# UGA FB Round 2 Vandy

# 1NC

## Main

### Off 1

#### A. Interpretation – targeted killing is distinct from signature strikes – precise definitions are key

Uebersax 12 (John, psychologist, writer and former RAND Corporation military analyst, "The Four Kinds of Drone Strikes," http://satyagraha.wordpress.com/2012/05/23/the-four-kinds-of-drone-strikes/)

We must begin with clear terms, and that is the purpose of the present article. Drone strikes, that is, the launching of explosive missiles from a remotely operated aerial vehicle, come in four varieties: targeted killings, signature strikes, overt combat operations, and covert combat operations. We shall consider each in turn.¶ Targeted killing. This occurs when a drone strike is used to kill a terrorist whose identity is known, and whose name has been placed on a hit list, due to being deemed a ‘direct and immediate threat’ to US security. The government would like people to think this means these strikes target a terrorist literally with his or her hand on a detonator. But, in actuality, the only real criterion is that the government believes the target is sufficiently closely affiliated with terrorist organizations (e.g., a propagandist or financier) to justify assassination. This is likely the rarest form of drone strike. However it receives the most publicity, because the government likes to crow when it kills a high-ranking terrorist.¶ Signature strikes. In signature strikes, the target is a person whose name is not known, but whose actions fit the profile (or ‘signature’) of a high-ranking terrorist. There is some ambiguity concerning the meaning of this term. Some use it in the sense just stated — i.e., a strike against an anonymous terrorist leader. Others use it more broadly to include killing of any non-identified militants, whether high-ranking or not. However from the moral standpoint it makes a major difference whether an anonymous targeted victim is a high-level leader, or simply an anonymous combatant. For this reason it is advantageous to restrict the term “signature strike” to the targeting of anonymous high-level leaders, and to assign strikes against anonymous non-leaders to the two further categories below.¶ Overt combat operation. This category includes drone strikes conducted as part of regular military operations. These strikes are presumably run by uniformed military personnel according to codes of military conduct, and are, logically and legally, not much different from ordinary air or artillery strikes. As a part of routine warfare, such strikes are subject to the provisions of the Geneva Conventions. Three items of the Geneva Conventions are of special interest here: (1) strikes should occur only in the context of a legally declared war; (2) they should be conducted by lawful combatants (which, many experts believe, excludes use of non-uniformed, civilian contractor operators); and (3) standard provisions concerning the need to report casualties, especially civilian casualties, are in effect.¶ Covert combat operation. Finally, there are covert combat operations. These, like the former category, are launched against usual military targets – e.g., any hostile militant, not just high-ranking ones. But why should these strikes be covert? The obvious answer is: to mask something shady. Covert combat strikes can evade all those irritating constraints on military tactics imposed by the Geneva Conventions, International Law, public opinion, and basic human decency.¶ The specific terms used above to distinguish these four kinds of strikes are admittedly arbitrary, and perhaps some other nomenclature would be more advantageous. But we need some fixed set of terms to refer to these fundamentally different kinds of strikes. Without such terms, the US government will continue to have its way by relying on public confusion and terminological sophistry. For example, if there is only a single generic term, the government may issue a claim such as “drone strikes comply with international law.” This is perhaps technically true for, say, overt military drone strikes, but it is not true for signature strikes. With more precise terms, it would be more difficult for the government to mislead the public.

#### B. Vote neg –

#### A. Precision – our interpretation is exclusive and has an intent to define – accurate reading of the resolution is a pre-requisite to fairness and education – they make the resolution meaningless

#### B. Limits – expanding the term to include unknown terrorist identities makes the term limitless, destroying in depth education

### Off 2

#### Obama’s war powers maintain his presidential power

Rozell 12

[Mark Rozell is Professor of Public Policy, George Mason University, and is the author of Executive Privilege: Presidential Power, Secrecy and Accountability, From Idealism to Power: The Presidency in the Age of Obama, 2012,, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>]

