## 1AC

**Plan**

**The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain on the grounds that executive indefinite detention violates the Suspension Clause.**

**advantage 1 – Afghanistan**

**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 regim**e. 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 U**nited**S**tates **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** **U**nited **S**tates **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** **U**nited **S**tates **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 is 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** thecountry’s corrupt **governmental systems**. Equally important was building the civilian institutions at the central and subnational levels.

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

Blank 12 (Stephen, Strategic Studies Institute, US Army War College, as served as the Strategic Studies Institute’s expert on the Soviet bloc and the post-Soviet world since 1989. Prior to that he was Associate Professor of Soviet Studies at the Center for Aerospace Doctrine, Research, and Education, Maxwell Air Force Base, AL; and taught at the University of Texas, San Antonio; and at the University of California, Riverside, holds a B.A. in history from the University of Pennsylvania, and an M.A. and Ph.D. in history from the University of Chicago, January 27, 2012, “Whither the new great game in Central Asia?”, pdf)

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

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

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

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

**Independently, Instability results in multiple conflict scenarios specifically- Indo-Pak**

**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.**

**advantage 2 – Abstention**

**Failure of the Supreme Court to substantively rule on detention authority causes judicial abstention on national security issues**

**Vaughns 13** (B.A. (Political Science), J.D., University of California, Berkeley, School of Law. Professor of Law, University of Maryland Francis King Carey School of Law.Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years After 9/11 ASIAN AMERICAN LAW JOURNAL [Volume 20:7])

After being reversed three times in a row in Rasul, Hamdan, and then Boumediene, the D.C. Circuit finally managed in Kiyemba to reassert, and have effectively sanctioned, its highly deferential stance towards the Executive in cases involving national security. In particular, the D.C. Circuit concluded that an order mandating the Uighurs’ release into the continental United States would impermissibly interfere with the political branches’ exclusive authority over immigration matters. But this reasoning is legal ground that the Supreme Court has already implicitly—and another three-judge panel of the D.C. Circuit more explicitly—covered earlier. As such, **the Bush administration’s strategy in employing the “war” paradigm at all costs and without any judicial intervention**, while unsuccessful in the Supreme Court**, has finally paid off in troubling, and binding, fashion in the D.C. Court of Appeals**, **where, national security fundamentalism reigns supreme and the Executive’s powers as “Commander-in-Chief” can be exercised with little, if any, real check**; arguably **leading to judicial abstention in cases involving national security**. **The consequences of the Kiyemba decision** potentially **continue** today, for example, **with passage of the** **N**ational **D**efense **A**uthorization **A**ct of 2012,246 which President Obama signed, with reservations, into law on December 31, 2011.247 This defense authorization bill contains detainee provisions that civil liberties groups and human rights advocates have strongly opposed.248 The bill’s supporters strenuously objected to the assertion that these provisions authorize the indefinite detention of U.S. citizens.249 In signing the bill, President **Obama later issued a statement to the effect that although he had reservations about some of the provisions, he “vowed to use discretion when applying” them**.250 Of course, **that does not mean another administration would do the same, especially if courts abstain from their role as protectors of individual rights.** In the years after 9/11, **the Supreme Court asserted its role incrementally, slowly entering into the debate about the rights of enemy combatant detainees. This was a “somewhat novel role” for the Court**.251 Unsurprisingly, in so doing, **the Court’s intervention “strengthened detainee rights, enlarged the role of the judiciary, and rebuked broad assertions of executive power**.”252 Also unsurprisingly, **the Court’s decisions in this arena “prompted strong reactions from the other two branches**.”253 This may be so because, as Chief Justice Rehnquist noted, the Court had, in the past, recognized the primacy of liberty interests only in quieter times, after national emergencies had terminated or perhaps before they ever began.254 However, since the twentieth century, wartime has been the “normal state of affairs.”255 If **perpetual war is the new “normal,” the political branches likely will be in a permanent state of alert. Thus, it remains for the courts to exercise vigilance and courage** about protecting individual rights, **even if these assertions of judicial authority come as a surprise to the political branches of government**.256 But courts, like any other institution, are susceptible to being swayed by influences external to the law. Joseph Margulies and Hope Metcalf make this very point in a 2011 article, noting that much of the post-9/11 scholarship mirrors this country’s early wartime cases and “envisions a country that veers off course at the onset of a military emergency but gradually steers back to a peacetime norm once the threat recedes, via primarily legal interventions.”257 This model, they state, “cannot explain a sudden return to the repressive wilderness just at the moment when it seemed the country had recovered its moral bearings.”258 Kiyemba is very much a return to the repressive wilderness. In thinking about the practical and political considerations that inevitably play a role in judicial decisionmaking (or non-decisionmaking, as the case may be), I note that **the Court tends to be reluctant to decide constitutional cases if it can avoid doing so**, as it did in Kiyemba. Arguably, **this doctrine of judicial abstention is tied to concerns of institutional viability**, in the form of public perception, and to concerns about respecting the separation of powers.259 But, as Justice Douglas once famously noted, when considering the separation of powers, the Court should be mindful of Chief Justice Marshall’s admonition that “it is a constitution we are expounding.”260 Consequently, “[i]t is far more important [for the Court] to be respectful to the Constitution than to a coordinate branch of government.”261 And **while brave jurists have made such assertions throughout the Court’s history, the Court is not without some pessimism about its ability to effectively protect civil liberties in wartimes or national emergencies.** For example, in Korematsu—one of the worst examples of judicial deference in times of crisis—Justice Jackson dissented, but he did so “with explicit resignation about judicial powerlessness,” and concern that it was widely believed that “civilian courts, up to and including his own Supreme Court, perhaps should abstain from attempting to hold military commanders to constitutional limits in wartime.”262 Significantly, even when faced with the belief that the effort may be futile, Justice Jackson dissented. As I describe in the following section, that dissent serves a valuable purpose. But, for the moment, I must consider the external influences on the court that resulted in that feeling of judicial futility.

**SCOTUS can restrain the president under authority granted by the Suspension Clause- that ensures precedent setting**

**Garrett 12** (Brandon, Roy L. and Rosamund Woodruff Morgan Professor of Law, University of Virginia School of Law. HABEAS CORPUS AND DUE PROCESSCORNELL LAW REVIEW [Vol. 98:47] page lexis)

T**he relationship between the Suspension Clause and the Due Process Clause has** **sweeping implications for** the **detention** of suspected terrorists and military engagements in multiple countries after September 11, 2001. In Boumediene v. Bush, **the Supreme Court** for the first time **clearly gave the Suspension Clause independent force as an affirmative source of judicial power** to adjudicate habeas petitions **and as a source of meaningful process to prisoners in custody**.15 As a consequence of this decision, **Congress now cannot enact jurisdictions tripping legislation to deny executive detainees access to judicial review of the type that it has twice tried and failed to do in the past decade**.16 A **noncitizen detained as a national security threat may now have procedural rights to contest the detention**.17 **Even as the Executive has crafted nuanced positions on power and procedure** for detaining persons for national security reasons, an**d even as Congress has adopted new detention-authorizing legislation,**1**8 the judiciary continues to play a central role,** though sometimes unwillingly and deferentially, **in detention review**.19 Apart from these specific developments, **I argue that the reinvigorated Suspension Clause jurisprudence will continue to have ripple effects across all areas regulated by habeas corpus.** What process must the government use to ensure that it detains the correct people? The traditional assumption was that the Due Process Clause provided the answers. Judges and scholars described a functional relationship in which due process supplied the rights while habeas provided the procedural means to vindicate them. Justice Antonin Scalia expressed this view in its starkest form in his INS v. St. Cyr dissent, arguing that the Suspension Clause “does not guarantee any content to (or even the existence of) the writ of habeas corpus.”20 Judges and scholars have long assumed that due process offers more protections than habeas corpus, or that the substance of habeas is coextensive with the Due Process Clause.21 Others have suggested that the Suspension Clause has a “structural” role, entwined with other individual rights guarantees.22 **The U.S. government, in the wake of** the **September 11, 2001** attacks, ad**opted the view that noncitizens captured and detained abroad had no due process rights and thus no habeas remedy**, and the D.C. Circuit agreed.23 In two cases that reshaped habeas jurisprudence, **Hamdi** v. Rumsfeld, decided in 2004,24 a**nd Boumediene**, decided in 2008,25 the Court connected the Suspension Clause and the Due Process Clause in a new way. Hamdi seemed to indicate that the Due Process Clause approach had triumphed. The Hamdi plurality applied the cost-benefit due process test from Mathews v. Eldridge26 to outline the procedural rights of citizens who challenge their detention.27 Following Hamdi, the precise scope of what due process required seemed the “looming question” for the future of executive detention.28 In response, the government hastily implemented administrative screening procedures for detainees, ostensibly to comply with the bare minimum that due process appeared to require.29 In Boumediene, the Court chose a different constitutional path. The Court did not discuss whether Guant´anamo detainees had due process rights, but instead held that the Suspension Clause independently supplies process to ensure review of executive detention.30 T**he Court put to rest the notion that the Suspension Clause is an empty vessel and regulates only the conditions for congressional suspension of the writ**. Instead, th**e Court held that the Suspension Clause itself extended “the fundamental procedural protections of habeas corpus.**”31 The Court’s view complements recent scholarship examining the common law origins of habeas corpus.32 However, w**hile an- swering the Suspension Clause question, the ruling created another puzzle.** T**he Court held that a prisoner should have a “meaningful opportunity” to demonstrate unlawful confinement, but it did not specify what process the Suspension Clause ensures, nor to what degree due process concerns influence the analys**is.33 Lowe**r court rulings elaborating on the process for reviewing detainee petitions have displayed confusion as to which sources to rely on.**34 This Article tries to untangle this important knot.

