## Detention 1AC

### Contention 1- Human Rights

#### US human rights promotion inevitable- but the double standard created by Guantanamo prevents that promotion from being credible

Hidayat 8/21 (Syarif- editor of the Mi’raj News Agency, 2013, “GITMO PRISON SHOWS THE US HYPOCRISY AND DOUBLE STANDARDS ON HUMAN RIGHTS”, http://mirajnews.com/en/article/opinion/7121-gitmo-prison-shows-the-us-hypocrisy-and-double-standards-on-human-rights.html)

The double standards of the renowned world preacher of human rights and the hypocrisy of US imperialism’s pretense of promoting human rights on the world arena is demonstrated in Washington’s decision to maintain Guantanamo prison and torture camps. President Barack Obama had decided to give $50 million to keep Guantanamo open indefinitely in a gross violation of his election promise. President Obama promised to close Guantanamo as part of his election campaign in 2008. Islamic community leaders in the UK and the US urge Obama to stop force-feeding Gitmo detainees during Ramadan.¶ “Anywhere that human rights are under threat, the United States will proudly stand up, unabashedly, and continue to promote greater freedom, greater openness, and greater opportunity for all people. And that means speaking up when those rights are imperiled. It means providing support and training to those who are risking their lives every day so that their children can enjoy more freedom. It means engaging governments at the highest levels and pushing them to live up to their obligations to do right by their people.” - Secretary of State John Kerry, April 2013.¶ Every year, the U.S. State Department releases a report on the status of human rights in countries around the world. Every year, one country is notably missing from this report — the United States.¶ “Our world is complex and increasingly influenced by non-state actors – brave civil society activists and advocates, but also violent extremists, transnational criminals, and other malevolent actors. In those places where human rights and fundamental freedoms are denied, it is far easier for these negative destabilizing influences to take hold, threatening international stability and our own national security.”¶ “It is in our interest to promote the universal rights of all persons. Governments that respect human rights are more peaceful and more prosperous. They are better neighbors, stronger allies, and better economic partners. Governments that enforce safe workplaces, prohibit exploitative child and forced labor, and educate their citizens create a more level playing field and broader customer base for the global marketplace. Conversely, governments that threaten regional and global peace, from Iran to North Korea, are also egregious human rights abusers, with citizens trapped in the grip of domestic repression, economic deprivation, and international isolation.” ¶ “The United States stands with people and governments that aspire to freedom and democracy, mindful from our own experience that the work of building a more perfect union – a sustainable and durable democracy – will never be complete. As part of this commitment, we advocate around the world for governments to adopt policies and practices that respect human rights regardless of ethnicity, religion, gender, race, sexual orientation, or disability; that allow for and honor the results of free and fair elections; that ensure safe and healthy workplaces; and that respect peaceful protests and other forms of dissent. The United States continues to speak out unequivocally on behalf of the fundamental dignity and equality of all persons.” - Secretary of State John F. Kerry's Preface on the Department of State’s Country Reports on Human Rights Practices for 2012.¶ The international organization Human Rights Watch has said that the US is “hypocritical” when it criticizes other countries for violating human rights, because the situation in the US itself is far from perfect. Deputy Director of the Europe and Central Asia Division of Human Rights Watch Rachel Denber criticized Obama’s administration for not investigating into cases of torture in prisons under Bush the junior and in Guantanamo prison. America’s human rights hypocrisy: The human rights record of the United States was put under an international microscope, as the UN Human Rights Council issued 228 recommendations on how Washington can address violations. America has long been the self appointed global leader on human rights, pointing out the shortcomings of others. But now the tables have turned. According to the United Nations Human Rights Council, incidents of injustice are taking place on US soil.¶ The point was made in Geneva, Switzerland at the Human Rights Council’s first comprehensive review of Washington’s record. The council released a Universal Periodic Review Tuesday, listing 228 recommendations on how the US can do better. “Close Guantanamo and secret detention centers throughout the world, punish those people who torture, disappear and execute detainees arbitrarily,” said Venezuelan delegate German Mundarain Hernan. The US has dismissed many recommendations calling them political provocations by hostile countries.¶ Yet even America’s allies are highlighting grave flaws. France and Ireland are demanding Obama follow through on the promise to close Guantanamo Bay. Britain, Belgium and dozens of others have called on the US to abolish the death penalty. For many, it’s the ultimate hypocrisy. How can a state with roughly 3,000 people on death row lecture the world about humanity? Many say the prime example is Mumia abu Jamal, viewed by some as America’s very own political prisoner.¶ “The United States, the perpetrator of gross human right violations is using human rights as a political football against its enemies. Its enemies are not enemies because they violate human rights necessarily, but because the US wants to change the government in their country,” said Brian Becker, Director of A.N.S.W.E.R Coalition in Washington, DC. The country often criticizing adversaries like Syria, Iran and North Korea for oppressing its citizens, is now faced with defending domestic practices like indefinite detention, poor prison conditions, and racial profiling.¶

#### Lack of human rights application to detention policy limits SCOTUS influence and US human rights leadership

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.

#### Court application of customary international law is key to international credibility- forcing congressional clarification is key

Kundmueller 2 (Michelle University of Notre Dame, Candidate for J.D. and M.A. in Political Theory 2004, , 28 J. Legis. 359, p. lexis)

This Note has attempted to demonstrate some of the difficulties of applying customary international law in U.S. courts. At every level, there are unanswered questions. Many of these issues, like how "general" a practice or its acceptance must be in order to constitute customary international law, can only be given imprecise answers. Not only are these general problems inherent in all legal questions involving line-drawing in the defining of customary international law, but there is a virtual war being waged over where that line should be drawn and by whom. This issue, in turn, raises questions of constitutional importance, the gravity of which it is almost impossible to overstate. Practical concerns about the balance of powers, no less than theoretical misgivings over undermining our government's consent based authority and legitimacy, demand our attention as the possibility of directly incorporating customary international law, perhaps even when in direct contravention of federal statute, comes closer to becoming a reality.¶ Current cases do not present any of these possibilities as realities. They do, however, contain the beginnings of what could become fundamental structural changes in customary--and hence, United States--law should the judicial system prove dominant in determining customary international law. Current cases show U.S. courts, on a fairly modest level, defining, determining, and applying customary international law. The cases have yet to produce a real showdown between domestic, either constitutional or congressional, and customary law. To date, congressional and executive actions and statements have been taken as one type of evidence in determining the content of customary international law, but they have not served as dispositive or controlling in the face of overwhelming evidence that customary international law as a whole dictates a contrary outcome.¶ This, of course, is the real issue. What happens when the will of the people or a dictate of the Constitution conflicts directly with customary international law? No doubt, our courts will do their best to interpret creatively so as to avoid such a conflict, but, eventually, the conflict will come, and a decision will be made. The conflict is inevitable due to the nature of modern customary international law. No longer delegated to issues traditionally understood as exterior, modern customary international law is beginning to define relationships between governments and their citizens and amongst citizens. [\*378] ¶ The conclusions of this Note are three. First, there is an impending constitutional crisis, with the potential to alter the fundamental structure of our laws and the legal authority (if not the power) of the American people. Second, in this eminent struggle, Congress ought to take the lead, controlling through legislation the authority of customary international law in domestic matters and thus circumventing the potential conflict between international and domestic law by upholding the supremacy of U.S. law in domestic matters. The courts will by necessity play a crucial role, for they must concur that this role belongs to the legislature and that federal law is supreme. Third, U.S. courts must, in their role as interpreters of customary international law, hold ever present in their determinations the recognized definition of customary law, which encompasses both a custom and a convention element: the practice of nations ought not be ignored. By this means, they will be surer of applying customary international law as it exists, rather than as courts and commentators wish it to be.

#### US key to global international law frameworks

Schulz 9 (William F. Schulz 9 is Senior Fellow, Center for American Progress, "The Future of Human Rights: Restoring America’s Leadership," [www.policyarchive.org/handle/10207/bitstreams/10918.pdf](http://www.policyarchive.org/handle/10207/bitstreams/10918.pdf))

What has been far more problematic over the last few years than random disparities between domestic and international interpretations of human rights law has been a fundamental disparagement of the authority of the international community itself. Such depreciation started early: in 2000 Condoleezza Rice, then foreign policy advisor to candidate George W. Bush, wrote in Foreign Affairs magazine, “Foreign policy in a Republican administration…will proceed from the firm ground of the national interest, not from the interests of an illusory international community [emphasis added].” Over the past seven years the U.S. has repeatedly demonstrated its contempt for that allegedly chimerical community by doing such things as “unsigning” the Rome statute of the International Criminal Court (ICC); declaring the Geneva Conventions inapplicable to prisoners at Guantanamo Bay and other so-called “unlawful combatants;” ignoring UN findings and resolutions in the run-up to the Iraq War; or refusing to stand for election to the UN Human Rights Council. The consequences have been devastating for the reputations both of the U.S., which has seen its favorability ratings drop precipitously around the world,5 and, paradoxically, of human rights themselves. The U.S. has long prided itself on being a champion of human rights and with much good reason. We would have had no Universal Declaration of Human Rights had it not been for Eleanor and Franklin Roosevelt; the U.S. pushed hard for the civil rights provisions of the Helsinki Accords, thereby contributing to the eventual liberation of Eastern Europe; the U.S. judicial system with its wide array of due process protections has been a model emulated by newly emerging countries around the world; U.S. diplomats have frequently intervened on behalf of political dissidents; the Kosovo War was spearheaded by an American commitment to prevent ethnic cleansing; and the annual State Department human rights reports have long been an invaluable resource to the cause of human rights. The current U.S. administration’s commitment to battling HIV/AIDS in Africa and its outspokenness on Darfur are consistent with this tradition. But for the most powerful nation in the world, long looked to as a model of human rights virtue, to undermine the international system itself—the very framework upon which human rights are predicated—is to cause immeasurable damage to the struggle for liberty. Backtracking on our commitments to international treaties and norms in the name of defending human rights is not just ironic. One of the consequences of the Iraq War with its latter-day human rights rationale and of the “War on Terror” with its oft-stated goals of defending freedom and the rule of law is that human rights themselves have come to be identified with America’s worldwide ambitions. For human rights to be conflated with, fairly or not, in the words of the critic David Rieff, “the official ideology of American empire,”6 only exacerbates the customary suspicion in which human rights have been held by some in the developing world who see them as a guise for the imposition of Western values. The truth is that if human rights and the U.S.’s pursuit of them are discredited, American interests are put in peril. Reserving the option to torture prisoners, denying them habeas corpus, sending them into “black site” prisons—all this makes it harder to defend America against the charge of hypocrisy; the claim that we are carrying out a war in defense of the rule of law by abandoning that very rule. Such a charge hands fodder for recruitment to our adversaries and makes the world less safe for Americans. No country can claim protection for its own citizens overseas (be they soldiers taken as prisoners, nationals charged with crimes, or corporations faced with extortion) if it fails to respect international norms at home. . Nor can the U.S. offer effective objection to the human rights violations of others if it is guilty of those same violations itself or has shunned cooperation with international allies. No nation, no matter how powerful, can successfully pursue improvements in human rights around the world independent of the international community. Unilateral sanctions imposed upon a country to protest human rights abuses will inevitably fail if they lack the support of others

#### The creation of an international standard for detention in accordance with humanitarian law solves multiple inevitable conflict scenarios- specifically climate change instability

Hilde 9 (Thomas C. Hilde is a professor at the university of Maryland school of Public Policy where he teaches seminars in ethics and policy and international environmental and development law and politics, 2009, “Beyond Guantánamo Restoring U.S. Credibility on Human Rights”, <http://www.lb.boell.org/downloads/Beyond_Guantanamo.pdf>) \*text amended after pasting troubles (g=>G)

There is also a difference in the legal treatment of captured “enemy combatants” and ordinary prisoners of war. While trying to prevent future killings, security agencies worried that existing  instruments were insufficient to fulfill this task. to solve the dilemma, the former us administration tried to formulate a third category of law, aside from existing civil law and martial law with  its respective international conventions. The military commissions, external detention camps like Guantánamo or Abu Ghraib and the euphemistically described “enhanced interrogation methods”  are the practical results of that political approach. Former government officials argue that this policy prevented the country from another attack  like the one the nation suffered on 9/11/2001. Even if this were true, however, this policy never  solved the dilemma in asymmetrical wars of how to prosecute “enemy combatants” in accordance with humanitarian international law. Moreover, “enhanced interrogation methods” not only harmed human rights credibility and undermined the integrity of liberal democracies; the officially  decreed use of torture in Abu Ghraib, Guantánamo and possibly other places in the early years of the Iraq war also led to counterproductive results. it played directly into the hands of extremist islamic recruiters, making their job much easier. As President Barack Obama said, “the existence  of Guantánamo likely created more terrorists around the world than it ever detained.” The new us administration inherited this dilemma. closing down Guantánamo alone will not solve it. Even worse, conflicts in Afghanistan and Pakistan as well as with pirates off the east  African coast continue to require the capture of combatants in asymmetric constellations. In the years ahead, an increase in new or outbreak of existing conflicts is to be expected. Climate change  as a threat multiplier will contribute to the fight over resource access through food and water  scarcities, natural disasters, and migration. Religion will continue to be misused as a pretext in  conflicts about social injustice in the course of globalization. in other words, there is an urgent need for international legal arrangements to help provide security to citizens and prosecute those engaged in terrorism, while at the same time respecting the rule of law and thus the integrity of liberal democracies. As Thomas Hilde rightly explains, Guantánamo is not an American problem alone. Europeans also failed to live up to their own human rights standards. investigative committees of various institutions revealed that european governments did not oppose the us policy choices for treating “enemy combatants” in the “global War On terror.” they either quietly allowed secret activities of the CIA on European soil or made use of information gained through “harsh interrogations,”

#### Absent cooperation- climate change instability escalates

**Werz & Conley 12** - Senior Fellow @American Progress where his work as member of the National Security Team focuses on the nexus of climate change, migration, and security and emerging democracies & Research Associate for National Security and International Policy @ the Center for American Progress [Michael Werz & Laura Conley, “Climate Change, Migration, and Conflict: Addressing complex crisis scenarios in the 21st Century,” Center for American Progress, January 2012]