And yet, as Jack Goldsmith accurately details in his latest book, President Barack Obama not only has not altered the course of controversial Bush-era practices, he has continued and expanded upon many of them. On initiating war, as a candidate for the presidency in 2007, Obama said that “the president doesn’t have the power under the Constitution to unilaterally authorize a military attack,” yet that is exactly what he did in exercising the war power in Libya. He has also said that he will exercise the power to act on his own to initiate military action in Syria if it’s leader ever crosses the “red line” (i.e., use of chemical weapons). He has issued a number of signing statements that directly violate congressional intent. He has vastly expanded, far beyond Bush’s actions, the use of unconfirmed and unaccountable executive branch czars to coordinate policies and to make regulatory and spending decisions. The president has made expanded use of executive privilege in circumstances where there is no legal merit to making such a claim and he has abused the principle of the state secrets privilege. His use of the recess appointment power on many occasions has been nothing more than a blatant effort to make an end-run around the Senate confirmation process. He has continued, and expanded upon, the practice of militarily detaining persons without trial or pressing charges (on the condition that the detention is not “indefinite”). In a complete reversal of his past campaign rhetoric, the president on a number of occasions has declared his intention to act unilaterally on a variety of fronts, and to avoid having to go to Congress whenever he can do so. There are varied explanations for the president’s total reversals. The hard-core cynics of course simply resort to the “they all lie” explanation. Politicians of all stripes say things to get elected but don’t mean much of it. Recently I saw a political bumper sticker announcing “BUSH 2.0” with a picture of Obama. Many who enthusiastically supported Obama are profoundly disappointed with his full-on embrace of Bush-like unilateralism and this administration’s continuation of many of his predecessor’s policies. Goldsmith, a law professor who led the Department of Justice’s (DOJ) Office of Legal Counsel from October 2003 to June 2004, during George W. Bush’s first term, says that there were powerful forces at work in the U.S. governmental system that ensured that the president would continue many of the policies and practices of his predecessor. The president reads the daily terrorism threat reports, which has forced him to understand that things really do look differently from the inside. From this standpoint, Obama likely determined that many of Bush’s policies actually were correct and needed to be continued. “The personal responsibility of the president for national security, combined with the continuing reality of a frightening and difficult-to-detect threat, unsurprisingly led Obama, like Bush, to use the full arsenal of presidential tools,” writes Goldsmith. He further argues that Obama lacked leeway to change course in part because many of Bush’s policies “were irreversibly woven into the fabric of the national security architecture.” For example, former president Bush’s decision to use the Guantanamo detention facility created an issue for Obama that he otherwise never would have confronted. And the use of coercion on suspects made it too complicated to then employ civilian courts to try them. In perhaps the most telling example of the limits of effecting change, Obama could not end what Bush had started, even though the president issued an executive order (never carried out) to close the detention center. Here Goldsmith somewhat overstates his case. Obama was not necessarily consigned to following Bush’s policies and practices, although undoubtedly his options may have been constrained by past decisions. But consider the decision whether the government should have investigated and then taken action against illegal and unconstitutional acts by officials in the Bush Administration, particularly in the DOJ, NSA, and CIA. President Obama said it was time to look forward, not backward, thus sweeping all under the rug. Nothing “irreversibly woven” there, but rather the new president made a choice that he absolutely did not have to make. Finally, Goldsmith adds that Obama, like most of his predecessors, assumed the executive branch’s institutional perspective once he became president. If it is true about Washington that where you stand on executive powers depends on where you sit, then should it be any surprise that President Obama’s understanding differs fundamentally from Senator Obama’s? Honestly, I find that quite sad. Do the Constitution and principles of separation of powers and checks & balances mean so little that we excuse such a fundamental shift in thinking as entirely justified by switching offices? Goldsmith’s analysis becomes especially controversial when he turns to his argument that, contrary to the critiques of presidential power run amok, the contemporary chief executive is more hampered in his ability to act in the national interest than ever before. In 2002, Vice President Richard Cheney expressed the view that in his more than three decades of service in both the executive and legislative branches, he had witnessed a withering of presidential powers and prerogatives at the hands of an overly intrusive and aggressive Congress. At a time when most observers had declared a continuing shift toward presidential unilateralism and legislative fecklessness, Cheney said that something quite opposite had been taking place. Goldsmith is far more in the Cheney camp on this issue than of the critics of modern exercises of presidential powers. Goldsmith goes beyond the usual emphasis on formal institutional constraints on presidential powers to claim that a variety of additional forces also are weighing down and hampering the ability of the chief executive to act. As he explains, “the other two branches of government, aided by the press and civil society, pushed back against the Chief Executive like never before in our nation’s history”. Defenders of former president Bush decry what they now perceive as a double standard: critics who lambasted his over expansive exercises of powers don’t seem so critical of President Obama doing the same. Goldsmith makes the persuasive case that in part the answer is that Bush was rarely mindful of the need to explain his actions as necessities rather than allow critics to fuel suspicions that he acted opportunistically in crisis situations to aggrandize power, whereas Obama has given similar actions a “prettier wrapping”. Further, Obama, to be fair, on several fronts early in his first term “developed a reputation for restraint and commitment to the rule of law”, thus giving him some political leeway later on. A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms. Just as he describes how a seemingly once idealistic candidate for president as Barack Obama could see things differently from inside government, so too was Goldsmith at one time on the inside, and thus perhaps it is no surprise that he would perceive more strongly than other academic observers the forces that he believes are constantly hamstringing the executive. But he is no apologist for unfettered executive power and he takes to task those in the Bush years who boldly extolled theories of the unitary executive and thereby gave credibility to critics of the former president who said that his objective was not merely to protect the country from attack, but to empower himself and the executive branch. Goldsmith praises institutional and outside-of-government constraints on the executive as necessary and beneficial to the Republic. In the end, he sees the balance shifting in a different direction than many leading scholars of separation of powers. And unlike a good many presidency scholars and observers, he is not a cheerleader for a vastly powerful chief executive. Goldsmith’s work too is one of careful and fair-minded research and analysis. He gives substantial due to those who present a counter-view to his own, and who devote their skills and resources to battling what they perceive as abuses of executive power. Whereas they see dangers to an unfettered executive, Goldsmith wants us to feel safe that there are procedural safeguards against presidential overreaching, although he also wants us to be uncomfortable with what he believes now are intrusive constraints on the chief executive’s ability to protect the country. Goldsmith may be correct that there are more actors than ever involved in trying to trip up the president’s plans, but that does not mean that our chief executives are losing power and control due to these forces. Whether it is war and anti-terrorism powers, czars, recess appointments, state secrets privilege, executive privilege, signing statements, or any of a number of other vehicles of presidential power, our chief executives are using more and more means of overriding institutional and external checks on their powers. And by any measure, they are succeeding much more than the countervailing forces are limiting them.