**Judicial abstention props up military adventurism and illegal arms sales**

**Scales and Spitz 12** (Ann Scales, prof at U Denver law school. Laura Spitz, prof at U Colorado Law School. The Jurisprudence of the Military-Industrial ComplexSeattle Journal for Social Justice Volume 1 | Issue 3 Article 51 10-11-2012)

First, **our nation’s history and legitimacy rest upon a separation of military power from democratic governance**. For that reason, **the armed forces are subject to constitutional constraint**. Second, however, **as an aspect of separation of powers, courts try not to interfere in areas of foreign policy and military affairs**. Often this is referred to as the “political question” doctrine, a determination that a matter is beyond the capabilities of judges. **The strongest argument for this deference is that the political branches**—or the military itself—**have superior expertise in military matters**. **That may be true in some situations**. **I am not sure,** for example, **the Supreme Court would have been the best crowd to organize the invasion of Normandy**. **But what we now have is an increasingly irrational deference**.7 Consider three cases: a. In Korematsu v. United States,8 the Supreme Court said the internment of Japanese-Americans at the beginning of 1942 was constitutional, based upon a military assessment of the possibility of espionage in preparation for a Japanese invasion of the United States. It turns out that the information provided by the military to the Supreme Court was falsified.9 But note two things: (1) the nation was in the midst of a declared world war, and (2) in subsequent less urgent circumstances, Korematsu would seem to argue strongly for military justifications to have to be based upon better, more reliable information than was offered there. b. In the 1981 case of Rostker v. Goldberg,10 the Supreme Court decided that it was constitutional for Congress to exclude women from the peacetime registration of potential draftees, even though both the Department of Defense and the Army Chief of Staff had testified that including women would increase military readiness. But Congress got the benefit of the military deference doctrine as a cover for what I think was a sinister political purpose—to protect the manliness of war—and the Supreme Court felt perfectly free to ignore what those with the real expertise had to say. c. Most recently, **in Hamdi v. Rumsfeld**,11 **the Fourth Circuit held that a U.S. citizen who had been designated an “enemy combatant**”12 **could be detained indefinitely without access to counse**l. In this case, however, not only is there no declared war,13 but also, the only evidence regarding Mr. Hamdi was a two-page affidavit by a Defense Department underling, Mr. Mobbs. Mobbs stated that Mr. Hamdi was captured in Afghanistan, and had been affiliated with a Taliban military unit. The government would not disclose the criteria for the “enemy combatant” designation, the statements of Mr. Hamdi that allegedly satisfied those criteria, nor any other bases for the conclusion of Taliban “affiliation.”14 And that is as good as the evidence for life imprisonment without trial has to be. **Deference to the military has become abdication**. In other words, **what we presently have is not civilian government under military control, but something potentially worse, a civilian government ignoring military advice**,15 **but using the legal doctrine of military deference for its own imperialist ends**. Third, **the gigantic military establishment and permanent arms industry are now in the business of justifying their continued existences**. **This justification is done primarily, as you know, by retooling for post-Cold War enemies**—the so-called “rogue states”—**while at the same time creating new ones,** for example **by arming corrupt regimes** in Southeast Asia.16 I was reminded of this recently when we went to see comedian Kate Clinton. She thought Secretary Powell had taken too much trouble in his presentation attempting to convince the Security Council that Iraq had weapons of mass destruction.17 Why not, she asked, “just show them the receipts?” Fourth, we **have seen the exercise of extraordinary influence by arms makers on both domestic and foreign policy**. For domestic pork barrel and campaign finance reasons, **obsolete or unproven weapons systems continue to be funded even when the military does not want them**!18 And, **just when we thought we had survived the nuclear arms race nightmare, the United States has undertaken to design new kinds of nuclear weapons**,19 even **when those designs have little military value**.20 Overseas, **limitations on arms sales are being repealed, and arms markets that should not exist are being constantly expanded21** for the sake of dumping inventory, even if those weapons are eventually used for “rogue” purposes by rogue states**. This system skews security considerations, and militarizes foreign policy.** Force has to be the preferred option because other conduits of policy are not sufficiently well-funded. Plus, those **stockpiled weapons have got to be used or sold so that we can build more**. Fifth, enlarging upon this in a document entitled The National Security Policy of the United States, **we were treated last September to “the Bush doctrine,” which for the first time in U.S. history declares a preemptive strike policy.** This document states, “America will act against emerging threats before they are fully formed.”22 If they are only emerging and not fully formed, you may wonder, how will we know they are “threats”? Because someone in Washington has that perception, and when the hunch hits, it is the official policy of this country to deploy the military.23 **All options—including the use of nuclear weapons—are always on the table**.

**Presidential adventurism causes nuclear war**

**Symonds 13** [Peter, leading staff writer for the World Socialist Web Site and a member of its International Editorial Board. He has written extensively on Middle Eastern and Asian politics, contributing articles on developments in a wide range of countries, 4-5, “Obama’s “playbook” and the threat of nuclear war in Asia,” <http://www.wsws.org/en/articles/2013/04/05/pers-a05.html>]

The Obama administration has engaged in **reckless provocations** against North Korea over the past month, inflaming tensions in North East Asia and **heightening the risks of war**. Its campaign has been accompanied by the relentless demonising of the North Korean regime and claims that the US military build-up was purely “defensive”. However, the Wall Street Journal and CNN revealed yesterday that the Pentagon was following a step-by-step plan, dubbed “the playbook”, drawn up months in advance and approved by the Obama administration earlier in the year. The flights to South Korea by nuclear capable B-52 bombers on March 8 and March 26, by B-2 bombers on March 28, and by advanced F-22 Raptor fighters on March 31 were all part of the script.¶ There is of course nothing “defensive” about B-52 and B-2 nuclear strategic bombers. The flights were designed to demonstrate, to North Korea in the first instance, the ability of the US military to conduct nuclear strikes at will anywhere in North East Asia. The Pentagon also exploited the opportunity to announce the boosting of anti-ballistic missile systems in the Asia Pacific and to station two US anti-missile destroyers off the Korean coast.¶ According to CNN, the “playbook” was drawn up by former defence secretary Leon Panetta and “supported strongly” by his replacement, Chuck Hagel. The plan was based on US intelligence assessments that “there was a low probability of a North Korean military response”—in other words, that Pyongyang posed no serious threat. Unnamed American officials claimed that Washington was now stepping back, amid concerns that the US provocations “could lead to miscalculations” by North Korea.¶ However, having deliberately ignited one of the most dangerous flashpoints in Asia, there are no signs that the Obama administration is backing off. Indeed, on Wednesday, Defence Secretary Hagel emphasised the military threat posed by North Korea, declaring that it presented “a real and clear danger”. The choice of words was deliberate and menacing—an echo of the phrase “a clear and present danger” used to justify past US wars of aggression.¶ The unstable and divided North Korean regime has played directly into the hands of Washington. Its bellicose statements and empty military threats have nothing to do with a genuine struggle against imperialism and are inimical to the interests of the international working class. Far from opposing imperialism, its Stalinist leaders are looking for a deal with the US and its allies to end their decades-long economic blockade and open up the country as a new cheap labour platform for global corporations.¶ As the present standoff shows, Pyongyang’s acquisition of a few crude nuclear weapons has in no way enhanced its defence against an American attack. The two B-2 stealth bombers that flew to South Korea could unleash enough nuclear weapons to destroy the country’s entire industrial and military capacity and murder even more than the estimated 2 million North Korean civilians killed by the three years of US war in Korea in the 1950s.¶ North Korea’s wild threats to attack American, Japanese and South Korean cities only compound the climate of fear used by the ruling classes to divide the international working class—the only social force capable of preventing war.¶ Commentators in the international media speculate endlessly on the reasons for the North Korean regime’s behaviour. But the real question, which is never asked, should be: why is the Obama administration engaged in the dangerous escalation of tensions in North East Asia? The latest US military moves go well beyond the steps taken in December 2010, when the US and South Korean navies held provocative joint exercises in water adjacent to both North Korea and China.¶ Obama’s North Korea “playbook” is just one aspect of his so-called “pivot to Asia”—a comprehensive diplomatic, economic and military strategy aimed at ensuring the continued US domination of Asia. The US has stirred up flashpoints throughout the region and created new ones, such as the conflict between Japan and China over the disputed Senkaku/Diaoyu islands in the East China Sea. Obama’s chief target is not economically bankrupt North Korea, but its ally China, which Washington regards as a dangerous potential rival. Driven by the deepening global economic crisis, US imperialism is using its military might to assert its hegemony over Asia and the entire planet.¶ The US has declared that its military moves against North Korea are designed to “reassure” its allies, Japan and South Korea, that it will protect them. Prominent figures in both countries have called for the development of their own nuclear weapons. US “reassurances” are aimed at heading off a nuclear arms race in North East Asia—not to secure peace, but to reinforce the American nuclear monopoly.¶ The ratcheting-up of tensions over North Korea places enormous pressures on China and the newly-selected leadership of the Chinese Communist Party. An unprecedented public debate has opened up in Beijing over whether or not to continue to support Pyongyang. The Chinese leadership has always regarded the North Korean regime as an important buffer on its northeastern borders, but now fears that the constant tension on the Korean peninsula will be exploited by the US and its allies to launch a huge military build-up.¶ Indeed, all of the Pentagon’s steps over the past month—the boosting of anti-missile systems and practice runs of nuclear capable bombers—have enhanced the ability of the US to fight a nuclear war against China. Moreover, the US may not want to provoke a war, but its provocations always run the risk of escalating dangerously out of control. Undoubtedly, Obama’s “playbook” for war in Asia contains many more steps beyond the handful leaked to the media. The Pentagon plans for all eventualities, including the possibility that a Korean crisis could bring the US and China head to head **in a** catastrophic **nuclear conflict**.

**Arms sales increase the probability of regional conflict and leads to US-Russia-China escalation**

**Klare 13** (Michael Klare is a professor of peace and world security studies at Hampshire College The Booming Global Arms Trade Is Creating a New Cold War http://www.motherjones.com/politics/2013/05/global-arms-trade-new-cold-war)

These are just some examples of **recent arms deal**s (or ones under discussion) that **suggest a fresh willingness** on the part of the major powers **to use weapons transfers as instruments of geopolitical intrusion and competition**. **The reappearance of such behavior suggests a troubling resurgence of** **Cold War-like rivalries**. Even if senior leaders in **Washington, Moscow, and Beijing** are not talking about resurrecting some twenty-first-century version of the Cold War, **anyone with a sense of history can see** that **they are headed down a grim**, well-trodden **path toward crisis and confrontation**. What gives this an added touch of irony is that **leading arms suppliers and recipients, including the** **U**nited **S**tates, recently [**voted**](http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html)in the U.N. General Assembly **to approve the** [**Arms Trade Treaty**](http://www.un.org/disarmament/ATT/) that was meant to impose significant constraints on the global trade in conventional weapons. Although **the treaty has many loopholes, lacks an enforcement mechanism, and will require years to achieve full implementation**, it represents the first genuine attempt by the international community to place real restraints on weapons sales. "This treaty won't solve the problems of Syria overnight, no treaty could do that, but it will help to prevent future Syrias," [said](http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html) Anna MacDonald, the head of arms control for [Oxfam International](http://www.oxfam.org/) and an ardent treaty supporter. "It will help to reduce armed violence. It will help to reduce conflict." This may be the hope, but such **expectations will quickly be crushed if the major weapons suppliers, led by the US** and Russia, once again **come to see arms sales as the tool of choice to gain geopolitical advantage in areas of strategic importance**. **Far from bringing peace and stability**—as the proponents of such transactions invariably claim—**each new arms deal now holds the possibility of taking us another step closer to a new Cold War with all the heightened risks of regional friction and conflict that entails**. Are we, in fact, seeing a mindless new example of the old saw: that those who don't learn from history are destined to repeat it?