The costs and consequences of climate change on our world will define the 21st century. Even if nations across our planet were to take immediate steps to rein in carbon emissions—an unlikely prospect—a warmer climate is inevitable. As the U.N. Intergovernmental Panel on Climate Change, or IPCC, noted in 2007, human-created “warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level.”1¶ As these ill effects progress they will have serious implications for U.S. national security interests as well as global stability—extending from the sustainability of coastal military installations to the stability of nations that lack the resources, good governance, and resiliency needed to respond to the many adverse consequences of climate change. And as these effects accelerate, the stress will impact human migration and conflict around the world.¶ It is difficult to fully understand the detailed causes of migration and economic and political instability, but the growing evidence of links between climate change, migration, and conflict raise plenty of reasons for concern. This is why it’s time to start thinking about new and comprehensive answers to multifaceted crisis scenarios brought on or worsened by global climate change. As Achim Steiner, executive director of the U.N. Environment Program, argues, “The question we must continuously ask ourselves in the face of scientific complexity and uncertainty, but also growing evidence of climate change, is at what point precaution, common sense or prudent risk management demands action.”2 In the coming decades climate change will increasingly threaten humanity’s shared interests and collective security in many parts of the world, disproportionately affecting the globe’s least developed countries. Climate change will pose challenging social, political, and strategic questions for the many different multinational, regional, national, and nonprofit organizations dedicated to improving the human condition worldwide. Organizations as different as Amnesty International, the U.S. Agency for International Development, the World Bank, the International Rescue Committee, and the World Health Organization will all have to tackle directly the myriad effects of climate change.¶ Climate change also poses distinct challenges to U.S. national security. Recent intelligence reports and war games, including some conducted by the U.S. Department of Defense, conclude that over the next two or three decades, vulnerable regions (particularly sub-Saharan Africa, the Middle East, South and Southeast Asia) will face the prospect of food shortages, water crises, and catastrophic flooding driven by climate change. These developments could demand U.S., European, and international humanitarian relief or military responses, often the delivery vehicle for aid in crisis situations.¶ This report provides the foundation and overview for a series of papers focusing on the particular challenges posed by the cumulative effects of climate change, migration, and conflict in some of our world’s most complex environments. In the papers following this report, we plan to outline the effects of this nexus in northwest Africa, in India and Bangladesh, in the Andean region of South America, and in China. In this paper we detail that nexus across our planet and offer wide ranging recommendations about how the United States, its allies in the global community, and the community at large can deal with the coming climate-driven crises with comprehensive sustainable security solutions encompassing national security, diplomacy, and economic, social, and environmental development. ¶ Here, we briefly summarize our arguments and our conclusions.¶ The nexus¶ The Arab Spring can be at least partly credited to climate change. Rising food prices and efforts by authoritarian regimes to crush political protests were linked first to food and then to political repression—two important motivators in the Arab makeover this past year.¶ To be sure, longstanding economic and social distress and lack of opportunity for so many Arab youth in the Middle East and across North Africa only needed a spark to ignite revolutions across the region. But environmental degradation and the movement of people from rural areas to already overcrowded cities alongside rising food prices enabled the cumulative effects of long-term economic and political failures to sweep across borders with remarkable agility. It does not require much foresight to acknowledge that other effects of climate change will add to the pressure in the decades to come. In particular the cumulative overlays of climate change with human migration driven by environmental crises, political conflict caused by this migration, and competition for more scarce resources will add new dimensions of complexity to existing and future crisis scenarios. It is thus critical to understand how governments plan to answer and prioritize these new threats from climate change, migration, and conflict.¶ Climate change¶ Climate change alone poses a daunting challenge. No matter what steps the global community takes to mitigate carbon emissions, a warmer climate is inevitable. The effects are already being felt today and will intensify as climate change worsens. All of the world’s regions and nations will experience some of the effects of this transformational challenge.¶ Here’s just one case in point: African states are likely to be the most vulnerable to multiple stresses, with up to 250 million people projected to suffer from water and food insecurity and, in low-lying areas, a rising sea level.3 As little as 1 percent of Africa’s land is located in low-lying coastal zones but this land supports 12 percent of its urban population.4¶ Furthermore, a majority of people in Africa live in lower altitudes—including the Sahel, the area just south of the Sahara—where the worst effects of water scarcity, hotter temperatures, and longer dry seasons are expected to occur.5 These developments may well be exacerbated by the lack of state and regional capacity to manage the effects of climate change. These same dynamics haunt many nations in Asia and the Americas, too, and the implications for developed countries such as the United States and much of Europe will be profound.¶ Migration¶ Migration adds another layer of complexity to the scenario. In the 21st century the world could see substantial numbers of climate migrants—people displaced by either the slow or sudden onset of the effects of climate change. The United Nations’ recent Human Development Report stated that, worldwide, there are already an estimated 700 million internal migrants—those leaving their homes within their own countries—a number that includes people whose migration isrelated to climate change and environmental factors. Overall migration across national borders is already at approximately 214 million people worldwide,6 with estimates of up to 20 million displaced in 2008 alone because of a rising sea level, desertification, and flooding.7¶ One expert, Oli Brown of the International Institute for Sustainable Development, predicts a tenfold increase in the current number of internally displaced persons and international refugees by 2050.8 It is important to acknowledge that there is no consensus on this estimate. In fact there is major disagreement among experts about how to identify climate as a causal factor in internal and international migration. But even though the root causes of human mobility are not always easy to decipher, the policy challenges posed by that movement are real. A 2009 report by the International Organization for Migration produced in cooperation with the United Nations University and the Climate Change, Environment and Migration Alliance cites numbers that range from “200 million to 1 billion migrants from climate change alone, by 2050,”9 arguing that “environmental drivers of migration are often coupled with economic, social and developmental factors that can accelerate and to a certain extent mask the impact of climate change.”¶ The report also notes that “migration can result from different environmental factors, among them gradual environmental degradation (including desertification, soil and coastal erosion) and natural disasters (such as earthquakes, floods or tropical storms).”10 (See box on page 15 for a more detailed definition of climate migrants.) Clearly, then, climate change is expected to aggravate many existing migratory pressures around the world. Indeed associated extreme weather events resulting in drought, floods, and disease are projected to increase the number of sudden humanitarian crises and disasters in areas least able to cope, such as those already mired in poverty or prone to conflict.11¶ Conflict¶ This final layer is the most unpredictable, both within nations and transnationally, and will force the United States and the international community to confront climate and migration challenges within an increasingly unstructured local or regional security environment. In contrast to the great power conflicts and the associated proxy wars that marked most of the 20th century, the immediate post- Cold War decades witnessed a diffusion of national security interests and threats. U.S. national security policy is increasingly integrating thinking about nonstate actors and nontraditional sources of conflict and instability, for example in the fight against Al Qaeda and its affiliated groups.¶ Climate change is among these newly visible issues sparking conflict. But because the direct link between conflict and climate change is unclear, awareness of the indirect links has yet to lead to substantial and sustained action to address its security implications. Still the potential for the changing climate to induce conflict or exacerbate existing instability in some of the world’s most vulnerable regions is now recognized in national security circles in the United States, although research gaps still exists in many places.¶ The climate-conflict nexus was highlighted with particular effect by the current U.S. administration’s security-planning reviews over the past two years, as well as the Center for Naval Analysis, which termed climate change a “threat multiplier,” indicating that it can exacerbate existing stresses and insecurity.12 The Pentagon’s latest Quadrennial Defense Review also recognized climate change as an “accelerant of instability or conflict,” highlighting the operational challenges that will confront U.S. and partner militaries amid a rising sea level, growing extreme weather events, and other anticipated effects of climate change.13 The U.S. Department of Defense has even voiced concern for American military installations that may be threatened by a rising sea level.14¶ There is also well-developed international analysis on these points. The United Kingdom’s 2010 Defense Review, for example, referenced the security aspects of climate change as an evolving challenge for militaries and policymakers. Additionally, in 2010, the Nigerian government referred to climate change as the “greatest environmental and humanitarian challenge facing the country this century,” demonstrating that climate change is no longer seen as solely scientific or environmental, but increasingly as a social and political issue cutting across all aspects of human development.15¶ As these three threads—climate change, migration, and conflict—interact more intensely, the consequences will be far-reaching and occasionally counterintuitive. It is impossible to predict the outcome of the Arab Spring movement, for example, but the blossoming of democracy in some countries and the demand for it in others is partly an unexpected result of the consequences of climate change on global food prices. On the other hand, the interplay of these factors will drive complex crisis situations in which domestic policy, international policy, humanitarian assistance, and security converge in new ways.¶ Areas of concern¶ Several regional hotspots frequently come up in the international debate on climate change, migration, and conflict. Climate migrants in northwest Africa, for example, are causing communities across the region to respond in different ways, often to the detriment of regional and international security concerns. Political and social instability in the region plays into the hands of organizations such as Al Qaeda in the Islamic Maghreb. And recent developments in Libya, especially the large number of weapons looted from depots after strongman Moammar Qaddafi’s regime fell— which still remain unaccounted for—are a threat to stability across North Africa. Effective solutions need not address all of these issues simultaneously but must recognize the layers of relationships among them. And these solutions must also recognize that these variables will not always intersect in predictable ways. While some migrants may flee floodplains, for example, others may migrate to them in search of greater opportunities in coastal urban areas.16¶ Bangladesh, already well known for its disastrous floods, faces rising waters in the future due to climate-driven glacial meltdowns in neighboring India. The effects can hardly be over. In December 2008 the National Defense University in Washington, D.C., ran an exercise that explored the impact of a flood that sent hundreds of thousands of refugees into neighboring India. The result: the exercise predicted a new wave of migration would touch off religious conflicts, encourage the spread of contagious diseases, and cause vast damage to infrastructure. India itself is not in a position to absorb climate-induced pressures—never mind foreign climate migrants. The country will contribute 22 percent of global population growth and have close to 1.6 billion inhabitants by 2050, causing demographic developments that are sure to spark waves of internal migration across the country.¶ Then there’s the Andean region of South America, where melting glaciers and snowcaps will drive climate, migration, and security concerns. The average rate of glacial melting has doubled over the past few years, according to the World Glacier Monitoring Service.17 Besides Peru, which faces the gravest consequences in Latin America, a number of other Andean countries will be massively affected, including Bolivia, Ecuador, and Colombia. This development will put water security, agricultural production, and power generation at risk—all factors that could prompt people to leave their homes and migrate. The IPCC report argues that the region is especially vulnerable because of its fragile ecosystem.18¶ Finally, China is now in its fourth decade of ever-growing internal migration, some of it driven in recent years by environmental change. Today, across its vast territory, China continues to experience the full spectrum of climate change related consequences that have the potential to continue to encourage such migration. The Center for a New American Security recently found that the consequences of climate change and continued internal migration in China include “water stress; increased droughts, flooding, or other severe events; increased coastal erosion and saltwater inundation; glacial melt in the Himala as that could affect hundreds of millions; and shifting agricultural zones”—all of which will affect food supplies. 19 Pg. 1-7

#### Effective international institutions solve disease spread- also puts a cap of warfare

Deudney and Ikenberry 9 (Daniel and John, Professor of Political Science at Johns Hopkins University and Professor of Politics and International Affairs at Princeton, "The Myth of Autocratic Revivial: Why Liberal Democracy Will PRevail," Foreign AFfairs, Jan/Feb, Vol. 88, Issue 1, EBSCO))

TWO decades of post-Cold War liberal triumph, U.S. foreign policy is being challenged by the return of an old antiliberal vision. According to this vision, the world is not marching toward universal liberal democracy and "the end of history." Rather, it is polarizing into different camps and entering an era of rivalry between Western liberal states and dangerous autocracies, most notably China and Russia. Unlike the autocracies that failed so spectacularly in the twentieth century, today's autocracies are said to be not only compatible with capitalist success but also representative of a rival form of capitalism. And their presence in the international system supposedly foreshadows growing competition and conflict and is dangerously undermining the prospect of global cooperation. Several recent developments seem to support this emerging view. Democratic transitions have stalled and reversed. In China, the Communist Party dictatorship has weathered domestic challenges while presiding over decades of rapid economic growth and capitalist modernization. Rising oil prices have empowered autocratic regimes. In Russia, Vladimir Putin's government rolled back democratic gains and became increasingly autocratic. At the same time, relations between Russia and the West have deteriorated from the near amity of the early post-Cold War era, and China and the West remain divided over Taiwan, human rights, and oil access. Meanwhile, much less powerful autocratic states, such as Venezuela and Iran, are destabilizing their regions. There even appear to be signs that these autocratic states are making common cause against the liberal Western states, with nascent alliances such as the Shanghai Cooperation Organization. The United Nations, and particularly the Security Council, has returned to the paralysis of the Cold War. In this view, the liberal West faces a bleak future. The new prophets of autocratic revival draw important foreign policy implications from their thesis. One of the most forceful exponents of this new view, Robert Kagan, insists that it is time for the United States and the other liberal democracies to abandon their expectations of global convergence and cooperation. Instead, they should strengthen ties among themselves, perhaps even through a formal "league of democracies," and gird themselves for increasing rivalry and conflict with the resurgent autocracies. Containment rather than engagement, military rivalry rather than arms control, balance of power rather than concert of power — these should be, according to such theorists, the guideposts for U.S. foreign policy. Fortunately, this new conventional wisdom about autocratic revival is as much an exaggeration of a few years of headlines as was the proclamation of the end of history at the end of the Cold War. The proposition that autocracies have achieved a new lease on life and are emerging today as a viable alternative within the global capitalist system is wrong. Just as important, the policies promoted by the autocratic revivalists are unlikely to be successful and, if anything, would be counterproductive — driving autocracies away from the liberal system and thereby creating a self-fulfilling prophecy. Although today's autocracies may be more competent and more adept at accommodating capitalism than their predecessors were, they are nonetheless fundamentally constrained by deep-seated incapacities that promise to limit their viability over the long run. Ultimately, autocracies will move toward liberalism. The success of regimes such as those in China and Russia is not a refutation of the liberal vision; the recent success of autocratic states has depended on their access to the international liberal order, and they remain dependent on its success. Furthermore, the relentless imperatives of rising global interdependence create powerful and growing incentives for states to engage in international cooperation regardless of regime type. The resilience of autocracies calls not for abandoning or retreating from liberal internationalism but rather for refining and strengthening it. If liberal democratic states react to revived autocracies solely with policies of containment, arms competition, and exclusive bloc building, as neoconservatives advise, the result is likely to be a strengthening and encouragement of illiberal tendencies in **these countries. In contrast, cooperatively tackling common global problems — such as** climate change, energy security, and disease **— will increase the stakes that autocratic regimes have in the liberal order.** Western states must also find ways to accommodate rising states — whether autocratic or democratic — and integrate them into the governance of international institutions. Given the powerful logic that connects modernization and liberalization, autocratic regimes face strong incentives to liberalize. The more accommodating and appealing the liberal path is, the more quickly and easily the world's current illiberal powers will choose the path of political reform. NOT ONLY do the autocratic revival theorists posit an alternative form of capitalism, but they also envision renewed international rivalries. According to Kagan's version of the argument, the twenty-first century will look much like the nineteenth century. There will be a combination of great-power rivalries and a growing ideological and geopolitical divide between autocracies and democracies. Rivalry among great powers, independent of regime type, will be an increasingly salient feature of world politics, according to this view. Rising powers — most notably China, India, Japan, and Russia — will aspire to improve their international positions and establish hegemony within their regions. As the power of these states grows, their definition of their national interest will expand, placing them on a collision course with one another. Because their envisioned spheres of influence overlap, these rising states will come into increasing conflict and competition. In East Asia, China's rise will come at Japan's expense; China and India will be rivals for leadership in Southeast Asia; and Russia's attempt to reestablish its imperial sphere of influence will put it on a collision course with both China and Europe. In Kagan's view, this emerging great-power struggle will be exacerbated by several factors. All of the rising great powers have well-developed senses of grievance based on their historical experiences over the last two centuries of decline in the face of encroachment by European imperialism and by one another. China's aspirations and view of itself are heavily shaped by the historical experience of its decline from the Middle Kingdom's hegemony in East Asia to the "century of humiliation," defined by predation by the Europeans and then by Japan in the 1930s and 1940s. Russia's narrative of grievance centers on the sudden loss of its centuries-old domination of eastern Europe, Ukraine, and Central Asia with the end of the Cold War. Another factor that will exacerbate the supposed coming great-power competition is the prospect of a nineteenth-century-style scramble for raw materials and markets. Tightening global oil supplies and voraciously rising demand presage a future of cutthroat mercantilist competition among the great powers. It is in combination with these factors that the regime divergence between autocracies and democracies will become increasingly dangerous. If all the states in the world were democracies, there would still be competition, but a world riven by a democratic-autocratic divergence promises to be even more conflictual. There are even signs of the emergence of an "autocrats international" in the Shanghai Cooperation Organization, made up of China, Russia, and the poorer and weaker Central Asian dictatorships. Overall, the autocratic revivalists paint the picture of an international system marked by rising levels of conflict and competition, a picture quite unlike the "end of history" vision of growing convergence and cooperation. This bleak outlook is based on an exaggeration of recent developments and ignores powerful countervailing factors and forces. Indeed, contrary to what the revivalists describe, the most striking features of the contemporary international landscape are the intensification of economic globalization, thickening institutions, and shared problems of interdependence. The overall structure of the international system today is quite unlike that of the nineteenth century. Compared to older orders, the contemporary liberal-centered international order provides a set of constraints and opportunities — of pushes and pulls — that reduce the likelihood of severe conflict while creating strong imperatives for cooperative problem solving. Those invoking the nineteenth century as a model for the twenty-first also fail to acknowledge the extent to which war as a path to conflict resolution and great-power expansion has become largely obsolete. Most important, nuclear weapons have transformed great-power war from a routine feature of international politics into an exercise in national suicide. With all of the great powers possessing nuclear weapons and ample means to rapidly expand their deterrent forces, warfare among these states has truly become an option of last resort. The prospect of such great losses has instilled in the great powers a level of caution and restraint that effectively precludes major revisionist efforts. Furthermore, the diffusion of small arms and the near universality of nationalism have severely limited the ability of great powers to conquer and occupy territory inhabited by resisting populations (as Algeria, Vietnam, Afghanistan, and now Iraq have demonstrated). Unlike during the days of empire building in the nineteenth century, states today cannot translate great asymmetries of power into effective territorial control; at most, they can hope for loose hegemonic relationships that require them to give something in return. Also unlike in the nineteenth century, today the density of trade, investment, and production networks across international borders raises even more the costs of war. A Chinese invasion of Taiwan, to take one of the most plausible cases of a future interstate war, would pose for the Chinese communist regime daunting economic costs, both domestic and international. Taken together, these changes in the economy of violence mean that the international system is far more primed for peace than the autocratic revivalists acknowledge. The autocratic revival thesis neglects other key features of the international system as well. In the nineteenth century, rising states faced an international environment in which they could reasonably expect to translate their growing clout into geopolitical changes that would benefit themselves. But in the twenty-first century, the status quo is much more difficult to overturn. Simple comparisons between China and the United States with regard to aggregate economic size and capability do not reflect the fact that the United States does not stand alone but rather is the head of a coalition of liberal capitalist states in Europe and East Asia whose aggregate assets far exceed those of China or even of a coalition of autocratic states. Moreover, potentially revisionist autocratic states, most notably China and Russia, are already substantial players and stakeholders in an ensemble of global institutions that make up the status quo, not least the UN Security Council (in which they have permanent seats and veto power). Many other global institutions, such as the International Monetary Fund and the World Bank, are configured in such a way that rising states can increase their voice only by buying into the institutions. The pathway to modernity for rising states is not outside and against the status quo but rather inside and through the flexible and accommodating institutions of the liberal international order. The fact that these autocracies are capitalist has profound implications for the nature of their international interests that point toward integration and accommodation in the future. The domestic viability of these regimes hinges on their ability to sustain high economic growth rates, which in turn is crucially dependent on international trade and investment; today's autocracies may be illiberal, but they remain fundamentally dependent on a liberal international capitalist system. It is not surprising that China made major domestic changes in order to join the WTO or that Russia is seeking to do so now. The dependence of autocratic capitalist states on foreign trade and investment means that they have a fundamental interest in maintaining an open, rule-based economic system. (Although these autocratic states do pursue bilateral trade and investment deals, particularly in energy and raw materials, this does not obviate their more basic dependence on and commitment to the WTO order.) In the case of China, because of its extensive dependence on industrial exports, the WTO may act as a vital bulwark against protectionist tendencies in importing states. Given their position in this system, which so serves their interests, the autocratic states are unlikely to become champions of an alternative global or regional economic order, let alone spoilers intent on seriously damaging the existing one. The prospects for revisionist behavior on the part of the capitalist autocracies are further reduced by the large and growing social networks across international borders. Not only have these states joined the world economy, but their people — particularly upwardly mobile and educated elites — have increasingly joined the world community. In large and growing numbers, citizens of autocratic capitalist states are participating in a sprawling array of transnational educational, business, and avocational networks. As individuals are socialized into the values and orientations of these networks, stark: "us versus them" cleavages become more difficult to generate and sustain. As the Harvard political scientist Alastair Iain Johnston has argued, China's ruling elite has also been socialized, as its foreign policy establishment has internalized the norms and practices of the international diplomatic community. China, far from cultivating causes for territorial dispute with its neighbors, has instead sought to resolve numerous historically inherited border conflicts, acting like a satisfied status quo state. These social and diplomatic processes and developments suggest that there are strong tendencies toward normalization operating here. Finally, there is an emerging set of global problems stemming from industrialism and economic globalization that will create common interests across states regardless of regime type. Autocratic China is as dependent on imported oil as are democratic Europe, India, Japan, and the United States, suggesting an alignment of interests against petroleum-exporting autocracies, such as Iran and Russia. These states share a common interest in price stability and supply security that could form the basis for a revitalization of the International Energy Agency, the consumer association created during the oil turmoil of the 1970s. The emergence of global warming and climate change as significant problems also suggests possibilities for alignments and cooperative ventures cutting across the autocratic-democratic divide. Like the United States, China is not only a major contributor to greenhouse gas accumulation but also likely to be a major victim of climate-induced desertification and coastal flooding. Its rapid industrialization and consequent pollution means that China, like other developed countries, will increasingly need to import technologies and innovative solutions for environmental management. Resource scarcity and environmental deterioration pose global threats that no state will be able to solve alone, thus placing a further premium on political integration and cooperative institution building. Analogies between the nineteenth century and the twenty-first are based on a severe mischaracterization of the actual conditions of the new era. The declining utility of war, the thickening of international transactions and institutions, and emerging resource and environmental interdependencies together undercut scenarios of international conflict and instability based on autocratic-democratic rivalry and autocratic revisionism. In fact, the conditions of the twenty-first century point to the renewed value of international integration and cooperation. THE PROPHETS of autocratic revival propose a foreign policy for the United States and the other liberal democracies organized around the assumption that great-power rivalry and the autocratic-democratic divide will dominate in the coming decades. They advocate a foreign policy of confrontation, containment, and exclusion, and they advise liberal states to diminish their support for global cooperation and institution building. This foreign policy, were it to be implemented, would be a recipe for retreat and would risk creating a self-fulfilling prophecy. Instead, the underlying realities of the new era — and the incentives that all states face — underscore the need for a retooled and reinvigorated liberal internationalist program. A new liberal internationalism of consensus building and problem solving must take into account the circumstances and sensitivities of rising states while affirming the record of success and continuing relevance of the liberal democratic project. A successful foreign policy must start with an acknowledgment of the historically inherited vulnerabilities and grievances of the rising great powers and autocratic states. Autocratic government is partially appealing because it addresses the problems of ethnic separatism and territorial fragmentation that confront many contemporary states. For China, emerging from a long period of national humiliation and foreign encroachment, the territorial viability of the state hinges on the successful maintenance of control over the outlying regions of Manchuria, Taiwan, Tibet, and Xinjiang, which are occupied by restive ethnic groups seeking independence or autonomy. Similarly, Russia, shorn of much of its historical empire by the breakaway of the non-Russian republics at the end of the Cold War, presides over a vast territorial domain whose outlying areas are also inhabited by potentially secessionist peoples. For both China and Russia, nationalism and an ironhanded central state are appealing solutions to these centrifugal forces and important sources of legitimacy for the current regimes. As long as China and Russia view democratic opening and the norms of the liberal international system as threats to their territorial integrity, there will be severe upper limits on their willingness to be accommodating or to integrate themselves further into this system. In these circumstances, the foreign policy of the United States and the liberal democracies should be not to exacerbate these grievances and vulnerabilities but rather to mollify and ameliorate them. A successful foreign policy should also seek to integrate, rather than exclude, autocratic and rising great powers. Proposals to "draw up the gates" of the democratic world and exclude nondemocratic states — with measures such as the expulsion of Russia from the G-8 (the group of highly industrialized states) — promise to worsen relations and reinforce authoritarian rule. Instead, the United States and the other liberal democracies should seek to further integrate these states into existing international institutions by increasing their stakeholder roles within them. Proposals such as a "concert of democracies" should be configured to deepen cooperation among democratic states and reinforce global institutions rather than to confront nondemocratic states. The United States and the other democratic nations should take the initiative in solving global resource and environmental problems and produce global frameworks for problem solving that draw in nondemocratic states along the way. The democratic states should orient themselves to pragmatically address real and shared problems rather than focusing on ideological differences. Looking for alignments based on interests rather than regime type will further foreclose the unlikely coalescence of an antiliberal autocratic bloc. The foreign policy of the liberal states should continue to be based on the broad assumption that there is ultimately one path to modernity — and that it is essentially liberal in character. The liberal vision allows for considerable diversity based on historical experience and national difference. But autocratic capitalism is not an alternative model; it is only a way station on this path. How long states take in traversing this path will be shaped by many factors, some beyond the control of the liberal states. But a foreign policy appropriately calibrated to the real constraints and opportunities of the twenty-first century will facilitate this progression. Liberal states should not assume that history has ended, but they can still be certain that it is on their side. War as a path to conflict resolution and great-power expansion has become largely obsolete. Emerging global problems will create common interests across states regardless of regime type.