#### The Courts are self-interested – they’ll use the aff’s precedent to expand their power vis-à-vis the President

Choper 7 -- Earl Warren Prof of Public Law @ UC Berkeley (Jesse H., 2007, "The Political Question Doctrine and the Supreme Court of the United States," Introduction, p. 1-21)

Because the prudential doctrine allows the Court to avoid deciding a case without an anchor in constitutional interpretation, it is this aspect of the political question doctrine that seems most troublesome. It would be unwise, however, to reject the entire political question doctrine because of the failings of the prudential doctrine. Indeed, the classical political question doctrine is critically important in the constitutional order, and its demise is cause for concern. In particular, the disappearance of the classical political question doctrine has a negative effect on two fronts. First, it has a direct negative impact in that it prevents the political branches from exercising constitutional judgment in those cases in which a classical political question is presented. Admittedly, this is a small category of cases that are not likely to arise very often. Electoral count disputes, judicial impeachments, and constitutional amendment ratification questions do not occur with much frequency. These questions are of fundamental importance, however, and judicial interference in these circumstances could have a negative effect on our government that transcends the scope of the particular case. Nothis provides a more poignant illustration than the Article II issue in the 2000 election cases. the doctrine strikes at the heart of separation of powers and the need for each branch to stay within its sphere to maintain the constitutional order. Second, the end of the classical political question doctrine has a much broader secondary effect. The Supreme Court is effectively left alone to police the boundaries of its power. This is, perhaps, the most difficult of all the Court's tasks, for it requires **the most extreme form of willpower**. It also dramatically displays the tension that exists beneath the surface of all the Court's decisions, That is, when the Court is protecting individual rights against congressional action, deciding whether authority resides with the states or with Congress, or resolving controversies between the executive and Congress, its own interest is not at the fore in the decision. Ostensibly, the Court is protecting one entity from another. When the Court decides whether the political question doctrine applies, however, what is merely implicit in those other decisions becomes explicit: the Court's institutional interests and strengths vis-a-vis the other branches. Thus, when the Court conducts the **threshold inquiry** of whether a matter rests exclusively with another branch, it must **inevitably** weigh the advantages and disadvantages of judicial review versus pure political analysis. This process therefore highlights for the Court its own strengths and weaknesses, as well as the upsides and downsides of giving the question to Congress of the executive. This is a healthy analysis for the Court to undertake, for it highlights the functional concerns behind the separation of powers and forces the Court to take a more modest view of its own powers and abilities. Therefore, eliminating this jurisdictional question from the Court's tasks helps **pave the way for a** much broader vision of judicial supremacy and a much more limited view of deference to the political branches. The end of the classical political question doctrine thus threaten to disrupt our constitutional order and turn the framers' vision of a constitutional conversation among three coordinate branches into a **monologue by the Supreme Court**.

#### Multiple scenarios for nuclear war

**Yoo 12**

[John, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, War Powers Belong to the President, 2/1/12, <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>]

Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress’ check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But **it could** also **seriously threaten American national security.** In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional **consent cannot be obtained in time to act**. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, **now is not the time to introduce sweeping, untested changes in the way we make war.**

### Off 3

#### The President of the United States should issue an executive order repealing, via the appropriate administrative agencies, its targeted killing policy involving drone strikes in order to comply with international law.