**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

**China war causes extinction- even with a swift victory**

**Wittner 11** (11/30/11 Dr. Lawrence, Prof of History Emeritus at SUNY Albany, “Is a Nuclear War with China Possible?”)

But what would that "victory" entail? **An attack with these Chinese nuclear weapons would immediately slaughter at least 10 million Americans in a great storm of blast and fire,** **while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher**. Both nations would be reduced to smoldering, radioactive wastelands. Also, **radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a "nuclear winter" around the globe** -- **destroying agriculture, creating worldwide famine, and generating chaos and destruction**. Moreover, in another decade the extent of this catastrophe would be far worse. The Chinese government is currently expanding its nuclear arsenal, and by the year 2020 it is [expected](http://www.nukestrat.com/china/Book-35-125.pdf) to more than double its number of nuclear weapons that can hit the United States. The U.S. government, in turn, has [plans](http://www.guardian.co.uk/world/2011/oct/30/nuclear-powers-weapons-spending-report) to spend hundreds of billions of dollars "modernizing" its nuclear weapons and nuclear production facilities over the next decade.

**solvency**

#### Detention policy is incomprehensible in the status quo- only Supreme Court rulings send a clear judicial review test for lower court judges and spills over to effective Congressional policy

Garrett 12 (Brandon, Roy L. and Rosamund Woodruff Morgan Professor of Law, University of Virginia School of Law. HABEAS CORPUS AND DUE PROCESSCORNELL LAW REVIEW [Vol. 98:47] page lexis)

The Suspension Clause casts a broad shadow over the regulation of all forms of detention. It has exerted direct and indirect influence even in contexts where statutes largely supplant habeas corpus as the primary vehicle for judicial review. The Executive, courts, and Congress have long been concerned with avoiding Suspension Clause problems, and the Supreme Court’s own sometimes-carried-out warnings that it will narrowly interpret efforts to restrict judicial review to avoid potential Suspension Clause problems have, many years before Boumediene, helped to structure judicial review of detention. I have argued that the Suspension Clause explains why, as the Court put it in INS v. St. Cyr, “[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”451 Post- Boumediene, judges may rely on the Suspension Clause more directly, and not just as a principle of constitutional avoidance. Understanding the Suspension Clause as affirmatively guaranteeing a right to habeas process to independently examine the authorization for a detention helps to explain habeas and constitutional doctrine across a range of areas. Why does habeas corpus sometimes provide access to process unavailable under the Due Process Clause, while sometimes due process provides more process than habeas would? At its core, habeas corpus provides judges with process in situations where the need for review of legal and factual questions surrounding detention is most pressing. This view of habeas process can be seen as related to the Court’s long line of decisions that guarantee a “right of access” to courts without clarifying the source of that “[s]ubstantive [r]ight.”452 In Boumediene, the Court grounded that right in the Suspension Clause. This basis for the right makes some sense of the varied nature of habeas review in which statutes and case law differ depending on the type of detention. Judicial review does not vary categorically; for example, immigration does not receive less review than postconviction or military detention habeas. Instead, judicial review varies within each category. This is the product of evolving executive detention policies, varying postconviction practice, and changes over time in federal statutes, some poorly conceived and some sensible. No one actor provides coherence to habeas practice at any time, and some of the statutes are notoriously Byzantine, poorly drafted, and illogical. Judges have long played, however, an important role in interpreting the writ (and the underlying constitutional rights). Indeed, for some time, the Supreme Court’s interventions have reinforced the role habeas plays, particularly in the executive detention context. In response to the Court’s habeas rulings, which generally avoid defining the precise reach of the Suspension Clause, Congress has drafted statutes to preserve judicial review of detentions in an effort to steer clear of Suspension Clause problems, with mixed results.

Ruling on the Suspension Clause ensures judicial review over all executive detention- prevents circumvention and ensures due process rights

Garrett 12 (Brandon, Roy L. and Rosamund Woodruff Morgan Professor of Law, University of Virginia School of Law. HABEAS CORPUS AND DUE PROCESSCORNELL LAW REVIEW [Vol. 98:47] page lexis)

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

Failing to articulate habeas standards for lower court judges makes indefinite detention inevitable and triggers your disads

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

**Observer effect solves- assumes all of their empirics and warrants**

**Deeks 13** (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

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

#### No executive circumvention

Green 11 (Craig, Prof of Law at Temple Unviersity , Northwestern University Law Review, Vol 105, No 3"Ending the Korematsu Era: An Early View From the War on Terror Cases")

Jackson’s hard-nosed analysis may seem intellectually bracing, but it understates the real-world power of judicial precedent to shape what is po- litically possible.306 Although presidential speeches occasionally declare a willingness to disobey Supreme Court rulings, actual disobedience of this sort is rare and would carry grave political consequences.307 Even President Bush’s losses in the GWOT cases did not spur serious consideration of noncompliance despite broad support from a Republican Congress.308 Likewise, from the perspective of strengthening presidential power, Kore- matsu-era decisions emboldened President Bush in his twenty-first-century choices about Guantánamo and military commissions.309 Thus, the modern historical record shows that judicial precedent can both expand and restrict the political sphere of presidential action.¶ The operative influence of judicial precedent is even stronger than a court-focused record might suggest, as the past sixty years have witnessed a massive bureaucratization and legalization of all levels of executive gov- ernment.310 From the White House Counsel, to the Pentagon, to other enti- ties addressing intelligence and national security issues, lawyers now occupy such high-level governmental posts that almost no significant policy is determined without multiple layers of legal review.311 And these execu- tive lawyers are predominantly trained to think—whatever else they may believe—that Supreme Court precedent is authoritative and binding.312

## 2AC

### Afghanistan

#### They’ll model

PILPG 8, the Public International Law & Policy Group (PILPG), is a global pro bono law firm that provides legal assistance to foreign governments and international organizations on the negotiation and implementation of peace agreements, the drafting and implementation of post-conflict constitutions, and the creation and operation of war crimes tribunals. PILPG also assists states with the training of judges and the drafting of legislation, “brief of the public international law & policy group as amicus curiae in support of petitioners”, <http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_08_1234_PetitionerAmCuPILPG.authcheckdam.pdf>

iii. transnational judicial dialogue confirms this court’s leadership in promoting adherence to rule of law in times of conflict.¶ PILPG’s on-the-ground experience demonstrating the leadership of this Court is confirmed by a study of transnational judicial dialogue. Over the past halfcentury, the world’s constitutional courts have been engaged in a rich and growing transnational judicial dialogue on a wide range of constitutional law issues. See, e.g., Melissa A. Waters, Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law, 93 Geo. L.J. 487 (2005); Anne-Marie Slaughter, Judicial Globalization, 40 Va. J. Int’l L. 1103 (2000). Courts around the world consider, discuss, and cite foreign judicial decisions not out of a sense of legal obligation, but out of a developing sense that foreign decisions are valuable resources in elucidating complex legal issues and suggesting new approaches to common problems. See Waters, supra, at 493-94.¶ In this transnational judicial dialogue, the decisions of this Court have exercised a profound — and profoundly positive — influence on the work of foreign and international courts. See generally Constitutionalism and Rights: The Influence of the United States Constitution Abroad (Louis Henkin & Albert J. Rosenthal eds., 1990); Anthony Lester, The Overseas Trade in the American Bill of Rights, 88 Colum. L. Rev. 537 (1988). As Anthony Lester of the British House of Lords has noted,¶ “there is a vigorous overseas trade in the Bill of Rights, in international and constitutional litigation involving norms derived from American constitutional law. When life or liberty is at stake, the landmark judgments of the Supreme Court of the United States, giving fresh meaning to the principles of the Bill of Rights, are studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C.” Id. at 541.¶ This Court’s overseas influence is not limited to the Bill of Rights. From Australia to India to Israel to the United Kingdom, **foreign courts have looked to the seminal decisions of this Court as support for their own rulings upholding judicial review, enforcing separation of powers, and providing a judicial check on the political branches**.¶ Indeed, for foreign courts, this Court’s rulings in seminal cases such as Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803),4 Brown v. Board of Education, 347 U.S. 436 (1954),5 United States v. Nixon, 418 U.S. 683 (1974),6 and Roper v. Simmons, 543 U.S. 551 (2005)7 take on a special significance. **Reliance on the moral authority of this Court can provide invaluable support for those foreign courts struggling to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own national legal systems**.¶ This Court’s potential to positively influence the international rule of law is particularly important in the nascent transnational judicial dialogue surrounding the war on terrorism and the primacy of rule of law in times of conflict. As the world’s courts begin to grapple with the novel, complex, and delicate legal issues surrounding the modern-day war on terrorism, and as states seek to develop judicial mechanisms to address domestic conflicts, foreign governments and judiciaries are confronting similar challenges. In particular, foreign governments and judiciaries must consider how to accommodate the legitimate needs of the executive branch in times of war within the framework of the law.¶ Although foreign courts are just beginning to address these issues, it is already clear that they are looking to the experience of the U.S., and to the precedent of this Court, for guidance on upholding the rule of law in times of conflict. In recent years, **courts in Israel, the United Kingdom, Canada, and Australia have relied on the precedent of this Court in decisions addressing the rights of detainees**.8 In short, as a result of this Court’s robust influence on transnational judicial dialogue, its decisions have proved extraordinarily important to the development of the rule of law around the world.¶ International courts have similarly relied on the precedent of this Court in influential decisions. For example, in the important and developing area of international criminal law, the international war crimes tribunals for Yugoslavia and Rwanda both relied heavily on the precedent of this Court in their early opinions. In the first five years of the Yugoslav Tribunal, the first in the modern iteration of the war crimes tribunals, the justices cited this Court at least seventeen times in decisions establishing the fundamental legal principles under which the Tribunal would function.9 The International Criminal Tribunal for Rwanda similarly relied on this Court’s precedent, citing this Court at least twelve times in its first five years.10 The precedent of this Court has provided a crucial foundation for international criminal law. The reliance on the precedent of this Court speaks to the Court’s international leadership on the promotion of respect for the rule of law in times of conflict.¶ By ruling in favor of the Petitioners, **this Court will reaffirm the precedent established in its prior decisions granting habeas rights to Guantanamo detainees and**, in doing so, **demonstrate to these foreign courts, and to other courts who will be addressing these issues in the future, that all branches of government must be bound by the rule of law, even in the most challenging of times**.