#### Pandemics lead to extinction- leading scientists are on our side

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Senate Majority Leader Frist describes the recent slew of emerging diseases in almost biblical terms: “All of these [new diseases] were advance patrols of a great army that is preparing way out of sight.”3146 Scientists like Joshua Lederberg don’t think this is mere rhetoric. He should know. Lederberg won the Nobel Prize in medicine at age 33 for his discoveries in bacterial evolution. Lederberg went on to become president of Rockefeller University. “Some people think I am being hysterical,” he said, referring to pandemic influenza, “but there are catastrophes ahead. We live in evolutionary competition with microbes—bacteria and viruses. There is no guarantee that we will be the survivors.”3147 There is a concept in host-parasite evolutionary dynamics called the Red Queen hypothesis, which attempts to describe the unremitting struggle between immune systems and the pathogens against which they fight, each constantly evolving to try to outsmart the other.3148 The name is taken from Lewis Carroll’s Through the Looking Glass in which the Red Queen instructs Alice, “Now, here, you see, it takes all the running you can do to keep in the same place.”3149 Because the pathogens keep evolving, our immune systems have to keep adapting as well just to keep up. According to the theory, animals who “stop running” go extinct. So far our immune systems have largely retained the upper hand, but the fear is that given the current rate of disease emergence, the **human race is losing the race**.3150 In a Scientific American article titled, “Will We Survive?,” one of the world’s leading immunologists writes: Has the immune system, then, reached its apogee after the few hundred million years it had taken to develop? Can it respond in time to the new evolutionary challenges? These perfectly proper questions lack sure answers because we are in an utterly unprecedented situation [given the number of newly emerging infections].3151 The research team who wrote Beasts of the Earth conclude, “Considering that bacteria, viruses, and protozoa had a more than two-billion-year head start in this war, a victory by recently arrived Homo sapiens would be remarkable.”3152 Lederberg ardently believes that emerging viruses may imperil human society itself. Says NIH medical epidemiologist David Morens, When you look at the relationship between bugs and humans, the more important thing to look at is the bug. When an enterovirus like polio goes through the human gastrointestinal tract in three days, its genome mutates about two percent. That level of mutation—two percent of the genome—has taken the human species eight million years to accomplish. So who’s going to adapt to whom? Pitted against that kind of competition, Lederberg concludes that the human evolutionary capacity to keep up “may be dismissed as almost totally inconsequential.”3153 To help prevent the evolution of viruses as threatening as H5N1, the least we can do is take away a few billion feathered test tubes in which viruses can experiment, a few billion fewer spins at pandemic roulette. The human species has existed in something like our present form for approximately 200,000 years. “Such a long run should itself give us confidence that our species will continue to survive, at least insofar as the microbial world is concerned. Yet such optimism,” wrote the Ehrlich prize-winning former chair of zoology at the University College of London, “might easily transmute into a tune whistled whilst passing a graveyard.”3154

### Contention 2- Rule of Law

#### Afghanistan is adopting detention policies modeled off US law- this makes instability inevitable

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.

#### Detention policy 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 is key- it will restore credibility in our system and allows us to improve the Afghani justice system

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 system can make our post-drawdown COIN strategy 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.

#### 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.

#### Judicial reform and COIN are key to long term stability

The Nation 9 (Nov. 11, 2009, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/International/11-Nov-2009/UN-body-urges-Karzai-to-fight-corruption)

UNITED NATIONS - The UN General Assembly has urged the government of re-elected Afghan President Hamid Karzai to press ahead with “strengthening of the rule of law and democratic processes, the fight against corruption (and) the acceleration of justice sector reform.” The 192-member assembly made that call Monday night by unanimously adopting a resolution that also declared that Afghanistan’s presidential election “credible” and “legitimate”, despite allegations of widespread fraud that led Karzai’s main challenger Abdullah Abdullah to pull out of the run-off round of the election. But the UN assembly raised no doubts about Karzai’s mandate or his right to continue leading the war-torn country. The resolution welcomed “the efforts of the relevant institutions to address irregularities identified by the electoral institutions in Afghanistan and to ensure a credible and legitimate process in accordance with the Afghan Election Law and in the framework of the Afghan Constitution.” It appealed to the international community to help Afghanistan in countering the challenges of the militants’ attacks that threaten its democratic process and and economic development. Before the assembly approved the resolution, 24 countries, including Pakistan, spoke in the debate on the deteriorating situation in Afghanistan in which they stressed the need for the Afghan Government and the global community to work closely together. Pakistan’s Acting Permanent Representative Amjad Hussain Sial said the core of violence and conflict in Afghanistan emanated from terrorist groups, foreign militants such as Al-Qaeda, and militant Taliban who were not prepared to reconcile and give up fighting. The nexus with drug traders was increasingly discernable. The key to long-term stability in Afghanistan, he said, was reformation of the country’s corrupt governmental systems. Equally important was building the civilian institutions at the central and subnational levels.

#### Instability results in multiple conflict scenarios specifically- Indo-Pak and US-Russia

**Carafano ’10** (Con: Obama must win fast in Afghanistan or risk new wars across the globe By JAMES JAY CARAFANO   Saturday, Jan. 2, 2010 James Jay Carafano is a senior research fellow for national security at The Heritage Foundation and directs its Allison Center for Foreign Policy Studies)

There’s little chance Kabul will become Saigon 1968. If the war in Afghanistan starts going south for allied forces, President Obama will probably quit rather than risk getting bogged down. President Lyndon B. Johnson considered Vietnam more a distraction than a national mission, yet he ramped up the troop commitment all the same. In 1968, the North Vietnamese launched a major offensive during the Tet holiday. They lost that battle. Badly! But the fact that they were able to mount such a large-scale offensive gave many Americans—including Walter Cronkite—the impression that the war wasn’t winnable. As “the U.S. is bogged down” became the common view, Johnson’s presidency fell to ashes. Not much chance Obama will go that route. If the violence skyrockets next year and it looks as though the president’s ambitious objectives can’t be met, Afghanistan could look a lot more like Vietnam in 1973. U.S. forces withdrew. Our abandoned ally was soon overrun. South Vietnam became a gulag; Cambodia sprouted the killing fields; life in Laos was just plain lousy. By 1979, the Sino-Vietnamese war erupted. We can expect similar results if Obama’s Afghan strategy fails and he opts to cut and run. Most forget that throwing South Vietnam to the wolves made the world a far more dangerous place. The Soviets saw it as an unmistakable sign that America was in decline. They abetted military incursions in Africa, the Middle East, southern Asia and Latin America. They went on a conventional- and nuclear-arms spending spree. They stockpiled enough smallpox and anthrax to kill the world several times over. State-sponsorship of terrorism came into fashion. Osama bin Laden called America a “paper tiger.” If we live down to that moniker in Afghanistan, odds are the world will get a lot less safe. Al-Qaida would be back in the game. Regional terrorists would go after both Pakistan and India—potentially triggering a nuclear war between the two countries. Sensing a Washington in retreat, Iran and North Korea could shift their nuclear programs into overdrive, hoping to save their failing economies by selling their nuclear weapons and technologies to all comers. Their nervous neighbors would want nuclear arms of their own. The resulting nuclear arms race could be far more dangerous than the Cold War’s two-bloc standoff. With multiple, independent, nuclear powers cautiously eyeing one another, the world would look a lot more like Europe in 1914, when precarious shifting alliances snowballed into a very big, tragic war. The list goes on. There is no question that countries such as Russia, China and Venezuela would rethink their strategic calculus as well. That could produce all kinds of serious regional challenges for the United States. Our allies might rethink things as well. Australia has already hiked its defense spending because it can’t be sure the United States will remain a responsible security partner. NATO might well fall apart. Europe could be left with only a puny EU military force incapable of defending the interests of its nations.

#### Limited Indo-Pak war causes extinction

Toon et al 7 – Atmospheric and Oceanic Sciences @ University of Colorado – ‘7 [Owen B. Toon, Alan Robock (Professor of Environmental Sciences @ Rutgers University), Richard P. Turco (Professor of Atmospheric and Oceanic Sciences @ UCLA, Charles Bardeen (Professor of Atmospheric and Oceanic Sciences @ University of Colorado), Luke Oman (Professor of of Earth and Planetary Sciences @ Johns Hopkins University), Georgiy L. Stenchikov (Professor of Environmental Sciences @ Rutgers University), “NUCLEAR WAR: Consequences of Regional-Scale Nuclear Conflicts,” Science, 2 March 2007, Vol. 315. no. 5816, pp. 1224 – 1225]

The world may no longer face a serious threat of global nuclear warfare, but regional conflicts continue. Within this milieu, acquiring nuclear weapons has been considered a potent political, military, and social tool (1-3). National ownership of nuclear weapons offers perceived international status and insurance against aggression at a modest financial cost. Against this backdrop, we provide a quantitative assessment of the potential for casualties in a regional-scale nuclear conflict, or a terrorist attack, and the associated environmental impacts (4, 5). Eight nations are known to have nuclear weapons. In addition, North Korea may have a small, but growing, arsenal. Iran appears to be seeking nuclear weapons capability, but it probably needs several years to obtain enough fissionable material. Of great concern, 32 other nations--including Brazil, Argentina, Japan, South Korea, and Taiwan--have sufficient fissionable materials to produce weapons (1, 6). A de facto nuclear arms race has emerged in Asia between China, India, and Pakistan, which could expand to include North Korea, South Korea, Taiwan, and Japan (1). In the Middle East, a nuclear confrontation between Israel and Iran would be fearful. Saudi Arabia and Egypt could also seek nuclear weapons to balance Iran and Israel. Nuclear arms programs in South America, notably in Brazil and Argentina, were ended by several treaties in the 1990s (6). We can hope that these agreements will hold and will serve as a model for other regions, despite Brazil's new, large uranium enrichment facilities. Nuclear arsenals containing 50 or more weapons of low yield [15 kilotons (kt), equivalent to the Hiroshima bomb] are relatively easy to build (1, 6). India and Pakistan, the smallest nuclear powers, probably have such arsenals, although no nuclear state has ever disclosed its inventory of warheads (7). Modern weapons are compact and lightweight and are readily transported (by car, truck, missile, plane, or boat) (8). The basic concepts of weapons design can be found on of the Internet. The only serious obstacle to constructing a bomb is the limited availability of purified fissionable fuels.There are many political, economic, and social factors that could trigger a regional-scale nuclear conflict, plus many scenarios for the conduct of the ensuing war. We assumed (4) that the densest population centers in each country--usually in megacities--are attacked. We did not evaluate specific military targets and related casualties. We considered a nuclear exchange involving 100 weapons of 15-kt yield each, that is, ~0.3% of the total number of existing weapons (4). India and Pakistan, for instance, have previously tested nuclear weapons and are now thought to have between 109 and 172 weapons of unknown yield (9). Fatalities were estimated by means of a standard population database for a number of countries that might be targeted in a regional conflict (see figure, above). For instance, such an exchange between India and Pakistan (10) could produce about 21 million fatalities--about half as many as occurred globally during World War II. The direct effects of thermal radiation and nuclear blasts, as well as gamma-ray and neutron radiation within the first few minutes of the blast, would cause most casualties. Extensive damage to infrastructure, contamination by long-lived radionuclides, and psychological trauma would likely result in the indefinite abandonment of large areas leading to severe economic and social repercussions. Fires ignited by nuclear bursts would release copious amounts of light-absorbing smoke into the upper atmosphere. If 100 small nuclear weapons were detonated within cities, they could generate 1 to 5 million tons of carbonaceous smoke particles (4), darkening the sky and affecting the atmosphere more than major volcanic eruptions like Mt. Pinatubo (1991) or Tambora (1815) (5). Carbonaceous smoke particles are transported by winds throughout the atmosphere but also induce circulations in response to solar heating. Simulations (5) predict that such radiative-dynamical interactions would loft and stabilize the smoke aerosol, which would allow it to persist in the middle and upper atmosphere for a decade. Smoke emissions of 100 low-yield urban explosions in a regional nuclear conflict would generate substantial global-scale climate anomalies, although not as large as in previous "nuclear winter" scenarios for a full-scale war (11, 12). However, indirect effects on surface land temperatures, precipitation rates, and growing season lengths (see figure, below) would be likely to degrade agricultural productivity to an extent that historically has led to famines in Africa, India, and Japan after the 1783-1784 Laki eruption (13) or in the northeastern United States and Europe after the Tambora eruption of 1815 (5). Climatic anomalies could persist for a decade or more because of smoke stabilization, far longer than in previous nuclear winter calculations or after volcanic eruptions. Studies of the consequences of full-scale nuclear war show that indirect effects of the war could cause more casualties than direct ones, perhaps eliminating the majority of the world's population (11, 12). Indirect effects such as damage to transportation, energy, medical, political, and social infrastructure could be limited to the combatant nations in a regional war. However, climate anomalies would threaten the world outside the combat zone. The predicted smoke emissions and fatalities per kiloton of explosive yield are roughly 100 times those expected from estimates for full-scale nuclear attacks with high-yield weapons (4).

#### Deterrence doesn’t check escalation

Weitz 10 [Richard, writes a weekly column on Asia-Pacific strategic and security issues. He is director of the Center for Political-Military Analysis and a Senior Fellow at the Hudson Institute, The Diplomat, South Asia’s Nuclear War Risk

July 12, 2010, http://the-diplomat.com/2010/07/12/south-asia%e2%80%99s-nuclear-war-risk/4/?print=yes]

Yet even setting aside the question of nuclear weapons falling into terrorist hands, nuclear competition between India and Pakistan is especially dangerous. Active (and ongoing) political disputes between the two countries have resulted in three past wars as well as numerous proxy conflicts. Pakistani leaders in particular have concluded that their nuclear arsenal has deterred India from again using its conventional forces to attack Pakistani territory. As a result, Pakistan’s implicit nuclear doctrine presumes the possible first use of nuclear weapons. The risks of such tensions are compounded by the physical proximity of the two countries, as well as their reliance on ballistic missiles as delivery vehicles, which means that early warning times might be as little as five to ten minutes. Although it remains unclear whether India or Pakistan have combined its nuclear warheads with their assigned delivery systems, such a precarious stance would increase the risks of both accidental and catalytic war (a nuclear conflict between both governments precipitated by a third party, such as a terrorist group). Throw China into the mix, with Pakistan at risk of viewing its own nuclear programme as increasingly inadequate as India seeks to achieve mutual deterrence with China, and the picture becomes more complicated. And add in the risk of widespread political disorder in either India or Pakistan, which could see a dangerous political adventurism as political leaders look to rally domestic support, and the peculiar challenges posed by the region become clearer. The fact is South Asia is particularly prone to a destabilizing arms race. And perhaps nuclear war.