#### Solves –

#### Executive orders concerning war powers are common, have the same effect as the plan, and withstand judicial scrutiny

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

### Off 4

#### Judicial review of war powers erodes the State Secrets Privilege

Kadidal 7 (Shayana – Center for Constitutional Rights, New York City; J.D., Yale 1994, “DOES CONGRESS HAVE THE POWER TO LIMIT THE PRESIDENT'S CONDUCT OF DETENTIONS, INTERROGATIONS AND SURVEILLANCE IN THE CONTEXT OF WAR?”, 2007, 11 N.Y. City L. Rev. 23, lexis)

As to the AUMF, this meta-defense runs as follows: In both our case and the ACLU's similar case, the government claims that it could explain how the program fits into what Congress authorized in the AUMF--namely, the "use [of] all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist [\*58] attacks that occurred on September 11, 2001" n127 and those who harbored them--but to do so it would have to explain to the court how the Program works, particularly who it was targeting and what kinds of communications it was intercepting. The sensitivity of that information about how the Program works in practice means that it cannot do that, even ex parte in camera. Thus, the government argues, the State Secrets Privilege forecloses the ability to litigate these questions. n128 As to the FISA-is-unconstitutional defense, the meta-defense argues that for the government to explain to the court how the Program fits into the core of the President's inherent power to defend the nation--that (limited) core aspect of the war power that is so fundamentally executive as to be immune to regulation from Congress--would require disclosing state secrets to the court. Since FISA might be unconstitutional to the extent that it restricts such a hypothetical core, unregulable part of the executive war power, the court cannot rely on FISA in enjoining the President from carrying out such surveillance:

#### Drone oversight requires circumventing the doctrine – allows lawsuits and releases military secrets

Rosen 11 (Richard D. – Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law, “PART III: ARTICLE: DRONES AND THE U.S. COURTS”, 2011, 37 Wm. Mitchell L. Rev. 5280, lexis)

V. State Secrets: The Death Knell of Drone Cases Assuming a complaint survives the jurisdictional, justiciability, immunity, and other hurdles to lawsuits challenging U.S. drone policy, the state secrets doctrine is likely to bring the suit to a quick end. n93 Under the doctrine, the United States may prevent the disclosure of information in judicial proceedings if there is a reasonable danger of revealing military or state secrets. n94 Once the privilege is properly invoked and a court is satisfied that release would pose a reasonable danger to secrets of state, "even the most compelling necessity cannot overcome the claim of privilege." n95 Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case, n96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets, n97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing [\*5293] protected secrets. n98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation's military tactics and strategy as well as its delicate relations with friendly nations. n99 As such, lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed.

#### Lawsuits release vital drone methods and intelligence –turns case

Murphy and Radsan 9 (Richard – AT&

officials if a court determines they reasonably believed they were acting within the scope of their legal authority. n220 Defendants would satisfy this requirement T Professor of Law, Texas Tech University School of Law, and Afsheen – Professor, William Mitchell College of Law, “ARTICLE: DUE PROCESS AND TARGETED KILLING OF TERRORISTS”, November, 32 Cardozo L. Rev. 405, lexis)

In defense of this anomaly, there are obvious policy reasons for not allowing Bivens-style claims against American officials for targeted killings wherever they occur in the world. Among them, we do not want federal courts damaging national security through excessive, misdirected second-guessing of executive judgments; nor do we want [\*442] the litigation process to reveal information that national security requires to be kept secret. In Arar v. Ashcroft, a divided panel of the Second Circuit cited these "special factors" to disallow a plaintiff from bringing a Bivens claim against officials he alleged subjected him to extraordinary rendition. n209 But as the dissenting judge in Arar noted, these special factors lose much of their force once one acknowledges that a Bivens-style action needs to overcome formidable hurdles of fact and law. n210 As to practical hurdles, most people left alive by a Predator strike or other targeted killing would not turn to American courts for relief. Some would not sue because they are, in fact, the enemy - Osama bin Laden is not going to hire an American lawyer. n211 Others would not sue because doing so is beyond their means - a villager from the mountains of Afghanistan is not likely to hire an American lawyer either. As to legal hurdles, Boumediene itself poses a high one to lawsuits by non-U.S. citizens for overseas attacks. Here we may seem to contradict our earlier insistence that Boumediene presupposes some form of constitutional protection worldwide for everyone. n212 Yet Boumediene shows that the requirement of judicial process depends on a pragmatic analysis. n213 As part of its balancing, Boumediene made clear that courts should favor the interests of American citizens and of others with strong connections to the United States. n214 Although the Boumediene petitioners lacked the preference in favor of citizens, they persuaded a slim majority of the Court to extend constitutional habeas to non-resident aliens detained at Guantanamo. This result, however, took place under exceptional circumstances: among them, Guantanamo is de facto United States territory; n215 the executive had held detainees [\*443] there for years and claimed authority to do so indefinitely; and the Supreme Court doubted the fairness and accuracy of the CSRTs. n216 Absent such circumstances, Boumediene leaves courts to follow their habit of deferring to the executive on national security. For targeted killing, that may mean cutting off non-citizens from American courts. The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security. n217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence. n218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods. n219 In addition, the doctrine of qualified immunity requires dismissal of actions against so long as they reasonably [\*444] claimed they had authority under the laws of war (assuming their applicability). These standards are hazy, and a court applying them would tend to defer to the executive on matters of military judgment. n221 In view of so many practical and legal hurdles, some courts and commentators might be inclined to categorically reject all Bivens-style challenges to targeted killings. In essence, they might view lawsuits related to targeted killing as a political question left to the executive. n222 This view parallels Justice Thomas's that courts should not second-guess executive judgments as to who is an enemy combatant. n223 Contrary to Justice Thomas's view, the potency of the government's threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct - for example, killing an unarmed Jose Padilla at O'Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary. In terms of a Mathews balancing, the question becomes whether the benefits of Bivens actions on targeted killings of terrorists outweigh the harms. The potential harm is to the CIA's sources and methods on the Predator program. Lawsuits might harm national security by forcing the disclosure of sensitive information. The states-secrets privilege should block this result, however. Lawsuits might also harm national security by causing executive officials to become risk-averse about actions needed to counter terrorist activities. Qualified immunity, however, should ensure that liability exists only where an official lacks any justification for his action. On the benefit side, allowing lawsuits to proceed would, in truly exceptional cases, serve the private interest of the plaintiff in seeking compensation and, perhaps more to the point given the incommensurability of death and money, would provide accountability. Still more important, all people have an interest in casting light on the government's use of the power to kill in a world-wide war in which combatants and targets are not easily identified.