### CP

#### Judicial deference is responsible for the split—a less deferential role for the courts is necessary to restore balance in civil-military relations

Mazur 10 (Diane, Professor of Law, University of Florida Levin College of Law, "A More Perfect Military: How the Constitution Can Make Our Military Stronger" Oxford University Press, Print)

One of the ways the doctrine of judicial deference has left a scar on civil-military relations is by changing how civilian government manages the military advice it receives. I don't meant to suggest this is a new problem for civilian control of the military—President Harry Truman certainly struggled to manage the military advice offered by General Douglas MacArthur during the Korean War1—but judicial deference has contributed to a more pervasive problem broadly affecting the way civilians engage with information from military sources. Strictly speaking, judicial deference in military affairs applies only when constitutional or legal issues are in play. When the question is whether a particular military policy or plan of action is a wise or prudent thing to do, and not whether it is constitutional or lawful, courts have no role in answering the question and judicial deference is irrelevant. However, because judicial deference has expanded beyond an abstract legal theory into a more general way of thinking about military affairs, it has come to have an indirect effect on all forms of military decision making by civilian officials. Deference in a strictly legal sense is only a part of the broad cultural deference on military issues we have adopted since the end of the Vietnam War. We consistently discourage civilians from serious engagement with military issues. Wc assume most civilians arc incapable of understanding the military and have little to add to the conversation. We suspect they have not earned the right to speak about military affairs, even though at some level we must know civilian engagement is necessary in a system built on civilian control of the military. There is always a risk that asking too many questions will be interpreted as a lack of support for the military, and so the easier path is often to endorse whatever appears to be the consensus "military" position on an issue, whether or not the consensus position is actually helpful to the military. Our inclination toward deference in matters involving the military is so strong that military advice can sometimes carry the power of a military veto when the advice becomes part of public debate. Few government officials want to be in the position of asking for the military's viewpoint on an issue and then choosing a policy direction inconsistent with that viewpoint. As a result, civilians may package or present military advice in a way that mis-lcadingly removes any conflict with civilian policy preference, ensuring at least the appearance of a deferential attitude. The "Don't Ask, Don't Tell" debate offered a good example of this phenomenon. Congress put on what were essentially "show hearings" to create the appearance of unified military opposition to gay citizens in military service. I don't doubt that in 1993 military opposition outweighed military support, but the hearings were carefully scrubbed of any military expertise from the minority viewpoint. The military's increasing political partisanship also plays an important role in how we characterize and respond to military advice, and there may be no better example of why political partisanship is damaging to military professionalism. At the same time civilians have an incentive to package military opinion selectively for favorable effect, the military may also feel an obligation to shape the advice it gives (or to withhold contrary opinions) in an effort to be loyal to a particular political interest. Political partisanship within the military imposes great pressure on military professionals to produce advice supportive of its political allegiance. At the very least, there will always be an air of uncertainty as to whether military advice has been tainted by a desire to either support or undercut the commander in chief or the Congress. Even the general public responds to military advice differently depending on whether the advice matches expectations about the military's presumed political allegiance. When military officials were uncooperative to the point of being insubordinate and refused to seriously consider how to implement President Clinton's proposal to end sexual orientation discrimination in the military, most people believed they were simply following their professional obligation to give civilian leaders candid military advice. We are so comfortable with the idea of military testimony running counter to policy preferences of the Democratic Party that no one objected when General Colin Powell gave a speech at the Naval Academy encouraging midshipmen to resign if they believed they could not morally serve in a military that also permitted gay people to serve." That's not advice, that's insubordination. On the other hand, when military advice upsets the careful civil-military consensus we usually construct for public consumption and also runs counter to the military's expected political allegiances, people take notice and ask whether the military has violated its ethical obligation of subordination to civilian control. The recent example of note occurred when General Eric Shinseki, the Army chief of staff, responded to a question during a Senate hearing asking how large a force would be necessary to maintain public order in Iraq following an invasion. This was information Congress needed to know in order to carry out its constitutional responsibilities to declare war and fund military operations. Shinseki responded with a significantly higher number than the administration's party line, and it began a debate among civil-military experts that continues today. A scries of essays in the professional journal Armed Forces and Society examined the controversy,5 and one author seriously argued Shinseki had a professional obligation to answer in a way that would protect the president from the perception he might be acting against military advice, or at least without a consensus military opinion.'1 Our system of civilian control of the military included, according to this argument, an obligation on the part of military professionals to adjust their advice to shore up civilian policy preferences. I have a feeling, however, the same ethical argument would not have been made on behalf of a Democratic Party commander in chief. The solution is both simple to understand and difficult to achieve. If we were more comfortable with open engagement and conversation about military advice—if we were more comfortable with robust, messy debate about military issues—it would not be so important to shape or distort military advice to match civilian preferences. If we were more comfortable with military viewpoints, and believed we could invite them, consider them, weigh their strengths and weaknesses, balance them against other nonmilitary concerns, and then, if necessary, make a decision inconsistent with those viewpoints, our civil-military relations would be much healthier. This is the same dynamic that inhibits a healthy civil-military exchange in judicial settings. We believe the system cannot tolerate the complexity or the inconvenience of real information, and so we construct a system specifically designed to generate a false consensus—the doctrine of judicial deference—so we can all feel better about making military decisions.

#### Civilian control key to military effectiveness—solves array of existential threats

Dr. Mackubin Thomas Owens, Professor, National Security Affairs, “What Military Officers Need to Know About Civil-Military Relations,” NAVAL WAR COLLEGE REVIEW v. 65 n. 2, Spring 2012, p. 81-82.

The combination of civil-military relations patterns and service doctrines affect military effectiveness. In essence, the ultimate test of a civil-military relations pattern is how well it contributes to the effectiveness of a state's military, especially at the level of strategic assessment and strategy making. (50) However, Richard Kohn has explicitly called into question the effectiveness of the American military in this realm, especially with regard to the planning and conduct of operations other than those associated with large-scale conventional war. "Nearly twenty years after the end of the Cold War, the American military, financed by more money than the entire rest of the world spends on its armed forces, failed to defeat insurgencies or fully suppress sectarian civil wars in two crucial countries, each with less than a tenth of the U.S. population, after overthrowing those nations' governments in a matter of weeks." (51) He attributes this lack of effectiveness to a decline in the military's professional competence with regard to strategic planning. "In effect, in the most important area of professional expertise--the connecting of war to policy, of operations to achieving the objectives of the nation--the American military has been found wanting. The excellence of the American military in operations, logistics tactics, , weaponry, and battle has been manifest for a generation or more. Not so with strategy." (52) This phenomenon manifests itself, he argues, in recent failure to adapt to a changing security environment in which the challenges to global stability are "less from massed armies than from terrorism; economic and particularly financial instability; failed states; resource scarcity (particularly oil and potable water); pandemic disease; climate change; and international crime in the form of piracy, smuggling, narcotics trafficking, and other forms of organized lawlessness." He observes that this decline in strategic competence has occurred during a time in which the U.S. military exercises enormous influence in the making of foreign and national security policies. He echoes the claim of Colin Gray: "All too often, there is a black hole where American strategy ought to reside." (53) Is there something inherent in current U.S. civil-military affairs that accounts for this failure of strategy? The failure of American civil-military relations to generate strategy can be attributed to the confluence of three factors. The first of these is the continued dominance within the American system of what Eliot Cohen has called the "normal" theory of civil-military relations, the belief that there is a clear line of demarcation between civilians who determine the goals of the war and the uniformed military who then conduct the actual fighting. Until President George W. Bush abandoned it when he overruled his commanders and embraced the "surge" in Iraq, the normal theory has been the default position of most presidents since the Vietnam War. Its longevity is based on the idea that the failure of Lyndon Johnson and Robert McNamara to defer to an autonomous military realm was the cause of American defeat in Vietnam. The normal theory can be traced to Samuel Huntington's The Soldier and the State, in which he sought a solution to the dilemma that lies at the heart of civil-military relations--how to guarantee civilian control of the military while still ensuring the ability of the uniformed military to provide security. His solution was a mechanism for creating and maintaining a professional, apolitical military establishment, which he called "objective control." Such a professional military would focus on defending the United States but avoid threatening civilian control. (54) But as Cohen has pointed out, the normal theory of civil-military relations often has not held in practice. Indeed, such storied democratic war leaders as Winston Churchill and Abraham Lincoln "trespassed" on the military's turf as a matter of course, influencing not only strategy and operations but also tactics. The reason that civilian leaders cannot simply leave the military to its own devices during war is that war is an iterative process involving the interplay of active wills. What appears to be the case at the outset of the war may change as the war continues, modifying the relationship between political goals and military means. The fact remains that wars are not fought for their own purposes but to achieve policy goals set by the political leadership of the state. The second factor, strongly reinforced by the normal theory of civil-military relations, is the influence of the uniformed services' organizational cultures. Each military service is built around a "strategic concept" that, according to Samuel Huntington, constitutes "the fundamental element of a military service," the basic "statement of [its] role ... or purpose in implementing national policy." (55) A clear strategic concept is critical to the ability of a service to organize and employ the resources that Congress allocates to it. It also largely determines a service's organizational culture. Some years ago, the late Carl Builder of the RAND Corporation wrote The Masks of War, in which he demonstrated the importance of the organizational cultures of the various military services in creating their differing "personalities," identities, and behaviors. His point was that each service possesses a preferred way of fighting and that "the unique service identities ... are likely to persist for a very long time." (56)

#### Double bind- either the environment is resilient or its destruction is inevitable

Lazarus ‘10 (Richard J. Lazarus, prof of law at Georgetown University Law Center, “Human Nature, the Laws of Nature, and the Nature of Environmental Law” 24 VA. ENVTL. L.J. 231-261, January 2010)