#### Risk of accidental exchange between the US and Russia over external crises is still high and risks extinction

**Barrett et al. 13** (Anthony M. Barrett- Global Catastrophic Risk Institute, Seth D. Baum- Center for Research on Environmental Decisions, Columbia University, Kelly R. Hostetler- Department of Geography, Pennsylvania State University, 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia”, http://sethbaum.com/ac/fc\_NuclearWar.pdf)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1,2,3,4,5,6 potentially leading to collapse of modern civilization worldwide and even the extinction of humanity. 7,8,9,10 Nuclear war between the US and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 11,12 (Brinkmanship strategies incorporate elements of all of the above, in that they involve deliberate manipulation of the risk of otherwise unauthorized or inadvertent attack as part of coercive threats that “leave something to chance,” i.e., “taking steps that raise the risk that the crisis will go out of control and end in a general nuclear exchange.” 13,14 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, though numerous measures were also taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. 15,16,17 For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side’s forces and command-and-control capabilities led to both sides’development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 18,19,20 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 21,22 However, it has also been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 23,24,25,26,27,28,29,30,31,32,33 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 34,35,36,37,38 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 39 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 40,41,42 especially if such an event occurs during a crisis between the United States and Russia. 43 A variety of nuclear terrorism scenarios are possible. 44 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 45,46,47 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 48,49 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.-Russian crisis conditions, 50,51,52,53 with the Cuban Missile Crisis being a prime historical example of such a crisis. 54,55,56,57,58 It is possible that U.S.-Russian relations will significantly deteriorate in the future, increasing nuclear tensions. 59 There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 60,61,62,63

#### That is particularly true in the context of instability in the region

**Schorr, 1** - analyst with the Insitute for Policy Studies (Ira, The Record, 10/14, lexis)

While these actions helped the nuclear superpowers back away from using weapons of mass destruction at a precarious time, it's sobering to note that the United States and Russia are still courting nuclear disaster. Despite no longer being strategic foes they still maintain thousands of nuclear weapons on hair-trigger alert -- poised for a quick launch. This is a threat that no missile defense system will ever be able to protect us from. This process of keeping nuclear weapons on a hair-trigger means that leaders on both sides have just minutes to assess whether a warning of an attack is real or false. And while the threats we faced during the Cold War came from Soviet strength -- the danger today comes more from Russia's weakness. For example, Russia's troubled economy has led to the profound decay of its early warning satellite system. A fire last May that destroyed a critical facility used to control Russian warning satellites has made things even worse. "Russia has completely lost its space-based early warning capabilities," says Bruce Blair of the Center for Defense Information. "In essence, the country's ability to tell a false alarm from a real warning has been nearly crippled. " False alarms on both sides have already brought us to the brink of nuclear war. What will happen now if there is a war in the volatile neighborhood of Central Asia -- a region that includes nuclear powers India, Pakistan, and Russia? Former Sen. Sam Nunn brought the point home in a recent speech: "The events of Sept. 11 gave President Bush very little time to make a very difficult decision -- whether to give orders to shoot down a commercial jetliner filled with passengers. Our current nuclear posture in the United States and Russia could provide even less time for each president to decide on a nuclear launch that could destroy our nations. " Nunn called on Presidents Bush and Putin to "stand-down" their nuclear forces to "reduce toward zero the risk of accidental launch or miscalculation and provide increased launch decision time for each president. " In the spirit of the courageous steps his father took to decrease the nuclear threat 10 years ago, President Bush should take action now to remove nuclear weapons from hair-trigger alert. This would send a signal to the world that in this volatile time, the U.S. is serious about preventing the use of nuclear weapons.

### Contention 3- Solvency

#### Supreme Court action and application of the convention is key- solves congressional 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 suitable 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.

#### Normal means is the application of a clear statement requirement- that removes the President’s authority to conduct indefinite detention based on military grounds and is key to judicial clarity

Sarah Erickson-Muschko (J.D., Georgetown University Law Center) June 2013 “Beyond Individual Status: The Clear Statement Rule and the Scope of the AUMF Detention Authority in the United States” 101 Geo. L.J. 1399, Lexis

III. EXISTING SCHOLARSHIP ON THE CLEAR STATEMENT RULE: THE FOCUS ON INDIVIDUAL STATUS

Many scholars have advanced arguments regarding the application of a clear statement principle to the AUMF. 133 Two specific arguments have been made [\*1419] about the applicability of a clear statement principle in the context of U.S. territory, both of which focus on the status of the individual as the triggering factor. Professors Richard Fallon and Daniel Meltzer argue that a clear statement principle applies when U.S. citizens are detained on U.S. territory. 134 This argument is based on statutory grounds, namely the theory that the Non-Detention Act triggers the clear statement requirement. 135 This argument is perfectly sound in that respect. However, it is incomplete in that it does not address the constitutional grounds for imposing a clear statement rule: the Due Process Clause of the Fifth Amendment, which applies to all persons, including noncitizens. 136 Reading the AUMF and the NDAA 2012 together to allow for the indefinite military detention without trial of individuals arrested on U.S. territory would be inconsistent with the constitutional prohibition on depriving a person of liberty without due process of law. Professors Curtis Bradley and Jack Goldsmith offer the most comprehensive constitutionally based argument for when and how to apply a clear statement principle. Their position is that courts should apply a clear statement requirement "when the President takes actions under the AUMF that restrict the liberty of noncombatants in the United States," but not when such actions only restrict the liberty of combatants. 137 Looking to the three World-War-II-era decisions discussed in Part II, they conclude that Endo and Duncan stand for the proposition that liberty interests trump the President's commander-in-chief authority when the President's actions are unsupported by historical practice in other wars and affect the constitutional rights of U.S. citizens who are not combatants. 138 In this context, "the canon protecting constitutional liberties prevails." 139 In contrast, the authors point to Quirin to show that "the Court did not demand a clear statement before concluding that the U.S. citizen enemy combatant in that case could be subject to a military commission trial in the United States even though neither the authorization to use force nor the authorization for military commissions specifically mentioned U.S. citizens." 140 In such a case, the authors contend that a clear statement requirement protecting civil liberties is not required because "the presidential action involves a traditional wartime function exercised by the President against an acknowledged enemy combatant or enemy [\*1420] nation." 141 In this context, "the President's Article II powers are at their height, and the relevant liberty interests (and thus the need for a liberty-protecting clear statement requirement) are reduced (or nonexistent)." 142 Despite its level of detail, Bradley and Goldsmith's clear statement principle will likely never be of much help to courts construing the AUMF. By basing their clear statement requirement on the distinction between combatants and noncombatants, they fail to resolve the key interpretive question: namely, how to construe the AUMF to avoid grave constitutional concerns where an individual's status as an enemy combatant is in dispute. Their interpretation accommodates a broad reading of Quirin. However, in Quirin, nobody disputed that the detainees were in fact unlawful enemy combatants under long-standing law-of-war principles. In contrast, a court reviewing the classification of an individual as an "enemy combatant" under the AUMF and NDAA 2012 must determine what it means to be "part of" or provide "substantial[] support[]" to al-Qaeda or an "associated force[]" or otherwise to commit a "belligerent act." 143 The question of how to construe these terms lies at the core of detainee litigation, 144 and the provisions in the NDAA 2012 failed to clarify their meaning. Bradley and Goldsmith acknowledge that the AUMF is silent on the point of "what institutions or procedures are appropriate for determining whether a person captured and detained on U.S. soil is in fact an enemy combatant." 145 However, they fail to address how this ambiguity impacts the application of their clear statement principle. Their framework is therefore of no real help to courts that must first determine whether an individual was properly deemed to be an "enemy combatant" before determining whether the clear statement rule applies to the AUMF. The clear statement rule thus fails to fulfill its core purpose of resolving statutory ambiguity in a manner that avoids serious constitutional questions. In addition to failing to resolve the due process questions surrounding the [\*1421] "enemy combatant" determination, Bradley and Goldsmith's argument does not resolve the core separation of powers concern: namely, whether, and if so under what conditions, it is constitutionally permissible for the President to apply martial law in place of the criminal justice system on U.S. territory despite the absence of any compelling need to do so. In short, their argument assumes that such an application of law-of-war principles on U.S. territory, outside of the battlefield context, would be a legitimate exercise of the President's war powers in the context of counterterrorism. This is hard to square with the Milligan Court's powerful statements to the contrary. 146 IV. MOVING BEYOND INDIVIDUAL STATUS: THE CONSTITUTION APPLIES IN THE UNITED STATES This Note argues that the clear statement principle applies to the AUMF detention authority whenever it is invoked to detain individuals arrested within the United States--at least where the enemy combatant question is in dispute. The principal trigger for application of the clear statement principle should not be an individual's status but rather the presumption that constitutional rights and restraints apply on U.S. territory. Courts therefore should dispense with the enemy combatant inquiry under these circumstances. This Note posits that such a construction is required to preserve the constitutionality of the AUMF. This constitutional default rule presumes that Congress has not delegated power to the executive branch to circumvent due process protections wholesale, and that it has not altered the traditional boundaries between military and civilian power on U.S. territory. Any departure from this baseline at least requires a clear manifestation of congressional intent. As evinced by the divisions in Congress over passage of the detention provisions in the NDAA 2012, there is no consensus as to the breadth of the detention power afforded to the executive branch under the AUMF. Courts should therefore not presume that the statute authorizes application of martial law to circumvent otherwise applicable constitutional restraints and due process rights. By making the jurisdictional question--civilian versus military--the trigger for the clear statement principle, the judiciary would properly place the impetus on Congress to clearly define and narrowly circumscribe the conditions under which the executive may use military jurisdiction to detain individuals on U.S. territory. This is the only way to ensure that our nation's political representatives have adequately deliberated and reached a consensus with respect to delegating powers to the executive branch where such delegation would have the consequence of displacing, in a wholesale fashion, constitutional protections. For all its controversy, § 412 of the USA PATRIOT Act of 2001 provides an example of where Congress has provided for executive detention under circumstances that are arguably sufficiently detailed to satisfy a clear statement [\*1422] requirement. 147 Absent this level of clarity, where the President purports to use the AUMF to detain militarily on U.S. territory, courts must presume that constitutional rights and restraints apply and are not displaced by martial law. A. DUE PROCESS CONCERNS One of the most basic rights accorded by the Constitution is the fundamental right to be free from deprivations of liberty absent due process of law. The AUMF must be read with the gravity of this fundamental right in mind. As the Court made clear in Endo, where fundamental due process rights are at stake, ambiguous wartime statutes are to be construed to allow for "the greatest possible accommodation of the liberties of the citizen." 148 Courts "must assume, when asked to find implied powers in a grant of legislative or executive authority, that the law makers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used." 149 This includes statutes that would otherwise "exceed the boundaries between military and civilian power, in which our people have always believed, which responsible military and executive officers had heeded, and which had become part of our political philosophy and institutions . . . ." 150 B. THE SUSPENSION CLAUSE The Suspension Clause lends further constitutional support to applying a clear statement requirement to the AUMF detention authority on U.S. territory. The Suspension Clause gives Congress the emergency power to suspend the writ of habeas corpus "when in Cases of Rebellion or Invasion the public Safety may require it." 151 As Fallon and Meltzer observe, this Clause--and the limited circumstances in which it may be invoked--suggest, or even explicitly affirm, "the presumptive rule that when the civilian courts remain capable of dealing with threats posed by citizens, those courts must be permitted to function." 152 To interpret the AUMF as congressional authorization to displace the civilian system and apply military jurisdiction on U.S. territory would "render that [\*1423] emergency power essentially redundant." 153 The Suspension Clause also underscores that the right to be free from the arbitrary deprivation of physical liberty is one of the most central rights that the Constitution was intended to protect. C. THE LACK OF MILITARY NECESSITY The lack of military necessity for applying law-of-war principles on U.S. territory further supports the construction of the AUMF to avoid displacing civilian law with law of war in the domestic context. The Supreme Court long ago declared that martial law may not be applied on U.S. territory when civilian law is functioning and "the courts are open and their process unobstructed." 154 Instead, "[t]he necessity [for martial law] must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration." 155 In the absence of such necessity, "[w]hen peace prevails, and the authority of the government is undisputed, there is no difficulty of preserving the safeguards of liberty . . . ." 156 The past ten years have shown that there is no need to stretch law-of-war principles in the AUMF to reach U.S. territory. The exigencies associated with an active battlefield, which were critical to the Hamdi plurality's interpretation of the AUMF, 157 are simply not present in the United States. Instead, "American law enforcement agencies . . . continue to operate within the United States. These agencies have a powerful set of legal tools, adapted to the criminal process, to deploy within the United States against . . . suspected [terrorists], and the civilian courts remain open to impose criminal punishment." 158 Indeed, for more than a decade since the 9/11 attacks, domestic law enforcement agencies have carried the responsibility for domestic counterterrorism and have successfully thwarted several terrorism plots. 159 Civilian courts have adjudicated the prosecution of suspected terrorists captured on U.S. territory under [\*1424] federal laws. 160 The experience of the past decade shows that the civilian system is up to the task, and there is no military exigency that justifies curtailing constitutional protections and applying military authority in the domestic context. 161 Accordingly, the circumstances that the Supreme Court found to justify the use of the military authority under the AUMF to capture and indefinitely detain Hamdi, who was found armed on the active battlefield in Afghanistan, do not extend to persons captured on U.S. territory. The manner in which the government handled the Padilla and al-Marri cases further demonstrates the lack of military necessity. In both cases, the government abandoned its position that national security imperatives demanded that they continue to be held in military custody; both were transferred to federal custody and ultimately convicted of federal crimes carrying lengthy prison terms. 162 The Supreme Court's precedent in Quirin neither requires, nor can it be fairly read to justify, a different conclusion. First, the issue of indefinite military detention without trial was not before the Court in that case. Second, the status of the Nazis in Quirin as enemy combatants was undisputed, in contrast to that of individuals who are "part of" or "substantially support" al-Qaeda or "associated forces." 163 Third, the Court in Quirin went "out of its way to say that the Court's holding was extremely limited," encompassing only the precise factual circumstances before it. 164 Finally, Quirin itself is shaky precedent, as evidenced by the Court's own subsequent statements and as elaborated in numerous scholarly commentaries on the case. 165 As Katyal and Tribe observe: Quirin plainly fits the criteria typically offered for judicial confinement or reconsideration: It was a decision rendered under extreme time pressure, with respect to which there are virtually no reliance interests at stake, and where the statute itself has constitutional dimensions suggesting that its construction should be guided by relevant developments in constitutional law. 166 [\*1425] This case therefore should not be read as foreclosing the application of a clear statement principle to the AUMF as applied on U.S. territory where an individual's status as an enemy combatant is in dispute. CONCLUSION The AUMF is ambiguous: it does not specify whether it reaches individuals captured on U.S. territory, and Congress declined to resolve this question when it enacted § 1021 of the NDAA 2012. If a future administration invokes the AUMF as authority to capture and hold persons on U.S. territory in indefinite military detention, it will be left to the courts to determine whether this is constitutional. Courts should resolve this question by applying a clear statement requirement. This Note has argued that the trigger for this clear statement requirement is not the individual's status but rather the presumption that constitutional rights and restraints apply on U.S territory. Courts should apply this default presumption regardless of an individual's citizenship status, and it should apply even where the government claims that the individual is an "enemy combatant," at least where that determination is subject to dispute. This Note has argued that this method of statutory interpretation is constitutionally required. "[B]y extending to all 'persons' within the Constitution's reach such guarantees as . . . due process of law, the Constitution constrains how our government may conduct itself in bringing terrorists to justice." 167 If these constraints are to remain meaningful, these guarantees require, at the very least, that courts presume that constitutional guarantees prevail where congressional intent is unclear. The past ten years have shown that our criminal justice system is capable of thwarting terrorist attacks and bringing terrorists to justice while still preserving the safeguards of liberty that are fundamental to our system of justice. "[T]hese safeguards need, and should receive, the watchful care of those [e]ntrusted with the guardianship of the Constitution and laws." 168

**Lower Court rulings inevitable - they lack cohesion and clarity but trigger the link to the courts DA- ONLY a ruling by the Supreme Court creates necessary clarity**

Sparrow 11 (Indefinite Detention After Boumediene: Judicial Trailblazing in Uncharted and Unfamiliar Territory SUFFOLK UNIVERSITY LAW REVIEW [Vol. XLIV:261 p lexis Tyler Sparrow is an associate in the Securities Department, and a member of the Litigation and Enforcement Practice Group]

This section will argue that the current guidance on detainee habeas corpus actions offered by the Supreme Court as well as the Executive and Legislative branches is vague and inadequate.100 Because of this inadequacy, federal district court judges cannot proceed with any confidence that their judgments will stand, nor can the litigants form any reasonable predictions from the case law.101 This section will then examine how more definitive Supreme Court precedent would help to unify the case law dealing with detainee habeas corpus actions.102 Finally, this section will argue that adoption of legislation clearly addressing the substantive scope of the government’s detention authority would clarify the law for the public, the federal courts, and most importantly those detained without charge.103 The Supreme Court’s holding in Boumediene was limited to the constitutional issues regarding Guantanamo detainees’ access to the writ of habeas corpus, leaving all questions of procedure and substantive scope-ofdetention authority to the lower federal courts.104 This lack of guidance has drawn criticism from legal scholars and federal judges alike.105 A group of noted legal scholars observed that, in holding Guantanamo detainees were entitled to seek the writ of habeas corpus, the Supreme Court “gave only the barest sketch of what such proceedings should look like, leaving a raft of questions open for the district and appellate court judges.”106 Furthermore, the Obama Administration has stated that it will not seek further legislation from Congress to justify or clarify its detention authority.107 This lack of guidance has led to disparate results in detainee habeas corpus actions with similar facts, based not on the merits of the cases, but rather on which particular judge hears the petition.108 B. Need for Supreme Court Precedent Addressing Standards and Procedure for Detainee Habeas Corpus Actions The Supreme Court’s refusal to address the substantive scope of the government’s detention authority in Boumediene has left the task to federal district court judges, who are free to apply whichever standard they see fit, regardless of its disparity from the standard being applied down the hall of the very same courthouse.109 For instance, it is up to the district judges whether to analyze detention authority under the rubric of “substantial support” for the Taliban and/or Al Qaeda, or the rubric pertaining to being a “part of” either of these groups.110 There are also differing opinions as to when, and how long, a detainee’s relationship with the Taliban and/or Al Qaeda must have existed to justify detention, under either the “part of” or “substantial support” rationales.111 Differing judicial approaches can also be seen in the weight of evidence required to justify detention, as well as how to treat hearsay and evidence obtained in the face of coercion.112 This creates a situation where neither the government nor the detainee “can be sure of the rules of the road in the ongoing litigation, and the prospect that allocation of a case to a particular judge may prove dispositive on the merits can cut in either direction.”113 The Supreme Court has the opportunity to unify these divergent paths by finally ruling on questions such as the substantive scope of the government’s detention authority, the standard and weight of evidence required for continued detention, whether a relationship with the Taliban and/or Al Qaeda can be sufficiently vitiated, and the reliability of hearsay evidence and statements made under coercion.114

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain without the Third Geneva Conventions Article Five rights.