#### Unmanned vehicle tech leadership is key to naval power

Landay et al. 4 (William E. Landay III – RDML (Rear Admiral), USN, Concurring with the following: Michael A. LeFever, RDML, USN Raymond A. Spicer, RDML, USN Roseanne M. Levitre, RDML, USN Steven J. Toma szeski, RADM, USN, Oceanographer of the Navy, Approved by Joseph A. Walsh and Roger M. Smith of US Navy, “The Navy Unmanned Undersea Vehicle (UUV) Master Plan”, 11/9, http://www.navy.mil/navydata/technology/uuvmp.pdf)

The Vision for UUVs and the Objective of the UUV Master Plan Today our naval forces enjoy maritime superiority around the world and find themselves at a strategic inflection point during which future capabilities must be pondered with creativity and innovation . Change must be embraced and made an ally in order to take advantage of emerging technologies, concepts, and doctrine; thereby preserving the nation’s global leadership. Sea Power 21 has additionally specified unmanned vehicles as force multipliers and risk reduction agents for the Navy of the future. Transformation applies to what we buy as well as how we buy and operate it–all while competing with other shifting national investment priorities. The growing use of unmanned systems– air, surface, ground, and underwater is continually demonstrating new possibilities. While admittedly futuristic in vision , one can conceive of scenarios where UUVs sense, track, identify, target, and destroy an enemy–all autonomously and tie in with the full net-centric battlespace. UUV systems will provide a key undersea component f o r FORCEnet, contributing to an integrated picture of the battlespace. Even though today’s planners, operators, and technologists cannot accurately forecast the key applications for U UVs in the year 2050, this plan provides a roadmap to move toward that vision. Pursuit of this plan’s updated recommendations beginning in the year 2004, will place increasingly large numbers of UUVs in the hands of warfighters. Thus, xvii UUV Master Plan UUVs can begin addressing near-term needs while im proving understanding of mid- to far-term possibilities. Even the most futuristic applications can evolve in a confident, cost-effective manner. This confidence is based on several factor s: the Sea Power 21 Sub-Pillar capabilities identified he readdress a broad ran g e of user needs; critical technologies are identified that will enable tomorrow’s more complex applications; and key principles and best practices are recommended that p r o v ide for a logical, flexible, and affordable development effort.

#### Strong navy is key to prevent great power war – deterrence

Eaglen 11 (Mackenzie, Heritage Foundation Research Fellow for National Security Studies, Allison Center for Foreign Policy Studies, May, 16, 2011, “Thinking about a Day without Sea Power: Implications for U.S. Defense Policy”, http://www.heritage.org/research/reports/2011/05/thinking-about-a-day-without-sea-power-implications-for-us-defense-policy)