Some environmental pollution is, of course, unavoidable. Basic human life requires the consumption of the surrounding natural environment. While the First Law of Thermodynamics provides for the conservation of energy (and classical physics for the conservation Of mass),16 the Second Law provides for the inevitable increases in entropy that result from human activity. The term "entropy" refers to the degree of disorder in a system. For instance, as energy is transformed from one form to another, some energy is lost as heat; as the energy decreases, the disorder in the system, and hence the entropy, increases. IS Natural resource destruction and environmental contamination is a form of entropy. Disorder in the ecosystem is increased when common resources such as air and water are polluted. Disorder is likewise increased whenever complex natural resources are broken down into smaller parts. In consuming natural resources to provide the basic necessities of energy, food, shelter, and clothing, humankind necessarily increases entropy in parts of the ecosystem in the form of polluted global resources and destroyed natural resources. Fundamental human biological processes compel it. Human life depends, as life does in many animals, on a series of chemical reactions within the cells of the human body capable of breaking down complex chemical compounds such as glucose into its component parts of carbon dioxide and water.19 The technical name of the necessary biochemical process for the breakdown of glucose is carbohydrate catabolism, which itself consists of three major stages: glycosis, citric acid cycle (known as the "Krebs cycle") and phosphorylation.20 For the purposes of this essay, however, what is important for the nonscientific reader to understand is how these many biochemical processes ultimately depend on the breaking down of more complex and ordered chemical compounds into less complex and more disordered chemical elements. Some natural resource destruction and environmental pollution are necessarily implicated by such processes. As energy is transformed from one form to another, natural resources are consumed and contamination of existing natural resources results. To the extent, moreover, that it is human nature to seek to survive, it is human nature to undertake activities that cause such natural resource destruction and environmental pollution. That central threshold proposition should be noncontroversial. What is no doubt more controversial is whether it is similarly human nature to consume the natural environment in a nonsustainable fashion. Garrett Hardin's classic article "The Tragedy of the Commons," published in Science in 1968,21 offers a disturbing answer to that question. Although Hardin's central thesis is well-known, it is worth emphasis here by repetition: The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy. As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?" . .. [T]he rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another. .. But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit-in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.22 Hardin describes his thesis in the limited context of human nature faced with a pasture for animal grazing, but it all too easily extends with potentially catastrophic results to many contemporary environmental settings. The expansive reach of modern technology has turned the once seemingly infinite into the finite. Populations of ocean fisheries can be irreversibly destroyed. Underground aquifers of drinking water supplies can be forever lost. And, of course, potentially destructive global climate change may occur from increased loadings of carbon to the atmosphere from anywhere in the globe. Modern technology also has its limits, as the nation was tragically reminded in the aftermath of Hurricane Katrina this past year. Modern technology allowed for the development of a major metropolitan area where nature, standing alone, would have precluded any such possibility. New Orleans was largely below sea level and existed only by grace of a complex series of levees designed to keep water from flowing along its natural course. Even when properly constructed, such levees are no match, however, for the enormous force of hurricanes like Katrina, especially when thousands of acres of surrounding wetlands, which might have otherwise provided some natural protection from flood waters, are filled to satisfy ever-rising demands for residential, commercial, and industrial development. The upshot: the devastation of a city, the loss of human life, and the destruction of an invaluable aquatic ecosystem by floodwaters laden with toxic contaminants.23 Hardin's central insight regarding the implications of human nature for the natural environment extends much further, however, than to just the potential tragic destruction of resource commons. Each of the individual actors in Hardin's proffered tragedy cause ruin to all because of their inability to look beyond the here and now. They perceive well their own, present short-term needs. They are unable to apprehend and take into account the longerterm implications for individual persons at other times or in other places. Even if presented by information detailing those broader spatial and temporal impacts, they would be unable on their own to temper their own immediate actions as necessary to avoid the resource common's tragic destruction. The risks facing New Orleans have been well-known for decades. Yet, short-term needs always trumped government's willingness and ability to expend the massive resources necessary to guard against long-term, low-risk events, even if of potentially catastrophic consequences.z4 More recent research into behavioral psychology and human cognitive biases offers contemporary confirmation of Hardin's basic thesis. Experimental research shows that humans strongly favor avoidance of immediate costs over less immediate, longerterm, and distant risks. Dubbed by some a "myopia" bias, scientists argue that a strong basic desire to avoid immediate costs is present throughout nature and is deeply rooted in evolutionary biology.25 Others similarly argue that human genetic evolution has systematically favored consumerism and materialism, *i.e.,* the so-called "selfish gene. "26 When, over thousands of years ago, human beings relied on hunting and gathering to get their next meal, long-term planning was of little value. After all, without a means of preserving food, there was little reason to plan. It was better to consume what one found when one found it, especially when there was no assurance that more would be found tomorrow. "Our brains were built for a world in which the currency of the day did lose value over time. Put simply: food rotS."27 "[N]ature created within us a short-sighted set of moral instincts."28 Selfish shortsightedness and materialism became dominant tendencies in the competition with other species for survival. "Rather than leave some precious energy lying around to mold or be stolen, put it in your stomach and have your body convert the food into an energy savings account. "29 The drive for survival arguably extended to the production of heirs-survival by the passing of genes to one's children-and the accumulation of material wealth often seen as a necessary prerequisite for successful reproduction. *3D* And, "even though wealth may not relate to babies in an industrialized world, our instincts come from a time when concerns over material possessions were crucial."31 One commentator has gone so far as to suggest, provocatively, that "[h]uman failings, such as those that some call the Seven Deadly Sins, may all derive from our evolutionary traps. "32

#### Credible rule of law promotion is modelled by Latin America and is key to stability

Cooper, 08 (James, Institute Professor of Law and an Assistant Dean at California Western School of Law, "COMPETING LEGAL CULTURES AND LEGAL REFORM: THE BATTLE OF CHILE," 29 Mich. J. Int'l L. 501, lexis)

The legal transplantation process involves, by its very nature, the adoption of, adaptation n57 to, incorporation of, or reference to legal cultures from abroad. n58 Judges, along with other actors in the legal [\*512] sector - including prosecutors, justice ministry officials, judicial councils, supreme courts, law school professors, ombudspeople, and public defenders - often look to rules, institutions, and jurisprudence from other countries, particularly to those from similar legal traditions and Anglo-Saxon or other legal cultures. n59 Professor Alan Watson contends that "legal transplants [are] the moving of a rule or a system of law from one country to another, or from one people or another since the earliest recorded history." n60 For many centuries, the legal codes and legal cultures that were established in Latin America were products of the colonial experience with Spain and Portugal. n61 Prior to independence, laws were merely imposed on the territories of the colonial powers. Spain, through the legal culture it transplanted during colonial times, enjoyed a consistent influence on the New World in the Americas. n62 In the colonies, "the Spanish judiciary was given almost no autonomy and continued to depend on the Crown's scholarly-inspired statutes with limited reflection of the principles, customs and values arising from Spain's diverse regions." n63 After independence in the early part of the nineteenth century, however, legal models from other countries like the United Kingdom and the United States soon found receptive homes in the southern parts of the Western Hemisphere. n64 Statutes, customs, and legal processes were [\*513] transplanted in a wholesale fashion, themselves the product of French influence over the codification process. n65 For much of the twentieth century - at least until the early 1980s - most governments in Latin America pursued policies of economic nationalism, including import substitution and controls on capital flows. Latin American governments closed markets to foreign competition and pursued state intervention. n66 When these policies failed, they resulted in economic stagnation, hyperinflation, and the erosion of living standards. n67 International bond defaults in the early 1980s produced military dictatorships and oppressive regimes simultaneously throughout Latin [\*514] America. The region was ready for a change. n68 In exchange for the adoption of certain rules and regulations concerning the functioning of markets, and some strengthening of democratic institutions, the international financial community lent money to these nascent democracies in an attempt to encourage a set of "neoliberal" policies - the so-called Washington Consensus. n69 Privatization of state assets was a central part of the prescription. n70 Deregulation, the opening of markets to foreign competition, and the lowering of barriers to trade were also recommended policies. n71 These policies - involving the flow of capital, intellectual property, technology, professional services, and ideas - require that disputes be settled fairly and by a set of recognized and enforced laws. n72 The rule of law, after all, provides the infrastructure upon which democracies may thrive, because it functions to enforce property rights and contracts. n73 [\*515] Likewise, the rule of law is the foundation for economic growth and prosperity: n74 Law is a key element of both a true and a stable democracy and of efficient economic interaction and development both domestically and internationally ... . The quality and availability of court services affect private investment decision and economic behavior at large, from domestic partnerships to foreign investment. n75 Foreign businesses that invest or do business abroad want to ensure that their intellectual property, shareholder, capital repatriation, contract, and real property rights will be protected. n76 It is not surprising, then, that in [\*516] the aftermath of the economic reforms, or at times concurrently, there also have been efforts to implement new criminal procedures, protect human and civil rights, and increase access to justice. n77 Economic growth and sustainable development require a functioning, transparent, and efficient judicial sector. n78 "It is not enough to build highways and factories to modernize a State ... a reliable justice system - the very basis of civilization - is needed as well." n79 Without the rule of law, corruption in the tendering regimes was rampant, encouraging the looting of national treasuries, n80 the exploitation of labor, and the polluting of the environment. n81 As Professor Joseph Stiglitz sadly points out, "The market [\*517] system requires clearly established property rights and the courts to enforce them; but often these are absent in developing countries." n82 A healthy and independent judicial power is also one third of a healthy democratic government. n83 Along with the executive and legislative branches, the judicial branch helps form the checks and balances to allow for an effective system of governance. Instead, what has resulted over the last few decades in many Latin American governments is a breakdown in the rule of law: a judiciary unable to change itself, virtual impunity from prosecution, judicial officers gunned down, and the wholesale interference with the independence of the judicial power. The judiciary is not as independent as the other two branches of government. n84 Instead, the judiciary functions as part of the civil service: devoid of law-making abilities, merely a slot machine for justice that applies the various codes. n85

#### Instability causes disease

Manwaring, 05 (Max G., Retired U.S. Army colonel and an Adjunct Professor of International Politics at Dickinson College, October 2005, <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub628.pdf>)

President Chávez also understands that the process leading to state failure is the most dangerous long-term security challenge facing the global community today. The argument in general is that failing and failed state status is the breeding ground for instability, criminality, insurgency, regional conflict, and terrorism. These conditions breed massive humanitarian disasters and major refugee flows. They can host “evil” networks of all kinds, whether they involve criminal business enterprise, narco-trafficking, or some form of ideological crusade such as Bolivarianismo. More specifically, these conditions spawn all kinds of things people in general do not like such as murder, kidnapping, corruption, intimidation, and destruction of infrastructure. These means of coercion and persuasion can spawn further human rights violations, torture, poverty, starvation, disease, the recruitment and use of child soldiers, trafficking in women and body parts, trafficking and proliferation of conventional weapons systems and WMD, genocide, ethnic cleansing, warlordism, and criminal anarchy. At the same time, these actions are usually unconfined and spill over into regional syndromes of poverty, destabilization, and conflict .62 Peru’s Sendero Luminoso calls violent and destructive activities that facilitate the processes of state failure “armed propaganda.” Drug cartels operating throughout the Andean Ridge of South America and elsewhere call these activities “business incentives.” Chávez considers these actions to be steps that must be taken to bring about the political conditions necessary to establish Latin American socialism for the 21st century.63 Thus, in addition to helping to provide wider latitude to further their tactical and operational objectives, state and nonstate actors’ strategic efforts are aimed at progressively lessening a targeted regime’s credibility and capability in terms of its ability and willingness to govern and develop its national territory and society. Chávez’s intent is to focus his primary attack politically and psychologically on selected Latin American governments’ ability and right to govern. In that context, he understands that popular perceptions of corruption, disenfranchisement, poverty, and lack of upward mobility limit the right and the ability of a given regime to conduct the business of the state. Until a given populace generally perceives that its government is dealing with these and other basic issues of political, economic, and social injustice fairly and effectively, instability and the threat of subverting or destroying such a government are real.64 But failing and failed states simply do not go away. Virtually anyone can take advantage of such an unstable situation. The tendency is that the best motivated and best armed organization on the scene will control that instability. As a consequence, failing and failed states become dysfunctional states, rogue states, criminal states, narco-states, or new people’s democracies. In connection with the creation of new people’s democracies, one can rest assured that Chávez and his Bolivarian populist allies will be available to provide money, arms, and leadership at any given opportunity. And, of course, the longer dysfunctional, rogue, criminal, and narco-states and people’s democracies persist, the more they and their associated problems endanger global security, peace, and prosperity.65