# 2AC

## Case

### 2AC Hegemony Impact

#### The plan’s alliance building solves the heg impact- also solves energy insecurity

**Ikenberry, 11** (Professor of Politics and International Affairs at Princeton University, “A World of Our Making,” Spring,<http://www.democracyjournal.org/20/a-world-of-our-making.php?page=all>)

Grand strategy is a set of coordinated and sustained policies designed to address the long-term threats and opportunities that lie beyond the country’s shores. Given the great shifts in the global system and the crisis of liberal hegemonic order, how should the United States pursue grand strategy in the coming years? The answer is that the United States should work with others to rebuild and renew the institutional foundations of the liberal international order and along the way re-establish its own authority as a global leader. The United States is going to need to invest in alliances, partnerships, multilateral institutions, special relationships, great-power concerts, cooperative security pacts, and democratic security communities. That is, the United States will need to return to the great tasks of liberal order building. It is useful to distinguish between two types of grand strategy: positional and milieu oriented. With a positional grand strategy, a great power seeks to diminish the power or threat embodied in a specific challenger state or group of states. Examples are Nazi Germany, Imperial Japan, the Soviet bloc, and perhaps—in the future—Greater China. With a milieu-oriented grand strategy, a great power does not target a specific state but seeks to structure its general international environment in ways that are congenial with its long-term security. This might entail building the infrastructure of international cooperation, promoting trade and democracy in various regions of the world, and establishing partnerships that might be useful for various contingencies. My point is that under conditions of unipolarity, in a world of diffuse threats, and with pervasive uncertainty over what the specific security challenges will be in the future, this milieu-based approach to grand strategy is necessary. The United States does not face the sort of singular geopolitical threat that it did with the fascist and communist powers of the last century. Indeed, compared with the dark days of the 1930s or the Cold War, America lives in an extraordinarily benign security environment. Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics—these and other dangers loom on the horizon. Any of these threats could endanger Americans’lives and way of life either directly or indirectly by destabilizing the global system upon which American security and prosperity depends. What is more, these threats are interconnected—and it is their interactive effects that represent the most acute danger. And if several of these threats materialize at the same time and interact to generate greater violence and instability, then the global order itself, as well as the foundations of American national security, would be put at risk. What unites these threats and challenges is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence—stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance.When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States cannot hide or protect itself from threats under conditions of rising security interdependence. It must **get out in the world and** **work with other states to build frameworks of cooperation** and leverage capacities for action against this unusually diverse, diffuse, and unpredictable array of threats and challenges. This is why a milieu-based grand strategy is attractive. The objective is to shape the international environment to maximize your capacities to protect the nation from threats. To engage in liberal order building is to **invest in** international cooperative frameworks—that is, rules, institutions, **partnerships,** networks, standby capacities, social knowledge, etc.—in which the United Statesoperates. To build international order is to increase the global stock of “social capital”—which is the term Pierre Bourdieu, Robert Putnam, and other social scientists have used to define the actual and potential resources and capacities within a political community, manifest in and through its networks of social relations, that are available for solving collective problems.

#### **Energy insecurity escalates**

European Council, 08 (Paper from the High Representative and the European Commission to the European Council, “Climate Change and International Security”, 3/14/08, <http://www.consilium.europa.eu/ueDocs/cms_data/docs/pressdata/EN/reports/99387.pdf>)

One of the most significant potential conflicts over resources arises from intensified competition over access to, and control over, energy resources. That in itself is, and will continue to be, a cause of instability. However, because much of the world's hydrocarbon reserves are in regions vulnerable to the impacts of climate change and because many oil and gas producing states already face significant social economic and demographic challenges, instability is likely to increase. This has the potential to feed back into greater energy insecurity and greater competition for resources. A possible wider use of nuclear energy for power generation might raise new concerns about proliferation, in the context of a non-proliferation regime that is already under pressure. As previously inaccessible regions open up due to the effects of climate change, the scramble for resources will intensify

#### Plan key to US international legitimacy- that’s Gruber- that outweighs their internal link to hegemony

Finnemore 9 (Martha- professor of political science and international affairs at George Washington University, January 2009, “Legitimacy, Hypocrisy, and the Social Structure of Unipolarity: Why Being a Unipole Isn’t All It’s Cracked Up to Be,” World Politics, Volume 61, Number 1)

Legitimacy is, by its nature, a social and relational phenomenon. One’s position or power cannot be legitimate in a vacuum. The concept only has meaning in a particular social context. Actors, even unipoles, cannot create legitimacy unilaterally. Legitimacy can only be given by others. It is conferred either by peers, as when great powers accept or reject the actions of another power, or by those upon whom power is exercised. Reasons to confer legitimacy have varied throughout history. Tradition, blood, and claims of divine right have all provided reasons to confer legitimacy, although in contemporary politics conformity with [End Page 61] international norms and law is more influential in determining which actors and actions will be accepted as legitimate. 9¶ Recognizing the legitimacy of power does not mean these others necessarily like the powerful or their policies, but it implies at least tacit acceptance of the social structure in which power is exercised. One may not like the inequalities of global capitalism but still believe that markets are the only realistic or likely way to organize successful economic growth. One may not like the P5 vetoes of the Security Council but still understand that the United Nations cannot exist without this concession to power asymmetries. We can see the importance of legitimacy by thinking about its absence. Active rejection of social structures and the withdrawal of recognition of their legitimacy create a crisis. In domestic politics, regimes suffering legitimacy crises face resistance, whether passive or active and armed. Internationally, systems suffering legitimacy crises tend to be violent and noncooperative. Post-Reformation Europe might be an example of such a system. Without at least tacit acceptance of power’s legitimacy, the wheels of international social life get derailed. Material force alone remains to impose order, and order creation or maintenance by that means is difficult, even under unipolarity. Successful and stable orders require the grease of some legitimation structure to persist and prosper.10¶ The social and relational character of legitimacy thus strongly colors the nature of any unipolar order and the kinds of orders a unipole can construct. Yes, unipoles can impose their will, but only to an extent. The willingness of others to recognize the legitimacy of a unipole’s actions and defer to its wishes or judgment shapes the character of the order that will emerge. Unipolar power without any underlying legitimacy will have a very particular character. The unipole’s policies will meet with resistance, either active or passive, at every turn. Cooperation will be induced only through material quid pro quo payoffs. Trust will be thin to nonexistent. This is obviously an expensive system to run and few unipoles have tried to do so.

#### U.S. primacy isn’t key to peace—their data is flawed

**Preble, 10** – Director of Foreign Policy Studies at CATO (Christopher, 8/3/10, “U.S. Military Power: Preeminence for What Purpose?”, <http://www.cato-at-liberty.org/u-s-military-power-preeminence-for-what-purpose/>)

Most in Washington still embraces the notion that America is, and forever will be, the world’s indispensable nation. Some scholars, however, questioned the logic of hegemonic stability theory from the very beginning. A number continue to do so today. They advance arguments diametrically at odds with the primacist consensus. Trade routes need not be policed by a single dominant power; the international economy is complex and resilient. Supply disruptions are likely to be temporary, and the costs of mitigating their effects should be borne by those who stand to lose — or gain — the most. Islamic extremists are scary, but hardly comparable to the threat posed by a globe-straddling Soviet Union armed with thousands of nuclear weapons. It is frankly absurd that we spend more today to fight Osama bin Laden and his tiny band of murderous thugs than we spent to face down Joseph Stalin and Chairman Mao. Many factors have contributed to the dramatic decline in the number of wars between nation-states; it is unrealistic to expect that a new spasm of global conflict would erupt if the United States were to modestly refocus its efforts, draw down its military power, and call on other countries to play a larger role in their own defense, and in the security of their respective regions. But while there are credible alternatives to the United States serving in its current dual role as world policeman / armed social worker, the foreign policy establishment in Washington has no interest in exploring them. The people here have grown accustomed to living at the center of the earth, and indeed, of the universe. The tangible benefits of all this military spending flow disproportionately to this tiny corner of the United States while the schlubs in fly-over country pick up the tab.

### Nuke prim

#### No scenario for losing deterrence

Kristensen ‘12 -- FAS nuclear weapons expert [Hans, "DOD: Strategic Stability Not Threatened Even by Greater Russian Nuclear Forces," FAS, 10-10-12, www.fas.org/blog/ssp/2012/10/strategicstability.php, accessed 1-27-13, mss]

DOD: Strategic Stability Not Threatened Even by Greater Russian Nuclear Forces A Department of Defense (DOD) report on Russian nuclear forces, conducted in coordination with the Director of National Intelligence and sent to Congress in May 2012, concludes that even the most worst-case scenario of a Russian surprise disarming first strike against the United States would have “little to no effect” on the U.S. ability to retaliate with a devastating strike against Russia. I know, even thinking about scenarios such as this sounds like an echo from the Cold War, but the Obama administration has actually come under attack from some for considering further reductions of U.S. nuclear forces when Russia and others are modernizing their forces. The point would be, presumably, that reducing while others are modernizing would somehow give them an advantage over the United States. But the DOD report concludes that Russia “would not be able to achieve a militarily significant advantage by any plausible expansion of its strategic nuclear forces, even in a cheating or breakout scenario under the New START Treaty” (emphasis added). The conclusions are important because the report come after Vladimir Putin earlier this year announced plans to produce “over 400” new nuclear missiles during the next decade. Putin’s plan follows the Obama administration’s plan to spend more than $200 billion over the next decade to modernize U.S. strategic forces and weapons factories. The conclusions may also hint at some of the findings of the Obama administration’s ongoing (but delayed and secret) review of U.S. nuclear targeting policy. No Effects on Strategic Stability The DOD report – Report on the Strategic Nuclear Forces of the Russian Federation Pursuant to Section 1240 of the National Defense Authorization Act for Fiscal Year 2012 – was obtained under the Freedom of Information Act. It describes the U.S. intelligence community’s projection for the likely development of Russian nuclear forces through 2017 and 2022, the timelines of the New START Treaty, and possible implications for U.S. national security and strategic stability. Much of the report’s content was deleted before release – including general and widely reported factual information about Russian nuclear weapons systems that is not classified. But the important concluding section that describes the effects of possible shifts in the number and composition of Russian nuclear forces on strategic stability was released in its entirety. The section “Effects on Strategic Stability” begins by defining that stability in the strategic nuclear relationship between the United States and the Russian Federation depends upon the assured capability of each side to deliver a sufficient number of nuclear warheads to inflict unacceptable damage on the other side, even with an opponent attempting a disarming first strike. Consequently, the report concludes, “the only Russian shift in its nuclear forces that could undermine the basic framework of mutual deterrence that exists between the United States and the Russian Federation is a scenario that enables Russia to deny the United States the assured ability to respond against a substantial number of highly valued Russian targets following a Russian attempt at a disarming first strike” (emphasis added). The DOD concludes that such a first strike scenario “will most likely not occur.” But even if it did and Russia deployed additional strategic warheads to conduct a disarming first strike, even significantly above the New START Treaty limits, DOD concludes that it “would have little to no effects on the U.S. assured second-strike capabilities that underwrite our strategic deterrence posture” (emphasis added). In fact, the DOD report states, the “Russian Federation…would not be able to achieve a militarily significant advantage by any plausible expansion of its strategic nuclear forces, even in a cheating or breakout scenario under the New START Treaty, primarily because of the inherent survivability of the planned U.S. Strategic force structure, particularly the OHIO-class ballistic missile submarines, a number of which are at sea at any given time.” Implications These are BIG conclusions with BIG implications. They reaffirm conclusions made by DOD in 2010 [http://www.foreign.senate.gov/publications/download/executive-report-111-06-treaty-with-russia-on-measures-for-further-reduction-and-limitation-of-strategic-offensive-arms-the-new-start-treaty], but the new report is important because it comes after Russia earlier this year announced plans to produce “over 400” nuclear missiles over the next decade. In the real world, however, Russian nuclear forces are not increasing. Even with Putin’s missile production plan, simultaneous retirement of older missile will continue the downward trend and result in a net reduction of Russian strategic nuclear forces over the next decade and a half. This fact has not stopped some from arguing against additional U.S. nuclear reductions. Their argument is that reductions are unwise at a time when Russia and others are modernizing their nuclear forces. Others have even argued that Russia could break out of the New START Treaty by cheating and presumably achieve some strategic advantage. Even the U.S. Senate’s advice and consent resolution that in 2010 approved the New START Treaty required that “the President should regulate reductions in United States strategic offensive arms so that the number of accountable strategic offensive arms under the New START Treaty possessed by the Russian Federation in no case exceeds the comparable number of accountable strategic offensive arms possessed by the United States to such an extent that a strategic imbalance endangers the national security interests of the United States” (emphasis added). A similar obsession with numbers was echoed in the 2012 report by the State Department’s International Strategic Advisory Board on future U.S.-Russian “Mutual Assured Stability,” which concluded that it requires some “rough parity” of nuclear forces. (A similar number obsession has evolved with NATO about non-strategic nuclear weapons, but that’s another story). But the DOD report appears to conclude that such warnings and parity requirement are missing the point. Strategic stability and deterrence today are provided by a secure retaliatory capability, primarily ballistic missile submarines. In fact, although ICBMs and bombers also play a role in the U.S. nuclear posture, they seem oddly absent from the report’s description of what is required to maintain strategic stability based on a sufficient secure retaliatory capability. Retaining that capability, it seems, does not even require the ballistic missile submarines to be on alert (although the report doesn’t explicitly say so). It only requires that a sufficient number of submarines “are at sea” and secure at any given time – or perhaps even only in a crisis. Likewise, the conclusion that a Russian disarming first strike “will most likely not occur” may be obvious to most but, if formal, seems to remove the need for having ICBMs on alert, as long as a sufficient number of submarines are at sea to provide the basic deterrence that underpins strategic stability.

### 4GW

#### Checks on the Presidents power solves deterrence better- makes our threats credible

**Waxman 13** (Matthew C- Professor of Law at Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 8/25/2013, PDF)

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

#### conngress already has taken away Obama’s control of detention

Janet Cooper Alexander 13, professor of law at Stanford University, March 21st, 2013, "The Law-Free Zone and Back Again," Illinois Law Review, [illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf](http://illinoislawreview.org/wp-content/ilr-content/articles/2013/2/Alexander.pdf)

Congressalsopassed legislation requiringsuspectedmembers of al- Qaeda or “associated forces” to be held in military custody,again making it difficult to prosecute them in federal court.The bill as passed contained some moderating elements, including the possibility of presidential waiver of the military custody requirement, 7 recognition of the FBI’s ability to interrogate suspects, 8 and a disclaimer stating that the statute was not intended to change existing law regarding the authority of the President, the scope of the Authorization for Use of Military Force, 9 or the detention of U.S. citizens, lawful residents, or persons captured in the United States. 10 All the while, Republican presidential hopefuls were vying to see who could be the most vigorous proponent of indefinite detention, barring trials in civilian courts, and reinstating a national policy of interrogation by torture.¶11¶During the same period, the D.C. Circuit issued a series of decisions that effectively reversed the Supreme Court’s habeas decisions of 2004 and 2008. 12The Supreme Court’s failure to review these decisions has left detainees with essentially no meaningful opportunity to challenge their custody.¶Thus,a decade that began with the executive branch’s assertion of sole and exclusive power to act unconstrained by law or the other branches ended, ironically, with Congress asserting its power to countermand the executive branch’s decisions, regardless of detainee claims of legal rights, in order to maintain those law-free policies. And although the Supreme Court had blocked the Bush administration’s law-free zone strategy by upholding detainees’ habeas rights, the D.C. Circuit has since rendered those protections toothless

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#### 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 warand 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)

#### Counter-interpretation- treaty-based regulations constitute a restriction/regulations are restrictions

Barron 8 (Professor of Law, Harvard Law School, Harvard Law Review, January 2008, Retrieved 6/1/2013, Lexis/Nexis)

2. Armed Conflict Against Terrorist Organizations and Preexisting Framework Statutes. - Beyond this general executive trend, certain central features of the current military conflict against al Qaeda help to create the conditions for constitutional battles over the legal status of statutory (and treaty-based) limitations that apply to the war on terrorism. Important in this regard is the fact that in most traditional wars, the Executive has perhaps had less reason to feel unduly constrained [\*713] by extant statutory and treaty-based regulations on his treatment of the enemy, in part because many such restrictions (such as those in multilateral treaties) have, at least nominally, merely put the nation on common ground with its enemies with respect to the methods of battle and the treatment of prisoners.

## CP

### 2AC Self-Restraint CP

#### SCOTUS would have to review the CP- either the CP links to the net-benefit, or the CP is struck down and doesn’t solve- durable fiat only applies to the agency taking action

Howell 5 (William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief¶ Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### CP doesn’t solve- legal certainty is key

Guiora 12 (Professor of Law, S.J. Quinney College of Law, University of Utah; author of Freedom from Religion: Rights and National Security (2009). DUE PROCESS AND COUNTERTERRORISM EMORY INTERNATIONAL LAW REVIEW [Vol. 26 pg Lexis Nexis]

While President Obama signed an Executive Order ordering the closure of the Guantanamo Bay detention center26 for the purpose of discontinuing trials before Military Commissions, in April 2010 the Obama Administration reinstituted the Military Commissions.27 It is unclear whether this represents reversal of a policy previously articulated but not implemented, or a stopgap measure. Whatever the explanation, the Obama Administration has largely failed to satisfactorily address the rule-of-law questions essential to creating and implementing counterterrorism policy that ensures implementation of due process guarantees and obligations. For example, the Administration has failed to resolve whether Article III courts are the proper judicial forums for suspected terrorists.28 Perhaps this continuing failure is reflective of political infighting, as demonstrated in the backtracking with respect to Khalid Sheikh Mohammed’s trial.29 The result is a disturbing failure to ensure due process for individuals suspected of involvement in terrorism. More fundamentally, the status of individuals detained post-9/11 has not been uniformly or consistently articulated or applied. That is, varying definitions have been articulated at different times, reflecting legal and policy uncertainty directly affecting the ability to establish and consistently apply a legal regime based on due process.30 For thousands of individuals whose initial detention was based on questionable intelligence and subsequent, inadequate habeas protections, the current regime is inherently devoid of due process.31 I propose that detainees are neither prisoners of war nor criminals in the traditional sense; rather, they are a hybrid of both. To that end, I propose that the appropriate term for post-9/11 detainees is a combination—a convergence of the criminal law and law of war paradigms—best described as a hybrid paradigm.

#### The possibility of future presidential rollback magnifies the deficits

Friedersdorf 13 (CONOR FRIEDERSDORF, staff writer, “Does Obama Really Believe He Can Limit the Next President's Power?” MAY 28 2013, <http://www.theatlantic.com/politics/archive/2013/05/does-obama-really-believe-he-can-limit-the-next-presidents-power/276279/>, KB)

Obama doesn't seem to realize that his legacy won't be shaped by any perspicacious limits he places on the executive branch, if he ever gets around to placing any on it. The next president can just undo those "self-imposed" limits with the same wave of a hand that Obama uses to create them. His influence in the realm of executive power will be to expand it. By 2016 we'll be four terms deep in major policy decisions being driven by secret memos from the Office of Legal Counsel. The White House will have a kill list, and if the next president wants to add names to it using standards twice as lax as Obama's, he or she can do it, in secret, per his precedent.

#### Turn- SOP- Judicial action on detention policy is key to preserve it

Eric A. Tirschwell, J.D., attorney at Kramer, Levin, NAFTALIS & FRANKEL LLP, et al., April 2009. [

JAMAL KIYEMBA, et al., Petitioners, v. BARACK H. OBAMA, et al., Respondents. ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT PETITION FOR WRIT OF CERTIORARI]

In a constitutional sense, the President’s discretionary release of a prisoner is no different from his discre- tionary imprisonment: each proceeds from his un-checked power. The question presented here is whether the Third Branch may check the Second at all. If habeas review may be shelved because one President may someday undo what his predecessor did, then the law is whatever the sitting President says it is, and the judiciary is the handmaiden of the political branches. Habeas and the separation of powers cannot wait for politics. Without the Court’s intervention now, in this case, six years of excruciating appellate litigation will end with the evisceration of the Great Writ, and the separation of powers will be reduced to quaint history. All relief would hereafter be diplomatic, and located entirely and completely within the discretion of the jailer himself.