Under a scenario of dramatically reduced naval power, the United States would cease to be active in any international alliances. While it is reasonable to assume that land and air forces would be similarly reduced in this scenario, the lack of credible maritime capability to move their bulk and establish forward bases would render these forces irrelevant, even if the Army and Air Force were retained at today’s levels. In Iraq and Afghanistan today, 90 percent of material arrives by sea, although material bound for Afghanistan must then make a laborious journey by land into theater. China’s claims on the South China Sea, previously disputed by virtually all nations in the region and routinely contested by U.S. and partner naval forces, are accepted as a fait accompli, effectively turning the region into a “Chinese lake.” China establishes expansive oil and gas exploration with new deepwater drilling technology and secures its local sea lanes from intervention. Korea, unified in 2017 after the implosion of the North, signs a mutual defense treaty with China and solidifies their relationship. Japan is increasingly isolated and in 2020–2025 executes long-rumored plans to create an indigenous nuclear weapons capability.[11] By 2025, Japan has 25 mobile nuclear-armed missiles ostensibly targeting China, toward which Japan’s historical animus remains strong. China’s entente with Russia leaves the Eurasian landmass dominated by Russia looking west and China looking east and south. Each cedes a sphere of dominance to the other and remains largely unconcerned with the events in the other’s sphere. Worldwide, trade in foodstuffs collapses. Expanding populations in the Middle East increase pressure on their governments, which are already stressed as the breakdown in world trade disproportionately affects food importers. Piracy increases worldwide, driving food transportation costs even higher. In the Arctic, Russia aggressively asserts its dominance and effectively shoulders out other nations with legitimate claims to seabed resources. No naval power exists to counter Russia’s claims. India, recognizing that its previous role as a balancer to China has lost relevance with the retrenchment of the Americans, agrees to supplement Chinese naval power in the Indian Ocean and Persian Gulf to protect the flow of oil to Southeast Asia. In exchange, China agrees to exercise increased influence on its client state Pakistan. The great typhoon of 2023 strikes Bangladesh, killing 23,000 people initially, and 200,000 more die in the subsequent weeks and months as the international community provides little humanitarian relief. Cholera and malaria are epidemic. Iran dominates the Persian Gulf and is a nuclear power. Its navy aggressively patrols the Gulf while the Revolutionary Guard Navy harasses shipping and oil infrastructure to force Gulf Cooperation Council (GCC) countries into Tehran’s orbit. Russia supplies Iran with a steady flow of military technology and nuclear industry expertise. Lacking a regional threat, the Iranians happily control the flow of oil from the Gulf and benefit economically from the “protection” provided to other GCC nations. In Egypt, the decade-long experiment in participatory democracy ends with the ascendance of the Muslim Brotherhood in a violent seizure of power. The United States is identified closely with the previous coalition government, and riots break out at the U.S. embassy. Americans in Egypt are left to their own devices because the U.S. has no forces in the Mediterranean capable of performing a noncombatant evacuation when the government closes major airports. Led by Iran, a coalition of Egypt, Syria, Jordan, and Iraq attacks Israel. Over 300,000 die in six months of fighting that includes a limited nuclear exchange between Iran and Israel. Israel is defeated, and the State of Palestine is declared in its place. Massive “refugee” camps are created to house the internally displaced Israelis, but a humanitarian nightmare ensues from the inability of conquering forces to support them. The NATO alliance is shattered. The security of European nations depends increasingly on the lack of external threats and the nuclear capability of France, Britain, and Germany, which overcame its reticence to military capability in light of America’s retrenchment. Europe depends for its energy security on Russia and Iran, which control the main supply lines and sources of oil and gas to Europe. Major European nations stand down their militaries and instead make limited contributions to a new EU military constabulary force. No European nation maintains the ability to conduct significant out-of-area operations, and Europe as a whole maintains little airlift capacity.

## Case

### 1NC Deterrence Frontline

#### Nuclear modernization isn’t k2 deterrence

Travis Sharp 10, Research Associate at the Center for a New American Security, “The Numbers Game”, Nukes of Hazard, Center for Arms Control & Nonproliferation, 2-24, http://www.nukesofhazardblog.com/story/2010/2/24/123221/390

This complaint is regularly expressed by Keith Payne, the paragon of conservative nuclear strategists. For instance, Payne wrote last year that “informed estimates about the functioning of deterrence must also include assessments of opponent decision-making processes, values, intentions, histories, levels of determination, goals, stakes and worldviews.” Since deterrence is not a quantifiable or scientific outcome, Payne concluded,¶ In the contemporary strategic environment, it is impossible to provide high-confidence, quantitatively precise and enduring answers to the question “how much is enough” for deterrence. The familiar game of linking some specific number of nuclear weapons with confidence in deterrence and the adequacy of U.S. strategic forces in general remains popular, but it now is unsupportable…even if done rigorously, identifying the requirements for deterrence is an incomplete basis for defining the necessary parameters for U.S. strategic forces in general.¶ Before considering whether this “numbers game” critique is justified, a comment is needed on Bolton’s and Payne’s methodology. Deterrence indubitably involves historical, cultural, psychological, and political calculations, as Payne suggests. NOH readers should recognize, however, that predicating deterrence on potential adversaries’ values, goals, stakes, and worldviews allows Bolton and Payne to configure U.S. nuclear forces according to how evil they perceive other countries to be. Do we really want to dismiss targeting-based deterrence analyses, such as Cimbala’s JFQ article and Lieber’s and Press’s Foreign Affairs appendix, as mere Cold War remnants and replace them with 1 inflammatory Ahmadinejad quote = 1 credible limited U.S. counterforce option? Payne is arguing, laudably, for recognizing deterrence’s complexity. Yet will an injection of red-blooded Manichaeism make U.S. nuclear policy more effective? I doubt it.¶ Payne is right that it is difficult to formulate “quantitatively precise” answers to deterrence questions, but that uncertainty doesn’t necessarily justify rounding up to the larger U.S. nuclear arsenal he would prefer. As Charles Glaser convincingly put it, “Deterrence is likely to be effective because, as was argued extensively during the Cold War, even relatively little credibility is sufficient when the costs of retaliation are so large.” In other words, a little nuke still goes a long way.