Disease causes extinction- prefer most recent evidence that takes their authors into account

Shapiro 9/16 (Eliza, is a reporter for The Daily Beast, covering breaking news, crime, and politics. Previously, she worked at Capital New York, September 16, 2013, “A Scarier Bird Flu: CDC Chief Warns of Looming H7N9 Threat”, http://www.thedailybeast.com/contributors/eliza-shapiro.html///TS)

It was not an event for germophobes, as the CDC’s director described the crises Americans may soon face: an uncontainable virus, killer measles, and even the plague. ¶ Be afraid. Be very afraid.¶ While the U.S. public-health system has made major strides in stopping smoking and preventing HIV/AIDS, there is still [a slew of infectious diseases](http://www.thedailybeast.com/articles/2013/05/07/drug-resistant-gonorrhea-the-sex-superbug-is-not-worse-than-aids.html), new and old, that all Americans need to start thinking about.¶ Centers for Disease Control director Thomas Frieden outlined the looming crises in a talk this week, focusing on awareness and prevention while still name dropping a lot of scary stuff: the plague, bird flu, and killer measles. It was not a day for germophobes.¶ Never heard of [H7N9 flu](http://www.cdc.gov/flu/avianflu/h7n9-virus.htm)? Well, you might soon. It’s a recently discovered form of bird flu that Frieden said “is acting quite a bit like SARS,” the viral respiratory infection that has killed more than 8,000 people and created a worldwide panic in 2003.¶ [H7N9](http://www.thedailybeast.com/cheats/2013/04/05/china-kills-birds-after-sixth-flu-death.html) is lethal and spreads faster than [any other identified strain of bird flu](http://www.thedailybeast.com/articles/2013/01/14/flu-fears-the-race-between-pandemic-viruses-and-a-universal-vaccine.html). It moves from animals to humans, but, unlike previous versions of bird flu, doesn’t make animals sick. As a result, infected flocks can’t be contained, and there’s no effective vaccineffff.¶ This strain was discovered in China this past April. Of the 130 human infections reported, there were 44 deaths related to respiratory illnesses. Most of the infections were found in people with direct exposure to poultry.¶ Infections in China have tapered off, but this bird flu appears to be as seasonal as human flus, and may come back stronger as it gets colder.¶ “The only thing protecting us from a global pandemic right now is the fact that it doesn’t yet spread from person to person,” Frieden told the National Press Club on Tuesday. Gulp.¶ He’s also concerned about antibiotic-resistant tuberculosis, which he said is “spreading in long-term-care facilities and hospitals widely.” Then there are what the CDC calls “intentional diseases”—chemicals or diseases like anthrax, which could be used as biological weapons.¶ What’s highest on Frieden’s agenda? The plague.¶ After a person in rural Uganda was infected with the plague by a sick rat or flea [this year](http://www.nti.org/gsn/article/cdc-fights-plague-uganda-eye-biodefense/), 130 people were given preventive medication by CDC workers. That infection was contained.¶ But this scourge of the Middle Ages could have a terrifying modern application, too: “Plague is one of the organisms that we’re concerned about in terms of its potentially being used as a bio weapon,” Frieden said.¶ Another illness you might want to start taking seriously: the measles. ¶ There are still over 400 deaths a day from measles around the planet, Frieden said, with plenty of infections in the U.S. from a malady he called “perhaps the most infectious of all the infectious diseases.”¶ “If you take, oh, let’s say a room with a couple hundred people in it, and there is one person coughing with measles and there are just three or four others who are susceptible, they’ll probably get it. It’s that infectious,” he said.¶ It wasn’t all bad news from Frieden.¶ The most preventable cause of death—smoking—has plummeted among Americans in recent years. Frieden pointed to CDC data that show more than 1 million Americans have tried to quit smoking, and 100,000 or more have quit smoking altogether. And, crediting the [President’s Emergency Plan for AIDS Relief](http://www.pepfar.gov/about/index.htm), Frieden said some 5.5 million more people are able to live full lives even if they are HIV-positive.¶ Still—what about H7N9, drug-resistant TB, measles … and the plague?¶

### K

#### Nuclear War amplifies social tensions and creates violence- evacuation

Katz 82[ Arthur M, PHD in Chemistry from University of Rochester and MS in Meteorology from MIT, Cambridge Massachusetts, Pg 73]

Ikte recognized the potential for conflict between rural and suburban populations and urban evacuees. He believed that despite rural resistance, the overwhelming numbers of evacuees would force a grudging sharing of goods. However, this may not be the case. Limited nuclear war is strongly biased by its very nature to create the potential for these conflicts. Moreover, the problem is likely to be exaggerated in the United States. If the central city population is evacuated to the suburban and rural areas, the racial composition of the population will change. Almost 25 percent of the population in the central cities of the 157 SMSAs discussed above is nonwhite, while only 6 percent of the suburban and rural population is nonwhite. Moreover, the income distribution is very different, with the inner cities generally being poorer. Thus a combination of class and racial conf1ict may exacerbate the social tensions that existed in a situation similar to England in World War II. This will be particularly true if the war remains unterminated for any substantial period of time. This type of emerging racial conflict arose in Japan at the end of World War II: "The Koreans, who have been imported for labor, are feared and suspected of plotting against the Japanese .... Rumors and recrimination regarding a scapegoat minority such as the Koreans rose especially sharply. Given the changing but still unstable state of relations between white and nonwhite, and rich and poor groups in the United States, a dangerous conflict-laden situation might emerge under the conditions of terror and stress. Add to this the normal urban-suburban rural lifestyle dichotomies, and there is the potential of extreme disruption, perhaps even more long-lasting and threatening to societal stability than the physical damage.

#### IR nuclear war gaming key to good predictions and effective policy-making

Dong-ho Han 10, Ph.DCandidate in Political Science at the University of Nebraska-Lincoln, January 26, 2010, “Scenario Construction and Implications for IR Research: Connecting Theory to a Real World of Policy Making,” online: http://www.allacademic.com/one/isa/isa10/index.php?cmd=Download+Document&key=unpublished\_manuscript&file\_index=1&pop\_up=true&no\_click

\_key=true&attachment\_style=attachment&PHPSESSID=3e890fb59257a0ca9bad2e2327d8a24f

Another example of the use of scenario analysis by defense planners can be found in a series of papers by the Rand Corporation that deal with ongoing national security issues and develop national security policies for the United States governmentA recent article by Brian Jackson and David Frelinger entitled “Emerging Threats and Security Planning,” one of a series, deals with issues such as the security threats the U.Sgovernment faces now and suggests how to discern “true” threats from “false” threats.57 Coping with a variety of emerging threats means not just focusing on traditional and conventional ways of thinking but also concentrating on unconventional and unusual modes of reasoning, often based on fanciful thinking that scenario planning most seeks to inspire.¶ Again, a series of papers at the Rand Corporation have dealt with diverse national security issues and tried to devise various national security policies for the U.Sgovernment on the basis of scenario thinking and analysisOne of the early efforts in this domain could be found in a work on how nuclear war might start from the perspective of the early twenty-first century.58 In these papers various scenarios have been unfolded ranging from the possibility of nuclear warfare to emerging threats and new technological innovations in the military and industrial domainsThe diverse usages of scenarios in government think tanks like Rand suggest that scenarios could have potential to be used for not only articulating alternative possibilities in a certain issue area but also applying various thoughts of different outcomes into a real world of policy makingIn a word, scenario-based planning could make a difference in such diverse areas as business, military, economics, and politics.¶ Common and effective usage of scenario planning in other fields such as business, military, and even education strategic planning, strengthened by scenario-oriented methodological approaches, has considerable implications for the development of the field of IR in terms of the possible connection of theory and policyfffIf IR scholars could derive more practical insights from these fields of studies, their research could be more fruitful in the arena of real world policy makingThis is why we need a discussion of the necessity of introducing scenario analysis in our field, the topic of the following section.¶ 4Why the Study of International Politics Needs Scenario Analysis¶ Is the rationale for using scenarios in other disciplines still relevant for the study of international politics? Or do we have to find some other reasons for using the scenario methodology in our field?59 The potential relevance of the scenario method to the field of IR can be found in various efforts of IR scholars to use a variety of theoretical insights in order to think about an unknown future.¶ As the previous section suggested, the scenario methodology has been primarily developed in the areas of military planning and strategic managementIn the field of IR a few scholars have reevaluated the importance of scenario analysis as a social science methodology.60 These scholars contend that the scenario-building method could make a unique contribution to IR research because of the alternatives to a “scientific” approach it offers to mainstream IR theorizing.

### Politics

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

Raum, 2-18 -- Associated Press

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

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

#### Ending indefinite detention gives Obama PC for other battles

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

Are we closer to closing Guantanamo? It’s beginning to look that way. Earlier this week the Republican-led House and the Democratic-led Senate reached a compromise as part of an annual defense policy bill that would make it easier to transfer detainees from Guantanamo to foreign countries willing to take them. And while many in the press interpreted the news as evidence that [Gitmo](http://www.thedailybeast.com/witw/articles/2013/09/02/lifting-the-veil-with-souad-mekhennet-breaking-bread-with-a-former-guantanamo-prisoner-as-the-hunger-strike-wears-on.html)was here to stay, the bipartisan deal was actually a watershed moment in the long saga. It was the first time since Obama signed his original executive order that Congress moved to make it easier–not harder–to close the 12-year-old facility. “It’s as if the president finally decided to flip the on-switch and the White House and Defense Department got up and running to work towards closing Guantanamo,” says Christopher Anders, senior legislative counsel at the American Civil Liberties Union. “And it paid off, with a big Senate vote supporting easing some of the transfer restrictions.” There were many factors that led to this rare bit of tangible progress on Gitmo. Among them was a political climate that had been steadily shifting away from concerns about national security--especially as the country absorbs the reality that U.S. forces will be largely out of Afghanistan by year’s end. Meanwhile, Washington has been preoccupied with all-consuming battles over debt ceilings and sequestration. And in a time of austerity, arguments about the high cost of maintaining the controversial prison started to gain considerable traction with moderate Democrats and even some Republicans. But it is also the case that the Guantanamo stalemate began to give way to progress because of a resolute push by Obama as well as a willingness to spend political capital that was not always present during the president’s first term. Obama drove his advisers hard and pushed them to regularly update him on progress. And crucially, he made sure that his team engaged Congress, both to win the cooperation of lawmakers but also to signal that closing Guantanamo was one of the highest priorities of his second term.