#### Breakdown of SOP leads to foreign conflicts.

Paul, prof of law UConn, 1998

(Joel R. Paul, Prof of law @ UConn, July 1998, “The Geopolitical Constitution: Executive Expediency and Executive Agreements”

86 Calif. L. Rev. 671)

The Constitution "diffuses power...to secure liberty." n27 Constitutional checks and balances create resistance to the exercise of power. n28 [\*679] So long as constitutional authority over foreign affairs remained divided between the executive and Congress, neither branch was able to commit the nation abroad without a popular consensus. n29 These institutional obstacles are not merely quaint vestiges of an earlier era of relative isolationism. They serve the normative value of discouraging foreign adventures to which the nation is not fully committed. The discourse of executive expediency undermined this constitutional structure. n30 Specifically, the expansion of executive power allowed Congress to avoid public accountability for U.S. foreign policy, facilitated more frequent foreign interventions, undermined the coherence of our foreign policy, and exposed foreign policy-making to "capture" by foreign governments.

#### (if politics=NB) Congress will backlash to the aff by holding up (insert politics DA bill here)

Risen ’04 (Clay, Assistant Editor – New Republic, The American Prospect, Aug, Lexis)

Congress provides an additional, if somewhat less effective, check on executive orders. In theory, any executive order can be later annulled by Congress. But in the last 34 years, during which presidents have issued some 1,400 orders, it has defeated just three. More often, Congress will counter executive orders by indirect means, holding up nominations or bills until the president relents. "There's always the potential that a Congress angry about one issue will respond by limiting other things you want," says Mayer.

## Politics

### 2AC Economy Impact

#### Decline doesn’t cause war

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

#### Detention collapses US-EU relations

Smith 7 (JULIANNE, DIRECTOR AND SENIOR FELLOW, EUROPE PROGRAM, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, April 17, “EXTRAORDINARY RENDITION IN U.S. COUNTERTERRORISM POLICY: THE IMPACT ON TRANSATLANTIC RELATIONS”, http://archives.republicans.foreignaffairs.house.gov/110/34712.pdf)

As a European analyst, who spends a considerable amount of time in Europe meeting with policymakers and addressing a variety of public audiences, I can confirm that the issue of extraordinary rendition, along with press revelations about secret prisons in Europe, have cast a rather dark shadow on our relationship with our European allies. While transatlantic intelligence and law enforcement cooperation does continue, European political leaders are coming under increasing pressure to distance themselves from the United States. Over time, I do believe that this could pose a threat to joint intelligence activity with our European allies. Now it is well known that America’s image in Europe has declined quite steadily over the last couple of years, and some of the reasons for that were cited earlier this afternoon, in part due to the decision of the United States to go to Iraq, human rights abuses at Abu Ghraib and allegations of torture at Guantanamo bay. But we seemed to move away from some of these dark days in the transatlantic relationship as we moved into 2005, as both sides of the Atlantic I think, both Europe and the United States, made a conscious effort to renew transatlantic ties. When it was alleged, however, later in 2005—at the end of 2005 that the United States was detaining top terror suspects in socalled ‘‘black sites’’ in eight countries and that the CIA was flying terror suspects between secret prisons and countries in the Middle East that have been known to torture detainees, the United States image in Europe took another dive. On the particular issues of rendition, as we have heard earlier, Europeans appear to have two primary concerns, one, Washington’s unwillingness to grant due process to terror suspects and, two, violation of suspects’ human rights during interrogation. Now the allegations that have been submitted and the resulting investigation by the European Parliament have in many ways in my mind confirmed Europeans’ worst fears. Many Europeans, particularly at the public level, believe that they have plenty of evidence right now to prove a long-suspected gap between United States stated policies and U.S. action. As a result, U.S. promises not to torture terror suspects and to uphold the fundamental pillars of international law are no longer seen as credible. The question is, does any of this matter? President Bush has noted on several occasions that making policy is not a popularity contest, and he is right about that. But when political leads in other countries start to feel that standing shoulder to shoulder with the United States is a political liability, I think that low favorability ratings can indeed hinder America’s ability to solve global challenges with its many partners and allies around the world; and I would cite a couple of reasons for this. First, as we have seen with the tensions over the issue of rendition, this particular issue has put unnecessary strain, in my mind, on what has been, in many cases, a very positive relationship. In fact, it is distracting the two sides from the core task at hand; and that is, of course, combating terrorism. Second, as I mentioned earlier, European political leaders are under pressure from their publics to keep the United States at arm’s length. I don’t know that this pressure will ever halt counterterrorism cooperation with our European allies in full or certainly not in the near term, but there are signs that negative public opinion is making it more difficult for our European allies to cooperate with the United States. One only has to look at the latest European responses to United States requests for more support in Afghanistan to find one such example. Finally, I would point out that the United States and Europe are facing a long list of challenges above and beyond terrorism, things like energy security, nonproliferation, brewing regional crises, Darfur; and the list goes on and on. In many of these areas, the United States are asking—we are asking Europe to do more. But differences in our counterterrorism relationship with Europe have affected our relationship at other levels. Again, negative public sentiment toward the United States will never succeed in halting our cooperation with Europe entirely, but it does make asking for greater European support in other areas that much more challenging. Just to conclude, I would point out—and I feel very strongly— that Europe is one of America’s most important partners in combating radical extremism, and there is certainly no shortage of success stories in the many things we have done together, particularly over the past 6 years in this area. But I do feel—again based on my experience traveling back and forth to Europe on a regular basis—that this relationship that we share is currently played with mistrust and divisions over strategy and tactics.

#### That makes economic collapse inevitable

Harding ‘2 (Gareth Harding, Europe Correspondent for United Press International, United Press International, Lexis, August 7, 2002)

Despite their differences, EU and U.S. leaders know that a breakdown in relations between the two sides would be disastrous for the international economy and global stability. Together, Europe and America have the biggest trade and investment relationship in the world -- amounting to over $1 billion a day -- accounting for half the planet's wealth and forming the cornerstone of the world's most powerful military alliance, NATO.

#### Relations are key to solve nuclear war

Brzezinski ‘3 (Zbigniew Brzezinski, former national security advisor to the president, “Hegemonic quicksand,” National Interest Winter, 2003)

FOR THE next several decades, the most volatile and dangerous region of the world--with the explosive potential to plunge the world into chaos--will be the crucial swathe of Eurasia between Europe and the Far East. Heavily inhabited by Muslims, we might term this crucial subregion of Eurasia the new "Global Balkans." (1) It is here that America could slide into a collision with the world of Islam while American-European policy differences could even cause the Atlantic Alliance to come unhinged. The two eventualities together could then put the prevailing American global hegemony at risk. At the outset, it is essential to recognize that the ferment within the Muslim world must be viewed primarily in a regional rather than a global perspective, and through a geopolitical rather than a theological prism. The world of Islam is disunited, both politically and religiously. It is politically unstable and militarily weak, and likely to remain so for some time. Hostility toward the United States, while pervasive in some Muslim countries, originates more from specific political grievances--such as Iranian nationalist resentment over the U.S. backing of the Shah, Arab animus stimulated by U.S. support for Israel or Pakistani feelings that the United States has been partial to India-than from a generalized religious bias. The complexity of the challenge America now confronts dwarfs what it faced half a century ago in Western Europe. At that time, Europe's dividing line on the Elbe River was the strategically critical frontline of maximum danger, with the daily possibility that a clash in Berlin could unleash a nuclear war with the Soviet Union. Nevertheless, the United States recognized the stakes involved and committed itself to the defense, pacification, reconstruction and revitalization of a viable European community. In doing so, America gained natural allies with shared values. Following the end of the Cold War, the United States led the transformation of NATO from a defense alliance into an enlarging security alliance--gaining an enthusiastic new ally, Poland--and it has supported the expansion of the European Union (EU). For at least a generation, the major task facing the United States in the effort to promote global security will be the pacification and then the cooperative organization of a region that contains the world's greatest concentration of political injustice, social deprivation, demographic congestion and potential for high-intensity violence. But the region also contains most of the world's oil and natural gas. In 2002, the area designated as the Global Balkans contained 68 percent of the world's proven oil reserves and 41 percent of the world's proven natural gas reserves; it accounted for 32 percent of world oil production and 15 percent of world natural gas production. In 2020, the area is projected to produce roughly 42 million barrels of oil per day--39 percent of the global production total (107.8 million barrels per day). Three key regions-Europe, the United States and the Far East--collectively are projected to consume 60 percent of that global production (16 percent, 25 percent and 19 percent, respectively). The combination of oil and volatility gives the United States no choice. America faces an awesome challenge in helping to sustain some degree of stability among precarious states inhabited by increasingly politically restless, socially aroused and religiously inflamed peoples. It must undertake an even more daunting enterprise than it did in Europe more than half a century ago, given a terrain that is culturally alien, politically turbulent and ethnically complex. In the past, this remote region could have been left to its own devices. Until the middle of the last century, most of it was dominated by imperial and colonial powers. Today, to ignore its problems and underestimate its potential for global disruption would be tantamount to declaring an open season for intensifying regional violence, region-wide contamination by terrorist groups and the competitive proliferation of weaponry of mass destruction. The United States thus faces a task of monumental scope and complexity. There are no self-evident answers to such basic questions as how and with whom America should be engaged in helping to stabilize the area, pacify it and eventually cooperatively organize it. Past remedies tested in Europe--like the Marshall Plan or NATO, both of which exploited an underlying transatlantic political-cultural solidarity--do not quite fit a region still rent by historical hatreds and cultural diversity. Nationalism in the region is still at an earlier and more emotional stage than it was in war-weary Europe (exhausted by two massive European civil wars fought within just three decades), and it is fueled by religious passions reminiscent of Europe's Catholic-Protestant forty-year war of almost four centuries ago. Furthermore, the area contains no natural allies bonded to America by history and culture, such as existed in Europe with Great Britain, France, Germany and, lately, even Poland. In essence, America has to navigate in uncertain and badly charted waters, setting its own course, making differentiated accommodations while not letting any one regional power dictate its direction and priorities. To Whom Can America Turn? TO BE SURE, several states in the area are often mentioned as America's potential key partners in reshaping the Global Balkans: Turkey, Israel, India and--on the region's periphery--Russia. Unfortunately, every one of them suffers serious handicaps in its capability to contribute to regional stability or has goals of its own that collide with America's wider interests in the region. Turkey has been America's ally for half a century. It earned America's trust and gratitude by its direct participation in the Korean War. It has proven to be NATO's solid and reliable southern anchor. With the fall of the Soviet Union, it became active in helping both Georgia and Azerbaijan consolidate their new independence, and it energetically promoted itself as a relevant model of political development and social modernization for those Central Asian states whose people largely fall within the radius of the Turkic cultural and linguistic traditions. In that respect, Turkey's significant strategic role has been complementary to America's policy of reinforcing the new independence of the region's post-Soviet states. Turkey's regional role, however, is limited by two major offsetting considerations stemming from its internal problems. The first pertains to the still uncertain status of Ataturk's legacy: Will Turkey succeed in transforming itself into a secular European state even though its population is overwhelmingly Muslim? That has been its goal since Ataturk set his reforms in motion in the early 1920s. Turkey has made remarkable progress since then, but to this day its future membership in the European Union (which it actively seeks) remains in doubt. If the EU were to close its doors to Turkey, the potential for an Islamic political-religious revival and consequently for Turkey's dramatic (and probably turbulent) international reorientation should not be underestimated. The Europeans have reluctantly favored Turkey's inclusion in the European Union, largely in order to avoid a serious regression in the country's political development. European leaders recognize that the transformation of Turkey from a state guided by Ataturk's vision of a European-type society into an increasingly theocratic Islamic one would adversely affect Europe's security. That consideration, however, is contested by the view, shared by many Europeans, that the construction of Europe should be based on its common Christian heritage. It is likely, therefore, that the European Union will delay for as long as it can a clear-cut commitment to open its doors to Turkey--but that prospect in turn will breed Turkish resentments, increasing the risks that Turkey might evolve into a resentful Islamic state, with potentially dire consequences for southeastern Europe. (2) The other major liability limiting Turkey's role is the Kurdistan issue. A significant proportion of Turkey's population of 70 million is composed of Kurds. The actual number is contested, as is the nature of the Turkish Kurds' national identity. The official Turkish view is that the Kurds in Turkey number no more than 10 million, and that they are essentially Turks. Kurdish nationalists claim a population of 20 million, which they say aspires to live in an independent Kurdistan that would unite all the Kurds (claimed to number 25-35 million) currently living under Turkish, Syrian, Iraqi and Iranian domination. Whatever the actual facts, the Kurdish ethnic problem and the potential Islamic religious issue tend to make Turkey-- notwithstanding its constructive role as a regional model--also very much a part of the region's basic dilemmas. Israel is another seemingly obvious candidate for the status of a pre-eminent regional ally. As a democracy as well as a cultural kin, it enjoys America's automatic affinity, not to mention intense political and financial support from the Jewish community in America. Initially a haven for the victims of the Holocaust, it enjoys American sympathy. As the object of Arab hostility, it triggered American preference for the underdog. It has been America's favorite client state since approximately the mid-1960s and has been the recipient of unprecedented American financial assistance ($80 billion since 1974). It has benefited from almost solitary American protection against UN disapprobation or sanctions. As the dominant military power in the Middle East, Israel has the potential, in the event of a major regional crisis, not only to be America's military base but also to make a significant contribution to any required U.S. military engagement. Yet American and Israeli interests in the region are not entirely congruent. America has major strategic and economic interests in the Middle East that are dictated by the region's vast energy supplies. Not only does America benefit economically from the relatively low costs of Middle Eastern oil, but America's security role in the region gives it indirect but politically critical leverage on the European and Asian economies that are also dependent on energy exports from the region. Hence good relations with Saudi Arabia and the United Arab Emirates--and their continued security reliance on America--is in the U.S. national interest. From Israel's standpoint, however, the resulting American-Arab ties are disadvantageous: they not only limit the degree to which the United States is prepared to back Israel's territorial aspirations, they also stimulate American sensitivity to Arab grievances against Israel. Among those grievances, the Palestinian issue is foremost. That the final status of the Palestinian people remains unresolved more than 35 years after Israel occupied the Gaza Strip and the West Bank--irrespective of whose fault that actually may be--intensifies and, in Arab eyes, legitimates the widespread Muslim hostility toward Israel. (3) It also perpetuates in the Arab mind the notion that Israel is an alien and temporary colonial imposition on the region. To the extent that the Arabs perceive America as sponsoring Israeli repression of the Palestinians, America's ability to pacify anti-American passions in the region is constrained. That impedes any joint and constructive American-Israeli initiative to promote multilateral political or economic cooperation in the region, and it limits any significant U.S. regional reliance on Israel's military potential. Since September 11, the notion of India as America's strategic regional partner has come to the forefront. India's credentials seem at least as credible as Turkey's or Israel's. Its sheer size and power make it regionally influential, while its democratic credentials make it ideologically attractive. It has managed to preserve its democracy since its inception as an independent state more than half a century ago. It has done so despite widespread poverty and social inequality, and despite considerable ethnic and religious diversity in a predominantly Hindu but formally secular state. India's prolonged conflict with its Islamic neighbor, Pakistan, involving violent confrontations with guerrillas and terrorist actions in Kashmir by Muslim extremists benefiting from Pakistan's benevolence, made India particularly eager to declare itself after September 11 as co-engaged with the United States in the war on terrorism. Nonetheless, any U.S.-Indian alliance in the region is likely to be limited in scope. Two major obstacles stand in the way. The first pertains to India's religious, ethnic and linguistic mosaic. Although India has striven to make its 1 billion culturally diverse people into a unified nation, it remains basically a Hindu state semi-encircled by Muslim neighbors while containing within its borders a large and potentially alienated Muslim minority of somewhere between 120-140 million. Here, religion and nationalism could inflame each other on a grand scale. So far, India has been remarkably successful in maintaining a common state structure and a democratic system--but much of its population has been essentially politically passive and (especially in the rural areas) illiterate. The risk is that a progressive rise in political consciousness and activism could be expressed through intensified ethnic and religious collisions. The recent rise in the political consciousness of both India's Hindu majority and its Muslim minority could jeopardize India's communal coexistence. Internal strains and frictions could become particularly difficult to contain if the war on terrorism were defined as primarily a struggle against Islam, which is how the more radical of the Hindu politicians tend to present it. Secondly, India's external concerns are focused on its neighbors, Pakistan and China. The former is seen not only as the main source of the continued conflict in Kashmir but ultimately--with Pakistan's national identity rooted in religious affirmation--as the very negation of India's self-definition. Pakistan's close ties to China intensify this sense of threat, given that India and China are unavoidable rivals for geopolitical primacy in Asia. Indian sensitivities are still rankled by the military defeat inflicted upon it by China in 1962, in the short but intense border clash that left China in possession of the disputed Aksai Chin territory. The United States cannot back India against either Pakistan or China without paying a prohibitive strategic price elsewhere: in Afghanistan if it were to opt against Pakistan, and in the Far East if it allied itself against China. These internal as well as external factors constrain the degree to which the United States can rely on India as an ally in any longer-term effort to foster--let alone impose--greater stability in the Global Balkans. Finally, there is the question of the degree to which Russia can become America's major strategic partner in coping with Eurasian regional turmoil. Russia clearly has the means and experience to be of help in such an effort. Although Russia, unlike the other contenders, is no longer truly part of the region--Russian colonial domination of Central Asia being a thing of the past--Moscow nevertheless exercises considerable influence on all of the countries to its immediate south, has close ties to India and Iran and contains some 15-20 million Muslims within its own territory. At the same time, Russia has come to see its Muslim neighbors as the source of a potentially explosive political and demographic threat, and the Russian political elite are increasingly susceptible to anti-Islamic religious and racist appeals. In these circumstances, the Kremlin eagerly seized upon the events of September 11 as an opportunity to engage America against Islam in the name of the "war on terrorism." Yet, as a potential partner, Russia is also handicapped by its past, even its very recent past. Afghanistan was devastated by a decade-long war waged by Russia, Chechnya is on the brink of genocidal extinction, and the newly independent Central Asian states increasingly define their modern history as a struggle for emancipation from Russian colonialism. With such historical resentments still vibrant in the region, and with increasingly frequent signals that Russia's current priority is to link itself with the West, Russia is being perceived in the region more and more as a former European colonial power and less and less as a Eurasian kin. Russia's present inability to offer much in the way of a social example also limits its role in any American-led international partnership for the purpose of stabilizing, developing and eventually democratizing the region. Ultimately, America can look to only one genuine partner in coping with the Global Balkans: Europe. Although it will need the help of leading East Asian states like Japan and China--and Japan will provide some, though limited, material assistance and some peacekeeping forces--neither is likely at this stage to become heavily engaged. Only Europe, increasingly organized as the European Union and militarily integrated through NATO, has the potential capability in the political, military and economic realms to pursue jointly with America the task of engaging the various Eurasian peoples--on a differentiated and flexible basis--in the promotion of regional stability and of progressively widening trans-Eurasian cooperation. And a supranational European Union linked to America would be less suspect in the region as a returning colonialist bent on consolidating or regaining its special economic interests.

