel, Congress Cooperates, Obama Pushes Hard, and Closing Gitmo Has a Chance<http://www.thedailybeast.com/articles/2013/12/12/congress-cooperates-obama-pushes-hard-and-closing-gitmo-has-a-chance.html>

"The cost of keeping Guantanamo open is just staggering and completely unnecessary,” says Ken Gude of the Center for American Progress, which just put out a report on Gitmo costs. “Even this Congress can't ignore wasting billions of dollars on holding detainees that have already been cleared for transfer out of the prison camp," adds Gude. Smith understood that in an era of austerity, sequestration, and government furloughs, the Gitmo numbers would likely have a big impact on moderate Democrats and even some fiscally minded Republicans. “This was the one thing that changed the debate,” Smith said in an interview this week.

#### Winners win—they have NO EV specific to detention and that is a framing issue, in this context momentum begets momentum because it makes the democrats look food—spending PC will give Obama a freer hand to puruse the rest of his legislative agenda

#### Also empirically disproves or non-uniques all their links because O already signaled that he would make the plan a top priority, Obama’s spent PC on Gitmo for months

#### Your evidence is outdated- ending detention is now a non-issue

Golan-Viella 12/23 (Robert, Natl Interest. Closing Time? The Shifting Politics of Guantánamo <http://nationalinterest.org/blog/the-buzz/closing-time-the-shifting-politics-guant%C3%A1namo-9612?page=1>)

The reaction to the vote in Congress may also serve as an indicator of this trend. Predictably, civil-liberties [groups](https://www.aclu.org/national-security/senate-eases-transfer-restrictions-guantanamo-detainees) have [celebrated](http://www.humanrightsfirst.org/2013/12/19/human-rights-first-hails-defense-bill-that-provides-path-forward-on-guantanamo/) the result. Its opponents, meanwhile, have been relatively silent. This is a pretty significant shift from even just earlier this year. After President Obama announced in the spring that he was going to renew his effort to shutter the facility, leading congressional Republicans of both chambers [swore](http://thinkprogress.org/security/2013/05/07/1974601/republicans-vow-to-block-obamas-renewed-attempt-to-close-gitmo/) their opposition to this goal. Now, a major step toward that end is being taken, and from a political point of view it appears to be mostly a nonissue.