#### Winners win on detention issues

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

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

### LOAC

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

Matishak ‘10 (Martin, Global Security Newswire, “U.S. Unlikely to Respond to Biological Threat With Nuclear Strike, Experts Say,”, <http://www.globalsecuritynewswire.org/gsn/nw_20100429_7133.php>, April 29, 2010)

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

#### Blurring between the LOAC and human rights law inevitable- ICJ

Ryan Goodman 10, “CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO”, http://ssrn.com/abstract=1666198

3.1 Type I erosion: Humanitarian interventions and other wars of choice 3.1.1 Taxing humanitarian intervention: should higher standards apply? Historically, the greatest challenge to the separation principle has been rooted in a normative proposition that parties fighting for a just cause should benefit from a relaxed application of jus in bello rules that might hinder their ability to win the war or repel an attack.10 A new challenge to the separation principle emerges from a different ambition. It suggests in some circumstances heightening jus in bello rules for states fighting for certain just causes. Notably, an erosion of the line in the former case helped set the stage for the latter. That is, the source of a major challenge to the separation of jus ad bellum and jus in bello was, quite surprisingly, the International Court of Justice. And the Court’s position lent support to other threats to the regime.¶ In the Nuclear Weapons Advisory Opinion, the ICJ cast doubt on the separation principle. The Court concluded that the threat or use of nuclear weapons ‘would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law’.11 The Court then stated that it ‘cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake’.12 In other words, the Court left open the possibility that jus in bello rules would be relaxed when a state acts to defend itself from an existential military threat – to protect sovereign interests that the international community accepts as a core foundation of the global legal order. When a state resorts to force for other – less privileged or less valued – purposes, a higher level of jus in bello applies.13

#### Legal uncertainty is already hurting clarity and effectiveness

Wolff Heintschel von Heinegg 11, Prof of Public International Law at the Europa-Universität Viadrina in Frankfurt, Germany, “Asymmetric Warfare: How to Respond?” International Law Studies - Volume 87

There may be situations, however, that do not qualify as an armed conflict even though armed forces are engaged inmilitary operations against “asymmetric actors.” While the law of armed conflict will not be applicable in such circumstances, this does not mean that public international law is silent on the matterFor instance, counter-piracy operations are governed by the law of the sea or, as in the case of piracy off the coast of Somalia, by applicable UN Security Council resolutions.2 Very often international human rights law—though contained in a regional convention— will play an important role.3 Counterterrorism operations may also be based onUN Security Council resolutions or on the inherent right of self-defense.4 It needs to be emphasized with regard to the latter, however, that States have not yet agreed upon the criteria that give rise to the rightBecause of the variety of regimes thatmay be applicable, the armed forces deployed to counterterrorism operations all too often lack the legal clarity and legal security that are of vital importance for the success of contemporary military operations.

#### Judicial intervention on LOAC application to detention is inevitable – a wave of lawsuits is on the way

Chesney 13, Law Prof at UT

(November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 MichLRev163)

The government will not be able to simply ride out the legal friction generated by the fragmentation of al Qaeda and the shift toward shadow warThose trends do not merely shift unsettled questions of substantive law to the forefront of the debate; they also greatly increase the prospects for a new round of judicial intervention focusing on those substantive questions1Military Detention Consider military detention firstFresh judicial intervention regarding the substantive law of detention is a virtual certaintyIt will come in connection with the lingering Guantanamo population, and it will come as well in connection with any future detainees taken into custody on a long-term basis, regardless of where they might be heldaExisting Guantanamo Detainees Most of the existing Guantanamo detainees have already had a shot at habeas relief, and many lost on both the facts and the lawBut some of them can and will pursue a second shot, should changing conditions call into question the legal foundation for the earlier rulings against themn202 The first round of Guantanamo habeas decisions depended in almost every instance on the existence of a meaningful tie to ongoing hostilities in Afghanistan, as did the Supreme Court's 2004 decision in HamdiIndeed, Justice O'Connor in Hamdi was at pains to caution that at some point in the future this baseline condition making LOAC relevant could unraveln203 The declining U.Srole in combat operations in Afghanistan goes directly to that pointThis decline will open the door to a second wave of Guantanamo litigation, with detainees arguing that neither LOAC nor the relevant statutory authorities continues to applyThis argument may or may not succeed on the meritsAt first blush, the NDAA FY12 would seem to present a substantial obstacle to the detaineesThat statute expressly codifies detention authority as to members (and supporters) of al Qaeda, the Afghan Taliban, and "associated forces," n204 thus grounding detention authority directly in domestic law rather than requiring courts to impute such authority into the 2001 AUMF by implication from LOAC (as the Supreme Court had to do in [\*214] Hamdi itself)But it is not quite so simpleThe same section of the NDAA FY12 relinks the question of detention authority to LOAC after allIt specifies that statutory detention authority as an initial matter exists solely "pending disposition under the law of war." n205 And although it then lists long-term military detention as a possible disposition option, the statute specifically defines this authority as "detention under the law of war without trial until the end of the hostilities authorized by the [AUMF]." n206 A court confronted with this language might interpret it in a manner consistent with the government's borderless-conflict position, such that the drawdown in Afghanistan would not matterBut it might notThe repeated references to the "law of war" in the statute--that is to LOAC--might lead at least some judges to conduct a fresh field-of-application analysifffffs regarding the extent to which LOAC remains applicable in light of the drawdown, and judges might then read the results back into the NDAA FY12I am not saying that this is the likely outcome or that any such analysis would necessarily reject the government's borderless-conflict positionI am just saying that judges eventually will decide these matters without real guidance from Congress (unless Congress clarifies its intentions in the interim)Note, too, that any such judicial interpretations may well have far broader implications than just the fate of the particular detainee in question; a ruling that LOAC has no application in a given situation would cast a long shadow over any other LOAC-based actions the U.Sgovernment might undertake in the same or similar contexts (including targeting measures)Regardless of what occurs in Afghanistan, the existing Guantanamo detainee population might also find occasion to come back to court should the decline of the core al Qaeda organization continue to the point where it can plausibly be described as defunctIn such a case, it is likely that at least some current al Qaeda detainees would revive their habeas petitions in order to contend that the demise of the organization also means the demise of detention authority over members of the defunct groupThis argument would be particularly likely to come from those who were held on the ground of membership in al Qaeda but who the government had not shown to have been otherwise involved in hostile actsThis would be a challenging argument to make; the government would surely respond that al Qaeda would no longer be defunct if some of its members were set freeBut setting that possible response aside, such a petition could compel the government to litigate the question of whether the continuing existence of various "franchises," like AQAP or al-Shabaab, suffices to preserve detention authority over al Qaeda membersThat is, such a challenge could lead a judge to weigh in on the organizational boundary question.

## 1AR

### Case

**Nuclear war causes human extinction**

**PHILLIPS 2000** (Dr. Allen, Peace Activist, Nuclear Winter Revisited, October, <http://www.peace.ca/nuclearwinterrevisited.htm>)

Those of us who were involved in peace activities in the 80's probably remember a good deal about nuclear winter. Those who have become involved later may have heard little about it. No scientific study has been published since 1990, and very little appears now in the peace or nuclear abolition literature. \*It is still important.\* With thousands of rocket-launched weapons at "launch-on-warning", any day there could be an all-out nuclear war by accident. The fact that there are only half as many nuclear bombs as there were in the 80's makes no significant difference. Deaths from world-wide starvation after the war would be several times the number from direct effects of the bombs, and the surviving fraction of the human race might then diminish and vanish after a few generations of hunger and disease, in a radioactive environment.

Nuclear war destroys the environment and causes human extinction

**PHILLIPS 2000** (Dr. Allen, Peace Activist, Nuclear Winter Revisited, October, <http://www.peace.ca/nuclearwinterrevisited.htm>)

The 1980's research showed that the dust and the smoke would block out a large fraction of the sunlight and the sun's heat from the earth's surface, so it would be dark and cold like an arctic winter. It would  
take months for the sunlight to get back to near normal.  
 The cloud of dust and smoke would circle the northern hemisphere quickly. Soon it could affect the tropics, and cold would bring absolute disaster for all crops there. Quite likely it would cross the  
equator and affect the southern hemisphere to a smaller degree.  
 While the temperature at the surface would be low, the temperature of the upper part of the troposphere (5-11 km) would rise because of sunlight absorbed by the smoke, so there would be an absolutely massive  
temperature inversion. That would keep many other products of combustion down at the levels people breathe, making a smog such as has never been seen before. PYROTOXINS is a word coined for all the noxious  
vapours that would be formed by combustion of the plastics, rubber, petroleum, and other products of civilization. It is certain that these poisons would be formed, but we do not have quantitative estimates. The  
amount of combustible material is enormous, and it would produce dioxins, furans, PCB's, cyanides, sulphuric and sulphurous acids, oxides of nitrogen, carbon monoxide and carbon dioxide in amounts that would  
make current concerns about atmospheric pollution seem utterly trivial.

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There would also be toxic chemicals like ammonia and chlorine from damaged storage tanks.  
 Another bad environmental thing that would happen is destruction of the ozone layer. The reduction in the ozone layer could be 50% - 70% over the whole northern hemisphere - very much worse than the current losses  
that we are properly concerned about. Nitrogen oxides are major chemical agents for this. They are formed by combination of the oxygen and nitrogen of the air in any big fire and around nuclear explosions,  
as they are on a smaller scale around lightning flashes. So after the smoke cleared and the sun began to shine again, there would be a large increase of UV reaching the earth's surface. This is bad for people in  
several ways, but don't worry about the skin cancers ? not many of the survivors would live long enough for that to matter. UV is also bad for many other living things, notably plankton, which are the bottom layer  
of the whole marine food chain. There would likely be enough UV to cause blindness in many animals. Humans can protect their eyes if they are aware of the danger. Animals do not know to do that, and blind  
animals do not survive. Blind insects do not pollinate flowers, so there is another reason why human crops and natural food supplies for animals would fail.  
 Altogether, nuclear winter would be an ecological disaster of the same sort of magnitude as the major extinctions of species that have occurred in the past, the most famous one being 65 million years ago at the cretaceous extinction. Of all the species living at the time, about half became extinct. The theory is that a large meteor made a great crater in the Gulf of California, putting a trillion tons of rock debris into the atmosphere. That is a thousand times as much rock as is predicted for a nuclear war, but the soot from fires blocks sunlight more effectively than rock debris. In nuclear winter there would also be radioactive contamination giving worldwide background radiation doses many times larger than has ever happened during the 3 billion years of evolution. The radiation would notably worsen things for existing species, though it might, by increasing mutations, allow quicker evolution of new species (perhaps mainly insects and grasses) that could tolerate the post-war conditions. (I should just mention that there is no way the radioactivity from a nuclear war could destroy "all life on earth". People must stop saying that. There will be plenty of evolution after a war, but it **may not include us**.)