### 2AC Politics- PC link

#### Courts shield

Whittington 5 Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### The Senate version won’t pass the House – Boehner can’t wrangle the tea party

The New Repulic 9/19/13 (Noam Scheiber, Senior Edtior, "Obama May Yet Bail Boehner Out on the Budget. That Would be a Historic Mistake")

To see this, you have to understand the psychology of the average House Tea Partier. These are people who have spent the last two-and-a-half years demanding an apocalyptic showdown with Obama, only to have their leaders defer it again and again. When the debt limit needed to be raised this past March, for example, Boehner [persuaded](http://www.politico.com/story/2013/01/the-gops-48-hour-debt-ceiling-makeover-86591.html) his loonies that they’d be much better off postponing the confrontation until the government funding fight. Now that the moment of truth is here, Boehner is telling his folks to put the fight off yet again.¶ Not surprisingly, the Tea Partiers aren’t really going for it. They want to pass legislation that will defund Obamacare, and they want to do it by attaching it to the bill that keeps the government open past September 30. They don’t really believe Boehner when he says he’ll give them their shot a few weeks later, when the debt ceiling needs lifting, if they just hold their fire this one last time. Those suspicions are why Boehner is going to be hard-pressed to pass a clean CR with only Republican votes. The Tea Partiers will see it as the latest in a long history of capitulations.

#### Obama broke the political bank on Syria

**Tapper and Pham 9/12**, Jake Tapper and Sherisse Pham, CNN writers “Has Obama paid political price for Syria?” 9/12, http://thelead.blogs.cnn.com/2013/09/12/has-obama-paid-political-price-for-syria/

Political capital does not come cheap in Washington, D.C. After weeks of trying to rally Congress to support him on a fast-changing policy in Syria, President Barack Obama may have broken the bank on what political capital he has left in his second term. Congressman Steve Israel, chairman of the Democratic Congressional Campaign Committee, said he was surprised by how politicized the vote for military authorization in Syria has become. Several Democratic representatives, including former veterans Rep. Tammy Duckworth and Rep. Tulsi Gabbard, oppose authorization. "It's military families like mine that are the first to bleed when our nation makes this kind of commitment," Duckworth said in a statement. But Israel said Obama is not hurting his credibility with Democratic members of the House, adding that after a Democratic caucus briefing, the party is now focused on Russia's diplomatic proposal to disarm Syria of its stockpile of nuclear weapons. "Our focus on both sides of the aisle right now, quite honestly, is on ensuring that this is a legitimate, transparent, verifiable proposal," said Israel. But much of the Democratic caucus, people Israel helped get elected in the last cycle, are against the president.

PC is low and ineffectual for debt talks- Federal Reserve nominee proves

Rodgers 9/17 (Ed- Ed Rogers is a contributor to the PostPartisan blog, 2013, “The Insiders: Stubborn facts and bothersome polls”, http://www.washingtonpost.com/blogs/post-partisan/wp/2013/09/17/the-insiders-stubborn-facts-and-bothersome-polls/)

Obama was also dealt an embarrassing blow this week as Larry Summers withdrew his name from consideration for Federal Reserve Chairman. I wasn’t even for Summers getting the job, but this was another telling sign that the president lacks any political capital on the Hill — among members of either party. If he wasn’t so weak, he might have gotten his pick for the Fed, but as it is, he must defer to the loud voices making demands. The president does not have any influence with members of Congress now, and he isn’t going to have any going forward. I think it’s safe to say he cannot take a leadership role in the looming debt ceiling and budget battles. ‎

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#### Issues are compartmentalized

Dickinson 9– professor of political science at Middlebury College and taught previously at Harvard University where he worked under the supervision of presidential scholar Richard Neustadt (5/26/09, Matthew, Presidential Power: A NonPartisan Analysis of Presidential Politics, “Sotomayor, Obama and Presidential Power,” <http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/>)

As for Sotomayor, from here the path toward almost certain confirmation goes as follows: the Senate Judiciary Committee is slated to hold hearings sometime this summer (this involves both written depositions and of course open hearings), which should lead to formal Senate approval before Congress adjourns for its summer recess in early August. So Sotomayor will likely take her seat in time for the start of the new Court session on October 5. (I talk briefly about the likely politics of the nomination process below). What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee. If we want to measure Obama’s “power”, then, we need to know what his real preference was and why he chose Sotomayor. My guess – and it is only a guess – is that after conferring with leading Democrats and Republicans, he recognized the overriding practical political advantages accruing from choosing an Hispanic woman, with left-leaning credentials. We cannot know if this would have been his ideal choice based on judicial philosophy alone, but presidents are never free to act on their ideal preferences. Politics is the art of the possible. Whether Sotomayer is his first choice or not, however, her nomination is a reminder that the power of the presidency often resides in the president’s ability to dictate the alternatives from which Congress (or in this case the Senate) must choose. Although Republicans will undoubtedly attack Sotomayor for her judicial “activism” (citing in particular her decisions regarding promotion and affirmative action), her comments regarding the importance of gender and ethnicity in influencing her decisions, and her views regarding whether appellate courts “make” policy, they run the risk of alienating Hispanic voters – an increasingly influential voting bloc (to the extent that one can view Hispanics as a voting bloc!) I find it very hard to believe she will not be easily confirmed.

#### Aff is popular- new GOP strategy

McLaughlin 8/9 (Seth- Washington Times Staff Writer, 2013, “Rand Paul: GOP can grow base by opposing indefinite detention”, http://www.washingtontimes.com/news/2013/aug/9/rand-paul-gop-can-grow-base-opposing-indefinite-de/)

Sen. Rand Paul says that one of the ways he can bring more minority and younger voters into the party is to push back against indefinite detention.¶ Speaking with Bloomberg Businessweek, Mr. Paul, a likely 2016 presidential candidate, said this week that young blacks and Hispanics have

a sense of justice and often mistrust government.¶ “So one of the big issues that I’ve fought here is getting rid of the provision called indefinite detention,” the Kentucky Republican said. “This is the idea that an American citizen could be accused of a crime, held indefinitely without charge, and actually sent from America to Guantanamo Bay and kept forever. I think there is something in that message of justice and a right to a trial by jury and a right to a lawyer that resonate beyond the traditional Republican Party and will help us to grow the Republican Party with the youth.”¶ Mr. Paul has argued that his libertarian brand of politics can help the GOP reach out to young voters and minorities who have supported Democrats in recent elections.

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## Case

### Heg Turn

**No threat to America and institutions solve material decline**

**Cohen and Zenko 12** \*Micah Zenko is a Fellow in the Center for Preventive Action at the Council on Foreign Relations. Michael A. Cohen is a Fellow at the Century Foundation [March/April 2012, Clear and Present Safety: The United States Is More Secure Than Washington Thinks, Foreign Affairs]

Last August, the Republican presidential contender Mitt Romney performed what has become a quadrennial rite of passage in American presidential politics: he delivered a speech to the annual convention of the Veterans of Foreign Wars. His message was rooted in another grand American tradition: hyping foreign threats to the United States. It is "wishful thinking," Romney declared, "that the world is becoming a safer place.The opposite is true. Consider simply the jihadists, a near- nuclear Iran, a turbulent Middle East, an unstable Pakistan, a delusional North Korea, an assertive Russia, and an emerging global power called China. No, the world is not becoming safer." Not long after, U.S. Secretary of Defense Leon Panetta echoed Romney's statement. In a lecture last October, Panetta warned of threats arising "from terrorism to nuclear proliferation; from rogue states to cyber attacks; from revolutions in the Middle East, to economic crisis in Europe, to the rise of new powers such as China and India. All of these changes represent security, geopolitical, economic, and demographic shifts in the international order that make the world more unpredictable, more volatile and, yes, more dangerous." General Martin Dempsey, chairman of the Joint Chiefs of Staff, concurred in a recent speech, arguing that "the number and kinds of threats we face have increased significantly." And U.S. Secretary of State Hillary Clinton reinforced the point by claiming that America resides today in a "very complex, dangerous world." Within the foreign policy elite, there exists a pervasive belief that the post-Cold War world is a treacherous place, full of great uncertainty and grave risks. A 2009 survey conducted by the Pew Research Center for the People and the Press found that 69 percent of members of the Council on Foreign Relations believed that for the United States at that moment, the world was either as dangerous as or more dangerous than it was during the Cold War. Similarly, in 2008, the Center for American Progress surveyed more than 100 foreign policy experts and found that 70 percent of them believed that the world was becoming more dangerous. Perhaps more than any other idea, this belief shapes debates on U.S. foreign policy and frames the public's understanding of international affairs. There is just one problem. It is simply wrong. The world that the United States inhabits today is a remarkably safe and secure place. It is a world with fewer violent conflicts and greater political freedom than at virtually any other point in human history. All over the world, people enjoy longer life expectancy and greater economic opportunity than ever before.The United States faces no plausible existential threats, no great-power rival, and no near-term competition for the role of global hegemon. The U.S. military is the world's most powerful, and even in the middle of a sustained downturn, the U.S. economy remains among one of the world's most vibrant and adaptive. Although the United States faces a host of international challenges, they pose little risk to the overwhelming majority of American citizens and can be managed with existing diplomatic, economic, and, to a much lesser extent, military tools. This reality is barely reflected in U.S. national security strategy or in American foreign policy debates. President Barack Obama's most recent National Security Strategy aspires to "a world in which America is stronger, more secure, and is able to overcome our challenges while appealing to the aspirations of people around the world." Yet that is basically the world that exists today. The United States is the world's most powerful nation, unchallenged and secure. But the country's political and policy elite seems unwilling to recognize this fact, much less integrate it into foreign policy and national security decision-making. The disparity between foreign threats and domestic threatmongering results from a confluence of factors. The most obvious and important is electoral politics. **Hyping dangers serves the interests of both political parties.** For Republicans, who have long benefited from attacking Democrats for their alleged weakness in the face of foreign threats, there is little incentive to tone down the rhetoric; the notion of a dangerous world plays to perhaps their greatest political advantage. For Democrats, who are fearful of being cast as feckless, acting and sounding tough is a shield against gop attacks and an insurance policy in case a challenge to the United States materializes into a genuine threat. **Warnings about a dangerous world also benefit powerful bureaucratic interests**. The specter of looming dangers sustains and justifies the massive budgets of the military and the intelligence agencies, along with the national security infrastructure that exists outside government-defense contractors, lobbying groups, think tanks, and academic departments. There is also a pernicious feedback loop at work. Because of the chronic exaggeration of the threats facing the United States, Washington overemphasizes military approaches to problems (including many that could best be solved by nonmilitary means). The militarization of foreign policy leads, in turn, to further dark warnings about the potentially harmful effects of any effort to rebalance U.S. national security spending or trim the massive military budget- warnings that are inevitably bolstered by more threat exaggeration. Last fall, General Norton Schwartz, the U.S. Air Force chief of staff, said that defense cuts that would return military spending to its 2007 level would undermine the military's "ability to protect the nation" and could create "dire consequences." Along the same lines, Panetta warned that the same reductions would "invite aggression" from enemies. These are a puzzling statements given that the U.S. defense budget is larger than the next 14 countries' defense budgets combined and that the United States still maintains weapons systems designed to fight an enemy that disappeared 20 years ago. Of course, threat inflation is not new. During the Cold War, although the United States faced genuine existential threats, American political leaders nevertheless hyped smaller threats or conflated them with larger ones. Today, there are no dangers to the United States remotely resembling those of the Cold War era, yet policymakers routinely talk in the alarmist terms once used to describe superpower conflict. Indeed, the mindset of the United States in the post-9/11 world was best (albeit crudely) captured by former Vice President Dick Cheney. While in o/ce, Cheney promoted the idea that the United States must prepare for even the most remote threat as though it were certain to occur. The journalist Ron Suskind termed this belief "the one percent doctrine," a reference to what Cheney called the "one percent chance that Pakistani scientists are helping al Qaeda build or develop a nuclear weapon." According to Suskind, Cheney insisted that the United States must treat such a remote potential threat "as a certainty in terms of our response." Such hair-trigger responsiveness is rarely replicated outside the realm of national security, even when the government confronts problems that cause Americans far more harm than any foreign threat. According to an analysis by the budget expert Linda Bilmes and the economist Joseph Stiglitz, in the ten years since 9/11, the combined direct and indirect costs of the U.S. response to the murder of almost 3,000 of its citizens have totaled more than $3 trillion. A study by the Urban Institute, a nonpartisan think tank, estimated that during an overlapping period, from 2000 to 2006, 137,000 Americans died prematurely because they lacked health insurance. Although the federal government maintains robust health insurance programs for older and poor Americans, its response to a national crisis in health care during that time paled in comparison to its response to the far less deadly terrorist attacks. Rather than Cheney's one percent doctrine, what the United States actually needs is a 99 percent doctrine: a national security strategy based on the fact that the United States is a safe and well- protected country and grounded in the reality that the opportunities for furthering U.S. interests far exceed the threats to them. Fully comprehending the world as it is today is the best way to keep the United States secure and resistant to the overreactions that have defined its foreign policy for far too long. Better than ever The United States, along with the rest of the world, currently faces a period of economic and political uncertainty. But consider four long-term global trends that underscore just how misguided the constant fear-mongering in U.S. politics is: the falling prevalence of violent conflict, the declining incidence of terrorism, the spread of political freedom and prosperity, and the global improvement in public health. In 1992, there were 53 armed conflicts raging in 39 countries around the world; in 2010, there were 30 armed conflicts in 25 countries. Of the latter, only four have resulted in at least 1,000 battle-related deaths and can therefore be classified as wars, according to the Uppsala Conflict Data Program: the conflicts in Afghanistan, Iraq, Pakistan, and Somalia, two of which were started by the United States. Today, wars tend to be low-intensity conflicts that, on average, kill about 90 percent fewer people than did violent struggles in the 1950s. Indeed, the first decade of this century witnessed fewer deaths from war than any decade in the last century. Meanwhile, the world's great powers have not fought a direct conflict in more than 60 years-"the longest period of major power peace in centuries," as the Human Security Report Project puts it. Nor is there much reason for the United States to fear such a war in the near future: no state currently has the capabilities or the inclination to confront the United States militarily. Much of the fear that suffuses U.S. foreign policy stems from the trauma of 9/11. Yet although the tactic of terrorism remains a scourge in localized conflicts, between 2006 and 2010, the total number of terrorist attacks declined by almost 20 percent, and the number of deaths caused by terrorism fell by 35 percent, according to the U.S. State Department. In 2010, more than three-quarters of all victims of terrorism-meaning deliberate, politically motivated violence by nonstate groups against noncombatant targets-were injured or killed in the war zones of Afghanistan, Iraq, Pakistan, and Somalia. Of the 13,186 people killed by terrorist attacks in 2010, only 15, or 0.1 percent, were U.S. citizens. In most places today-and especially in the United States-the chances of dying from a terrorist attack or in a military conflict have fallen almost to zero. As violence and war have abated, freedom and democratic governance have made great gains. According to Freedom House, there were 117. And during that time, the number of autocracies declined from 62 to 48. To be sure, in the process of democratizing, states with weak political institutions can be more prone to near-term instability, civil wars, and interstate conflict. Nevertheless, over time, democracies tend to have healthier and better-educated citizens, almost never go to war with other democracies, and are less likely to fight nondemocracies. Economic bonds among states are also accelerating, even in the face of a sustained global economic downturn. Today, 153 countries belong to the World Trade Organization and are bound by its dispute-resolution mechanisms. Thanks to lowered trade barriers, exports now make up more than 30 percent of gross world product, a proportion that has tripled in the past 40 years. The United States has seen its exports to the world's fastest-growing economies increase by approximately 500 percent over the past decade. Currency flows have exploded as well, with $4 trillion moving around the world in foreign exchange markets every day. Remittances, an essential instrument for reducing poverty in developing countries, have more than tripled in the past decade, to more than $440 billion each year. Partly as a result of these trends, poverty is on the decline: in 1981, half the people living in the developing world survived on less than $1.25 a day; today, that figure is about one-sixth. Like democratization, economic development occasionally brings with it significant costs. In particular, economic liberalization can strain the social safety net that supports a society's most vulnerable populations and can exacerbate inequalities. Still, from the perspective of the United States, increasing economic interdependence is a net positive because trade and foreign direct investment between countries generally correlate with long-term economic growth and a reduced likelihood of war. A final trend contributing to the relative security of the United States is the improvement in global health and well-being. People in virtually all countries, and certainly in the United States, are living longer and healthier lives. In 2010, the number of people who died from aids- related causes declined for the third year in a row. Tuberculosis rates continue to fall, as do the rates of polio and malaria. Child mortality has plummeted worldwide, thanks in part to expanded access to health care, sanitation, and vaccines. In 1970, the global child mortality rate (deaths of children under five per 1,000) was 141; in 2010, it was 57. In 1970, global average life expectancy was 59, and U.S. life expectancy was 70. Today, the global figure is just under 70, and the U.S. figure is 79. These vast improvements in health and well-being contribute to the global trend toward security and safety because countries with poor human development are more war-prone. Phantom menace None of this is meant to suggest that the United States faces no major challenges today. Rather, the point is that the problems confronting the country are manageable and pose minimal risks to the lives of the overwhelming majority of Americans. None of them-separately or in combination-justifies the alarmist rhetoric of policymakers and politicians or should lead to the conclusion that Americans live in a dangerous world. Take terrorism. Since 9/11, no security threat has been hyped more. Considering the horrors of that day, that is not surprising. But the result has been a level of fear that is completely out of proportion to both the capabilities of terrorist organizations and the United States' vulnerability. On 9/11, al Qaeda got tragically lucky. Since then, the United States has been preparing for the one percent chance (and likely even less) that it might get lucky again. But al Qaeda lost its safe haven after the U.S.-led invasion of Afghanistan in 2001, and further military, diplomatic, intelligence, and law enforcement efforts have decimated the organization, which has essentially lost whatever ability it once had to seriously threaten the United States. According to U.S. o/cials, al Qaeda's leadership has been reduced to two top lieutenants: Ayman al-Zawahiri and his second-in-command, Abu Yahya al-Libi. Panetta has even said that the defeat of al Qaeda is "within reach."The near collapse of the original al Qaeda organization is one reason why, in the decade since 9/11, the U.S. homeland has not suffered any large-scale terrorist assaults. All subsequent attempts have failed or been thwarted, owing in part to the incompetence of their perpetrators. Although there are undoubtedly still some terrorists who wish to kill Americans, their dreams will likely continue to be frustrated by their own limitations and by the intelligence and law enforcement agencies of the United States and its allies. As the threat from transnational terrorist groups dwindles, the United States also faces few risks from other states. China is the most obvious potential rival to the United States, and there is little doubt that China's rise will pose a challenge to U.S. economic interests. Moreover, there is an unresolved debate among Chinese political and military leaders about China's proper global role, and the lack of transparency from China's senior leadership about its long-term foreign policy objectives is a cause for concern. However, the present security threat to the U.S. mainland is practically nonexistent and will remain so. Even as China tries to modernize its military, its defense spending is still approximately one-ninth that of the United States. In 2012, the Pentagon will spend roughly as much on military research and development alone as China will spend on its entire military. While China clumsily flexes its muscles in the Far East by threatening to deny access to disputed maritime resources, a recent Pentagon report noted that China's military ambitions remain dominated by "regional contingencies" and that the People's Liberation Army has made little progress in developing capabilities that "extend global reach or power projection." In the coming years, China will enlarge its regional role, but this growth will only threaten U.S. interests if Washington attempts to dominate East Asia and fails to consider China's legitimate regional interests. It is true that China's neighbors sometimes fear that China will not resolve its disputes peacefully, but this has compelled Asian countries to cooperate with the United States, maintaining bilateral alliances that together form a strong security architecture and limit China's room to maneuver. The strongest arguments made by those warning of Chinese influence revolve around economic policy. The list of complaints includes a host of Chinese policies, from intellectual property theft and currency manipulation to economic espionage and domestic subsidies. Yet none of those is likely to lead to direct conflict with the United States beyond the competition inherent in international trade, which does not produce zero-sum outcomes and is constrained by dispute-resolution mechanisms, such as those of the World Trade Organization. If anything, China's export-driven economic strategy, along with its large reserves of U.S. Treasury bonds, suggests that Beijing will continue to prefer a strong United States to a weak one. Nuclear fear It is a matter of faith among many American politicians that Iran is the greatest danger now facing the country. But if that is true, then the United States can breathe easy: Iran is a weak military power. According to the International Institute for Strategic Studies, Iran's "military forces have almost no modern armor, artillery, aircraft or major combat ships, and un sanctions will likely obstruct the purchase of high-technology weapons for the foreseeable future." Tehran's stated intention to project its interests regionally through military or paramilitary forces has made Iran its own worst enemy. Iran's neighbors are choosing to balance against the Islamic Republic rather than fall in line behind its leadership. In 2006, Iran's favorability rating in Arab countries stood at nearly 80 percent; today, it is under 30 percent. Like China's neighbors in East Asia, the Gulf states have responded to Iran's belligerence by participating in an emerging regional security arrangement with the United States, which includes advanced conventional weapons sales, missile defenses, intelligence sharing, and joint military exercises, all of which have further isolated Iran. Of course, the gravest concerns about Iran focus on its nuclear activities.Those fears have led to some of the most egregiously alarmist rhetoric: at a Republican national security debate in November, Romney claimed that an Iranian nuclear weapon is "the greatest threat the world faces." But it remains unclear whether Tehran has even decided to pursue a bomb or has merely decided to develop a turnkey capability. Either way, Iran's leaders have been su/ciently warned that the United States would respond with overwhelming force to the use or transfer of nuclear weapons. Although a nuclear Iran would be troubling to the region, the United States and its allies would be able to contain Tehran and deter its aggression-and the threat to the U.S. homeland would continue to be minimal. Overblown fears of a nuclear Iran are part of a more generalized American anxiety about the continued potential of nuclear attacks. Obama's National Security Strategy claims that "the American people face no greater or more urgent danger than a terrorist attack with a nuclear weapon." According to the document, "international peace and security is threatened by proliferation that could lead to a nuclear exchange. Indeed, since the end of the Cold War, the risk of a nuclear attack has increased." If the context is a state-against-state nuclear conflict, the latter assertion is patently false. The demise of the Soviet Union ended the greatest potential for international nuclear conflict. China, with only 72 intercontinental nuclear missiles, is eminently deterrable and not a credible nuclear threat; it has no answer for the United States' second- strike capability and the more than 2,000 nuclear weapons with which the United States could strike China. In the past decade, Cheney and other one-percenters have frequently warned of the danger posed by loose nukes or uncontrolled fissile material. In fact, the threat of a nuclear device ending up in the hands of a terrorist group has diminished markedly since the early 1990s, when the Soviet Union's nuclear arsenal was dispersed across all of Russia's 11 time zones, all 15 former Soviet republics, and much of eastern Europe. Since then, cooperative U.S.-Russian eaorts have resulted in the substantial consolidation of those weapons at far fewer sites and in comprehensive security upgrades at almost all the facilities that still possess nuclear material or warheads, making the possibility of theft or diversion unlikely. Moreover, the lessons learned from securing Russia's nuclear arsenal are now being applied in other countries, under the framework of Obama's April 2010 Nuclear Security Summit, which produced a global plan to secure all nuclear materials within four years. Since then, participants in the plan, including Chile, Mexico, Ukraine, and Vietnam, have fulfilled more than 70 percent of the commitments they made at the summit. Pakistan represents another potential source of loose nukes. The United States' military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan's nuclear arsenal, and successive senior U.S. government o/cials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is "very comfortable with the security of Pakistan's nuclear weapons." A more recent bogeyman in national security debates is the threat of so-called cyberwar. Policymakers and pundits have been warning for more than a decade about an imminent "cyber-Pearl Harbor" or "cyber-9/11." In June 2011, then Deputy Defense Secretary William Lynn said that "bits and bytes can be as threatening as bullets and bombs." And in September 2011, Admiral Mike Mullen, then chairman of the Joint Chiefs of Staff, described cyberattacks as an "existential" threat that "actually can bring us to our knees." Although the potential vulnerability of private businesses and government agencies to cyberattacks has increased, the alleged threat of cyberwarfare crumbles under scrutiny. No cyberattack has resulted in the loss of a single U.S. citizen's life. Reports of "kinetic-like" cyber- attacks, such as one on an Illinois water plant and a North Korean attack on U.S. government servers, have proved baseless. Pentagon networks are attacked thousands of times a day by individuals and foreign intelligence agencies; so, too, are servers in the private sector. But the vast majority of these attacks fail wherever adequate safeguards have been put in place. Certainly, none is even vaguely comparable to Pearl Harbor or 9/11, and most can be offset by commonsense prevention and mitigation efforts. A new approach Defenders of the status quo might contend that chronic threat inflation and an overmilitarized foreign policy have not prevented the United States from preserving a high degree of safety and security and therefore are not pressing problems. Others might argue that although the world might not be dangerous now, it could quickly become so if the United States grows too sanguine about global risks and reduces its military strength. Both positions underestimate the costs and risks of the status quo and overestimate the need for the United States to rely on an aggressive military posture driven by outsized fears. Since the end of the Cold War, most improvements in U.S. security have not depended primarily on the country's massive military, nor have they resulted from the constantly expanding definition of U.S. national security interests. The United States deserves praise for promoting greater international economic interdependence and open markets and, along with a host of international and regional organizations and private actors, more limited credit for improving global public health and assisting in the development of democratic governance. But although U.S. military strength has occasionally contributed to creating a conducive environment for positive change, those improvements were achieved mostly through the work of civilian agencies and nongovernmental actors in the private and nonprofit sectors. The record of an overgrown post-Cold War U.S. military is far more mixed. Although some U.S.-led military eaorts, such as the nato intervention in the Balkans, have contributed to safer regional environments, the U.S.-led wars in Afghanistan and Iraq have weakened regional and global security, leading to hundreds of thousands of casualties and refugee crises (according to the O/ce of the un High Commissioner for Refugees, 45 percent of all refugees today are fleeing the violence provoked by those two wars). Indeed, overreactions to perceived security threats, mainly from terrorism, have done significant damage to U.S. interests and threaten to weaken the global norms and institutions that helped create and sustain the current era of peace and security. None of this is to suggest that the United States should stop playing a global role; rather, it should play a diaerent role, one that emphasizes soft power over hard power and inexpensive diplomacy and development assistance over expensive military buildups. Indeed, the most lamentable cost of unceasing threat exaggeration and a focus on military force is that the main global challenges facing the United States today are poorly resourced and given far less attention than "sexier" problems, such as war and terrorism. These include climate change, pandemic diseases, global economic instability, and transnational criminal networks-all of which could serve as catalysts to severe and direct challenges to U.S. security interests. But these concerns are less visceral than alleged threats from terrorism and rogue nuclear states.They require long-term planning and occasionally painful solutions, and they are not constantly hyped by well-financed interest groups. As a result, they are given short shrift in national security discourse and policymaking. To avoid further distorting U.S. foreign policy and to take advantage of today's relative security and stability, policymakers need to not only respond to a 99 percent world but also solidify it. They should start by strengthening the global architecture of international institutions and norms that can promote U.S. interests and ensure that other countries share the burden of maintaining global peace and security. International institutions