#### Obama circumvents the aff

Lohmann 13 **(**Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>)

The U.S. military—in particular, the Special Operations Command (SOCOM), and its subsidiary entity, the Joint Special Operations Command (JSOC)—is responsible for carrying out military-led targeted killings.¶ Military-led targeted killings are subject to various legal restrictions, including a complex web of statutes and executive orders. For example, because the Covert Action Statute does not distinguish among institutions undertaking covert actions, targeted killings conducted by the military that fall within the definition of “covert action” set forth in 50 U.S.C. § 413(b) are subject to the same statutory constraints as are CIA covert actions. 50 U.S.C. § 413b(e). However, as Robert Chesney explains, many military-led targeted killings may fall into one of the CAS exceptions—for instance, that for traditional military activities—so that the statute’s requirements will not always apply to military-led targetings. Such activities are exempted from the CAS’s presidential finding and authorization requirements, as well as its congressional reporting rules.¶ Because such unacknowledged military operations are, in many respects, indistinguishable from traditional covert actions conducted by the CIA, this exception may provide a “loophole” allowing the President to circumvent existing oversight mechanisms without substantively changing his operational decisions. However, at least some military-led targetings do not fall within the CAS exceptions, and are thus subject to that statute’s oversight requirements. For instance, Chesney and Kenneth Anderson explain, some believe that the traditional military activities exception to the CAS only applies in the context of overt hostilities, yet it is not clear that the world’s tacit awareness that targeted killing operations are conducted (albeit not officially acknowledged) by the U.S. military, such as the drone program in Pakistan, makes those operations sufficiently overt to place them within the traditional military activities exception, and thus outside the constraints of the CAS.¶ Chesney asserts, however, that despite the gaps in the CAS’s applicability to military-led targeted killings, those targetings are nevertheless subject to a web of oversight created by executive orders that, taken together, largely mirrors the presidential authorization requirements of the CAS. But, this process is not enshrined in statute or regulation and arguably could be changed or revoked by the President at any time. Moreover, this internal Executive Branch process does not involve Congress or the Judiciary in either ex ante or ex post oversight of military-led targeted killings, and thus, Philip Alston asserts, it may be insufficient to provide a meaningful check against arbitrary and overzealous Executive actions.

#### 1AC Boyle ev says countries already have the technology now – if it’s in their self-interest they’ll adopt and use the tech even post plan

#### Drone arms race inevitable

USA Today 13

(1/9, http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/, “Experts: Drones basis for new global arms race”, AB)

The success of U.S. drones in Iraq and Afghanistan has triggered a global arms race, raising concerns the remotely piloted aircraft could fall into unfriendly hands, military experts say. The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress. Iran and China are among the countries that have fielded their own systems. "People have seen the successes we've had," said Lt. Gen. Larry James, the Air Force's deputy chief of staff for intelligence, surveillance and reconnaissance. The U.S. military has used drones extensively in Afghanistan, primarily to watch over enemy targets. Armed drones have been used to target terrorist leaders with missiles that are fired from miles away.

#### Your impact ev is all in the context of drones spreading – cross-x proves this is inevitable and already happening

#### U.S. can’t effectively signal

Zenko 13 (Micah, Council on Foreign Relations Center for Preventive Action Douglas Dillon fellow, "The Signal and the Noise," Foreign Policy, 2-2-13, www.foreignpolicy.com/articles/2013/02/20/the\_signal\_and\_the\_noise)