### Flex

#### Flexibility is irrelevant

COHEN 13 - fellow of the Century Foundation, foreign policy columnist for the Guardian (Michael Cohen, “Contrary to popular belief, President Obama doesn't have a magic wand”, May 8, http://www.theguardian.com/commentisfree/2013/may/08/obama-not-lame-duck-gop-obstructs-everything)

Yet, the belief that the president carries a leadership magic wand to convince recalcitrant political opponents (and some allies) to do his bidding is not merely restricted to Congressional relations, it's evident in foreign policy as well. As death tolls have mounted in the Syrian civil war perhaps the loudest criticism of President Obama is that he won't act to stop violence. But this is based on the dubious notion that the US military can stop the violence in Syria. Consider, for example, the "plan" put forward by Bill Keller in the New York Times. The US should move "to assert control of the arming and training of rebels … cultivating insurgents who commit to negotiating an orderly transition to a nonsectarian Syria." In addition, the US must "make clear to President Assad that if he does not cease his campaign of terror and enter negotiations on a new order, he will pay a heavy price. When he refuses, we send missiles against his military installations until he, or more likely those around him, calculate that they should sue for peace." What can President Obama be thinking in rejecting an idea as elegantly simple as this one? Indeed, virtually every argument for the use of force in Syria – chronicled in great detail here by Micah Zenko – including maintaining US credibility, sending a message to Iran or North Korea, winning back the confidence of the Arab league, maintaining influence with the Syrian rebels all lead in one direction … success! If only the president will show leadership, then good things will happen. Yet, if there is any lesson that could be drawn from the wars fought by the US over the past 10 years, it is that America's ability to shape events in foreign locales is limited and rarely works out well as the proponents of military force promise. To be sure, foreign policy is one of the few places where presidents can exercise significant institutional power (and largely because Congress has abdicated its oversight responsibilities). But being able to act with greater flexibility does not equal an optimal outcome – a point that the presidencies of Truman, Johnson, Nixon and Bush amply demonstrate. In the end, presidents, like all of us, are prisoners to events outside their control. At home and abroad they are hamstrung both by the interests of other actors in our political system and by the national interests of other nations – and of course by adherence to a Constitution that was purposely written to prevent any president from becoming too powerful. If you want to blame anyone for why the president can't do what you believe he should, blame them. Obama just works here.

### 1AR Politics

#### TPA won’t pass, Obama not pushing

Inside U.S. Trade, 1-31 ["Obama Seeks Cooperation With Congress on TPA; GOP Says He Must Lead," 1-31-14, l/n, accessed 2-19-14]

Separately, Lori Wallach, the director of Public Citizens Global Trade Watch, highlighted the brevity of Obama's trade comments, which she said failed to mention the pending bill to renew fast track. "Corporate interests were fiercely lobbying for President Obama to dedicate serious time in this speech to pushing Fast Track and the Trans-Pacific Partnership in order to try to overcome broad congressional and public opposition to both, but instead he made only a passing reference that largely repeated his past statements," she said. "With almost no House Democratic support for Fast Track, a bloc of GOP 'no' votes and public opposition making congressional phones ring off the hook, high-profile treatment of the issue was considered necessary to revive any prospect that Fast Track could be passed in this Congress."

#### TPA won’t pass before 2015- bipart opposition

Inside U.S. Trade, 2-14 ["Pelosi Rejects Camp-Baucus Fast-Track Bill, But Not Obama Trade Agenda," 2-14-14, l/n, accessed 2-19-14]

In the House, movement on a fast-track bill is stymied because of the depth of the Democratic opposition and the fact that some Republican members are not on board. Some of the opposition in the GOP caucus comes from conservatives like those that are members of the Republican Study Committee (RSC), for which the U.S. Chamber of Commerce, the American Farm Bureau and the National Association of Manufacturers (NAM) held a briefing this week. Last week, Rep. Kevin Brady (R-TX), who is a member of the RSC along with Camp, met with the study committee to make the argument that free trade is consistent with conservative values and the goal of minimizing government intervention in the economy (Inside U.S. Trade, Feb. 7). Among House Democrats, the debate over fast track has been complicated by the fact that it is conflated with the debate over the Trans-Pacific Partnership (TPP) negotiations, which are controversial because opponents accuse the administration of being too secretive and failing to consult with Congress. This has created additional complications because lawmakers are taking positions on the fast-track bill fueled by their opposition to TPP or vice versa, one source said. In light of these factors, some fast-track supporters acknowledge that a realistic timetable for Congress to approve a fast-track bill would be 2015 at the earliest, possibly immediately before the presidential primaries. But business groups have put forward a more optimistic timetable. For example, the U.S. Chamber told EU member state trade attaches last week that there maybe fast-track action as early as this summer or in the lame-duck session after the November elections, according to informed sources (see related story).

#### Won’t pass- midterms

Landler, 2-14 -- NYT staff

[Mark, and Jonathan Weisman, "Trade Pact Vwth Asia Faces Imposing Hurdle: Midterm Politics," NYT, 2-14-14, www.nytimes.com/2014/02/15/us/politics/biden-remark-casts-doubt-on-pillar-of-us-trade-agenda.html?\_r=1, accessed 2-19-14]

Trade Pact With Asia Faces Imposing Hurdle: Midterm Politics WASHINGTON - President Obama's ambitious trade agenda appeared to fall further victim to election-year politics on Capitol Hill on Friday when Vice President Joseph R. Biden Jr., in a closed- door retreat with House Democrats, said he understood why they would not grant Mr. Obama the crucial authority he needs to conclude large trade deals with Asia and Europe. Mr. Biden's comments most immediately called into question the Trans- Paciiic Partnership, a regional pact among 12 nations that would be one of the world's biggest trade agreements. It is a oentral element of Mr. 0bama's strategic shift toward Asia, and the White House had hoped to complete it last year. Responding to a question at the policy retreat for House Democratic leaders in Cambridge, Md., Mr. Biden said he understood that legislation for expedited consideration in Congress for free-trade agreements, known as fast-track authority, was not coming up for a vote now, according to several people who were in the meeting.

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

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

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

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

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

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

#### Only a risk of a link turn- Obama’s spent PC on Gitmo for months

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

But it wasn’t until last spring that Obama’s desire to redouble his efforts became public, forced to the surface by hunger-striking prisoners. A few weeks later Obama fleshed out his ideas for closing Guantanamo in a major national security speech at the National Defense University in Washington. During the speech Obama announced some unilateral actions he would take, such as lifting the ban he had imposed on transferring dozens of Yemeni detainees who’d been cleared for transfer back to their insurgency-wracked country. But what he could not answer was how he would break the political logjam in Congress. He had no obvious solution for persuading Republicans to lift the series of onerous restrictions they had placed on the administration’s ability to transfer detainees out of Gitmo. The answer to that question was more ineffable; it was about presidential leadership–the power of persuasion–and, ultimately, Obama’s own will to act. Within his own administration, Obama had to jump-start a policy that had effectively ground to a halt in 2011. In meetings he exhorted his advisers to move expeditiously, telling them that he didn’t want a single prisoner left in the offshore prison by the time he left office. And while he acknowledged that it would impossible to empty Gitmo in the face of the congressional restrictions, he insisted that that could not be an excuse for inaction. Obama imposed a system of accountability within his administration to ensure that the policy didn’t drift, as it had during his first term. He began a search for Gitmo special envoys at both the State Department and the Pentagon, senior officials who would “wake up everyday asking themselves” how they had advanced the cause of closing the prison, as a senior adviser to Obama puts it. The president required Secretary of State John Kerry and Defense Secretary Chuck Hagel to give him weekly progress reports on the effort. And he placed the broad initiative under the direction of Lisa Monaco, the White House counterterrorism and homeland security adviser. One of the first things he directed Monaco to do was develop a timeline of goals and objectives that he could measure progress against.

### CP

#### Archeology disproves environmental extinction

AFP ’13 (Agence France-Presse, “Climate change boosted human development: study”, May 21, 2013)

PARIS — Early humans living in South Africa made cultural and industrial leaps in periods of wetter weather, said a study Tuesday that compared the archaeological record of Man's evolution with that of climate change. Anatomically modern humans, Homo sapiens, first made their appearance in Africa during the Middle Stone Age which lasted from about 280,000 to 30,000 years ago. Some of the earliest examples of human culture and technology are found in South Africa -- with fossil evidence of innovative spurts whose cause has left scientists puzzled. The record reveals that a notable period of human advancement occurred about 71,500 years ago, and another between 64,000 and 59,000 years ago. Examples of such innovation include the use of symbols, linked to the development of complex language, in engravings, the manufacture and use of stone tools and personal adornment with shell jewellery. "We show for the first time that the timing of... these periods of innovation coincided with abrupt climate change," study co-author Martin Ziegler of the Cardiff University School of Earth and Ocean Sciences told AFP of the study in the journal Nature Communications. "We found that South Africa experienced wetter conditions during these periods of cultural advance. "At the same time, large parts of sub-Saharan Africa experienced drier conditions, so that South Africa potentially acted as a refugium for early humans." Ziegler and a team reconstructed the South African climate over the past 100,000 years using a sediment core drilled out from the country's east coast. The core shows changes in river discharge and rainfall. "It offers for the first time the possibility to compare the archaeological record with a record of climate change over the same period and thus helps us to understand the origins of modern humans," Ziegler said by email. Co-author Chris Stringer of London's Natural History Museum said the findings supported the view that population growth fuelled cultural advancement through increased human interactions. "Such climate-driven pulses in southern Africa and more widely were probably fundamental to the origin of key elements of modern human behaviour in Africa and to the subsequent dispersal of Homo sapiens from its ancestral homeland," concluded the study.

#### Warming won’t cause extinction

Barrett ‘7 (Scott, Professor of natural resource economics @ Columbia University, “Why Cooperate? The Incentive to Supply Global Public Goods, introduction”, 2007)

First, climate change does not threaten the survival of the human species.5 If unchecked, it will cause other species to become extinction (though biodiversity is being depleted now due to other reasons). It will alter critical ecosystems (though this is also happening now, and for reasons unrelated to climate change). It will reduce land area as the seas rise, and in the process displace human populations. “Catastrophic” climate change is possible, but not certain. Moreover, and unlike an asteroid collision, large changes (such as sea level rise of, say, ten meters) will likely take centuries to unfold, giving societies time to adjust. “Abrupt” climate change is also possible, and will occur more rapidly, perhaps over a decade or two. However, abrupt climate change (such as a weakening in the North Atlantic circulation), though potentially very serious, is unlikely to be ruinous. Human-induced climate change is an experiment of planetary proportions, and we cannot be sur of its consequences. Even in a worse case scenario, however, global climate change is not the equivalent of the Earth being hit by mega-asteroid. Indeed, if it were as damaging as this, and if we were sure that it would be this harmful, then our incentive to address this threat would be overwhelming. The challenge would still be more difficult than asteroid defense, but we would have done much more about it by now.