such as the un (and its a/liated agencies, such as the International Atomic Energy Agency), regional organizations (the African Union, the Organization of American States, the European Union, and the Association of Southeast Asian Nations), and international financial institutions can formalize and reinforce norms and rules that regulate state behavior and strengthen global cooperation, provide legitimacy for U.S. diplomatic efforts, and offer access to areas of the world that the United States cannot obtain unilaterally. American leadership must be commensurate with U.S. interests and the nature of the challenges facing the country. The United States should not take the lead on every issue or assume that every problem in the world demands a U.S. response. In the majority of cases, the United States should "lead from behind"-or from the side, or slightly in the front-but rarely, if ever, by itself. That approach would win broad public support. According to the Chicago Council on Global Affairs' most recent survey of U.S. public opinion on international affairs, less than ten percent of Americans want the country to "continue to be the pre-eminent world leader in solving international problems." The American people have long embraced the idea that their country should not be the world's policeman; for just as long, politicians from both parties have expressed that sentiment as a platitude. The time has come to act on that idea. If the main challenges in a 99 percent world are transnational in nature and require more development, improved public health, and enhanced law enforcement, then it is crucial that the United States maintain a sharp set of nonmilitary national security tools. American foreign policy needs fewer people who can jump out of airplanes and more who can convene roundtable discussions and lead negotiations. But owing to cuts that began in the 1970s and accelerated significantly during its reorganization in the 1990s, the U.S. Agency for International Development (usaid) has been reduced to a hollow shell of its former self. In 1990, the agency had 3,500 permanent employees.Today, it has just over 2,000 staffers, and the vast majority of its budget is distributed via contractors and nongovernmental organizations. Meanwhile, with 30,000 employees and a $50 billion budget, the State Department's resources pale in comparison to those of the Pentagon, which has more than 1.6 million employees and a budget of more than $600 billion. More resources and attention must be devoted to all elements of nonmilitary state power-not only usaid and the State Department but also the Millennium Challenge Corporation, the National Endowment for Democracy, and a host of multilateral institutions that deal with the underlying causes of localized instability and ameliorate their effects at a relatively low cost. As U.S. General John Allen recently noted,"In many respects, usaid's efforts can do as much- over the long term-to prevent conflict as the deterrent effect of a carrier strike group or a marine expeditionary force." Allen ought to know: he commands the 100,000 U.S. troops fighting in Afghanistan. Upgrading the United States' national security toolbox will require reducing the size of its armed forces. In an era of relative peace and security, the U.S. military should not be the primary prism through which the country sees the world. As a fungible tool that can back up coercive threats, the U.S. military is certainly an important element of national power. However, it contributes very little to lasting solutions for 99 percent problems. And the Pentagon's enormous budget not only wastes precious resources; it also warps national security thinking and policymaking. Since the military controls the overwhelming share of the resources within the national security system, policymakers tend to perceive all challenges through the distorting lens of the armed forces and respond accordingly. This tendency is one reason the U.S. military is so big. But it is also a case of the tail wagging the dog: the vast size of the military is a major reason every challenge is seen as a threat. More than 60 years of U.S. diplomatic and military efforts have helped create a world that is freer and more secure. In the process, the United States has fostered a global environment that bolsters U.S. interests and generally accepts U.S. power and influence. The result is a world far less dangerous than ever before. The United States, in other words, has won. Now, it needs a national security strategy and an approach to foreign policy that reflect that reality..

## Politics

### PC not real

#### Political capital theory isn’t true -

1. arm twisting fails
2. horse-trading isn’t real
3. Obama perceives it as such
4. He doesn’t try to use it

Kumar 13 (Anita, White House Correspondent for McClatchy Washington Bureau, Formerly worked for the Washington Post, 5/24, "After Failing on Gun Legislation Obama Learning Limits of His Power")

The cheering crowds that helped vault him into a second term in the White House mean little, if anything, back in Washington. A close look at his most recent defeat – a series of proposals intended to curb gun violence – shows that election popularity does not automatically translate into legislative success. Nor do campaign-like efforts to win a vote in Congress. Obama put more effort into the proposals than he has most issues, but he still suffered one of his biggest legislative defeats.¶ The defeat illustrates a key truth – for all their power, presidents rarely succeed in manipulating votes on Capitol Hill. If anything, their abilities to twist arms have grown even more limited in recent years. Strained budgets leave them no extra money or pet projects to offer lawmakers in return for votes. And Obama’s detached personality and short history in Washington make him even less likely to wheel and deal with lawmakers.¶ “There’s not much presidents can do to change votes. It’s mostly a myth,” said George Edwards, a presidential scholar at Texas A&M University. “It’s never been that way and it’s less so now.”¶ His own election victory still fresh in his mind, Obama thought he had a clear path to bend Congress to his will after the horror of a mass shooting at an elementary school in Newtown, Conn., in December. His goal: the first significant new controls on guns in a generation.¶ He tapped Vice President Joe Biden to lead a task force to examine gun laws. Biden spent a month speaking to more than 200 organizations on all sides of the issue, from crime victims to religious leaders, law enforcement organizations to gun manufacturers.¶ Obama unveiled his sweeping package of executive actions and proposed legislation in January. He immediately began trying to sell it.¶ By the standards of a campaign, he did everything right.¶ Obama and Biden gave more than 30 speeches, interviews and online chats, oftentimes with families of gun victims at their side.¶ First lady Michelle Obama made a rare foray into the debate by delivering an emotional speech in her hometown of Chicago.¶ Obama’s political organization, Organizing for Action, held dozens of events, including candlelight vigils, rallies and meetings across the nation pushing the legislation.¶ Obama flew Newtown families to Washington to lobby senators and turned over his radio address for the first time to the parents of a slain child.¶ He did not win support for a proposal to renew a ban on assault weapons or to limit ammunition in clips. But support for greater background checks for gun purchases topped 90 percent in the polls. If it were an election with voters choosing whether to pass background checks, Obama would have won a landslide.¶ But it was not an either-or choice. Congress could choose to do nothing.¶ In March and April, Obama and Biden spoke to nearly 30 senators in 45 meetings or phone calls, according to the White House. The president stressed gun control proposals at a pair of dinners with Republican senators. In the final days before the vote, Obama’s chief of staff, Denis McDonough, visited an undecided Democratic senator, Heidi Heitkamp of North Dakota, but failed to convince her to vote for the background check legislation.¶ New York Mayor Michael Bloomberg, founder of Mayors Against Illegal Guns and one of the nation’s most prominent gun control advocates, said he and Biden divvied up a list of senators to call in the hopes of convincing them that backing the legislation would not hurt them in their next election.¶ “I’m thoroughly convinced that he and the president and this whole administration are committed as they could possibly be to help end the scourge of gun violence,” Bloomberg said.¶ It wasn’t enough.¶ Last month, the Democratic-controlled Senate defeated all significant gun proposals sought by Obama after some lawmakers bristled at being pushed by Obama.¶ Obama, along with gun control advocates, insist they’ll try again, at least for the proposal to expand background checks to private and Internet sales. But the initial defeat underscored the limits of presidential power and suggested Obama faces major challenges for the duration of his presidency.¶ “We actually thought he and the vice president handled this perfectly. They handled this quite deftly,” said Matt Bennett, co-founder of Third Way, a think tank, who served in the Clinton White House. “The gun issues are about as hard as it gets.”¶ “The president worked really hard on this issue,” said Sen. Charles Schumer, D-N.Y. “He put political capital on the line. He made it one of his centerpieces of his State of the Union address and he went all around the country to try and rally support.”¶ So what happened?¶ For one, Obama and his allies often staged events in states that had been sites of mass shootings such as Illinois, Connecticut or Virginia, instead of states where senators were wavering on the issue.¶ For another, his high-profile push may have cost as many votes as it won, given how polarizing modern presidents have become.¶ Sen. John McCain of Arizona, one of four Republicans who voted for expanded background checks, said a better model of leadership would be Obama’s role on the proposed rewrite of the nation’s immigration laws. On that, Obama has expressed support but stayed out of the way to let members of Congress negotiate among themselves. “I think his role has been very appropriate, exactly appropriate,” he said of Obama’s approach on immigration.¶ Finally, Obama might have relied more on personal talks with senators and less on the bully pulpit, presidential scholars said.¶ “As soon as Obama jumps in, it makes it hard for Republicans to get behind it,” said Robert Spitzer, a political scientist at State University of New York at Cortland who has written extensively on gun control. “Obama could have done more on the inside game.”¶ But Dan Gross, president of the Brady Campaign to Prevent Gun Violence, said the importance of public speeches is misunderstood. They aren’t, he said, designed to convince more Americans to favor proposals backed by Obama, but rather to convince them to lobby Congress.¶ If the use of presidential rhetoric is misunderstood, the power of the presidency itself is often overstated.¶ Even Lyndon B. Johnson, whose domineering personality and negotiating skills helped fuel his reputation for helping push through major legislation, benefitted from large Democratic majorities in Congress and broad popular support in the wake of John F. Kennedy’s assassination.¶ There have been instances where presidents have helped get legislation passed, though they are the exception, not the rule.¶ Bill Clinton offered to support Republicans who voted for the North American Free Trade Agreement. George W. Bush pushed through prescription drug coverage in a rare middle-of-the-night vote in the House of Representatives by making last-minute phone calls to lawmakers.¶ But Obama’s effort to lobby or socialize with lawmakers has been sporadic, and some of his recent dinners came after the gun votes were all but locked up.¶ Also, he has little to offer the lawmakers.¶ While Washington was once a place where lawmakers openly traded votes with goodies from the White House – a president’s attendance at an event or a project in their home state – it’s not like that anymore.¶ The practice of offering so-called earmarks – pet projects for lawmakers tucked into appropriations bills – fell out of favor following years of criticism by watchdog groups, constituents and even some lawmakers themselves. And even if it hadn’t, the money for many of those projects has dried up as the economy took a downturn and the government slashed budgets.¶ “There’s not a lot he can give,” said John Burke, a political science professor at the University of Vermont who studies the presidency.¶ Still, some say, Obama should have offered senators appointments to boards or behind-the-scenes assistance with fundraising – items that even senators from conservative states who want to keep their distance from the president might want.¶ But in a recent wide-ranging news conference, Obama pushed back on the notion that he could get Congress to – as he called it – “behave.”¶ “I can urge them to,” he said. “I can put pressure on them. I can, you know, rally the American people. . . . But ultimately they themselves are going to have to say, we want to do the right thing.”