Later, Gen. Austin observed of cutting forces from the Middle East: "Once you reduce the presence in the region, you could very well signal the wrong things to our adversaries." Sen. Kelly Ayotte echoed his observation, claiming that President Obama's plan to withdraw 34,000 thousand U.S. troops from Afghanistan within one year "leaves us dangerously low on military personnel...it's going to send a clear signal that America's commitment to Afghanistan is going wobbly." Similarly, during a separate House Armed Services Committee hearing, Deputy Secretary of Defense Ashton Carter ominously warned of the possibility of sequestration: "Perhaps most important, the world is watching. Our friends and allies are watching, potential foes -- all over the world." These routine and unchallenged assertions highlight what is perhaps the most widely agreed-upon conventional wisdom in U.S. foreign and national security policymaking: the inherent power of signaling. This psychological capability rests on two core assumptions: All relevant international audiences can or will accurately interpret the signals conveyed, and upon correctly comprehending this signal, these audiences will act as intended by U.S. policymakers. Many policymakers and pundits fundamentally believe that the Pentagon is an omni-directional radar that uniformly transmits signals via presidential declarations, defense spending levels, visits with defense ministers, or troop deployments to receptive antennas. A bit of digging, however, exposes cracks in the premises underlying signaling theories. There is a half-century of social science research demonstrating the cultural and cognitive biases that make communication difficult between two humans. Why would this be any different between two states, or between a state and non-state actor? Unlike foreign policy signaling in the context of disputes or escalating crises -- of which there is an extensive body of research into types and effectiveness -- policymakers' claims about signaling are merely made in a peacetime vacuum. These signals are never articulated with a precision that could be tested or falsified, and thus policymakers cannot be judged misleading or wrong. Paired with the faith in signaling is the assumption that policymakers can read the minds of potential or actual friends and adversaries. During the cycle of congressional hearings this spring, you can rest assured that elected representatives and expert witnesses will claim to know what the Iranian supreme leader thinks, how "the Taliban" perceives White House pronouncements about Afghanistan, or how allies in East Asia will react to sequestration. This self-assuredness is referred to as the illusion of transparency by psychologists, or how "people overestimate others' ability to know them, and...also overestimate their ability to know others." Policymakers also conceive of signaling as a one-way transmission: something that the United States does and others absorb. You rarely read or hear critical thinking from U.S. policymakers about how to interpret the signals from others states. Moreover, since U.S. officials correctly downplay the attention-seeking actions of adversaries -- such as Iran's near-weekly pronouncement of inventing a new drone or missile -- wouldn't it be safer to assume that the majority of U.S. signals are similarly dismissed? During my encounters with foreign officials, few take U.S. government pronouncements seriously, and instead assume they are made to appease domestic audiences.

### 1NC Frontline

#### Ilaw fails --- states will either inevitably cooperate, or ilaw can’t convince them to

Eric A. Posner 9, Kirkland and Ellis Professor of Law at the University of Chicago Law School. The Perils of Global Legalism, 34-6

34 ¶ Most global legalists acknowledge that international law is created and enforced by states. They believe that states are willing to expand international law along legalistic lines because states’ long-term interests lie in solving global collective action problems. In the absence of a world govern- ment or other forms of integration, international law seems like the only way for states to solve these problems. The great difﬁculty for the global legalist is explaining why, if states create and maintain international law, they will also not break it when they prefer to free ride. In the absence of an enforcement mechanism, what ensures that states that create law and legal institutions that are supposed to solve global collective action prob- lems will not ignore them? ¶ For the rational choice theorist, the answer is plain: states cannot solve global collective action problems by creating institutions that themselves depend on global collective action. This is not to say that international law is not possible at all. Certainly, states can cooperate by threatening to retaliate against cheaters, and where international problems are matters of coordination rather than conﬂ ict, international law can go far, indeed.7 But if states (or the individuals who control states) cannot create a global government or q uasi-g overnment institutions, then it seems unlikely that they can solve, in spontaneous fashion, the types of problems that, at the national level, require the action of governments. ¶ Global legalists are not enthusiasts for rational choice theory and have ¶ 35¶ grappled with this problem in other ways.8 I will criticize their attempts in chapter 3. Here I want to focus on one approach, which is to insist that just as individuals can be loyal to government, so too can individuals (and their governments) be loyal to international law and be willing to defer to its requirements even when self-i nterest does not strictly demand that they do so. International law has force because (or to the extent that) it is legitimate.9 ¶ What makes governance or law legitimate? This is a complicated ques- tion best left to philosophers, but a simple and adequate point for present purposes is that no system of law will be perceived as legitimate unless those governed by that law believe that the law does good — serves their interests or respects and enforces their values. Perhaps more is required than this — such as political participation, for example — but we can treat the ﬁ rst condition as necessary if not sufﬁ cient. If individuals believe that a system of law does not advance their interests and respect their values, that instead it advances the interests of others or is dysfunctional and helps no one at all, they will not believe that the law is legitimate and will not voluntarily submit to its authority. ¶ Unfortunately, international law does not satisfy this condition, mainly because of its institutional weaknesses; but of course, its institutional weaknesses stem from the state system — states are not willing to tolerate powerful international agencies. In classic international law, states enjoy sovereign equality, which means that international law cannot be created unless all agree, and that international law binds all states equally. What this means is that if nearly everyone in the world agrees that some global legal instrument would be beneﬁ cial (a climate treaty, the UN charter), it can be blocked by a tiny country like Iceland (population 300,000) or a dictatorship like North Korea. What is the attraction of a system that puts a tiny country like Iceland on equal footing with China? When then at- torney general Robert Jackson tried to justify American aid for Britain at the onset of World War II on the grounds that the Nazi Germany was the aggressor, international lawyers complained that the United States could not claim neutrality while providing aid to a belligerent — there was no such thing as an aggressor in international law.10 Nazi Germany had not agreed to such a rule of international law; therefore, such a rule could not exist. Only through the destruction of Nazi Germany could international law be changed; East and West Germany could reenter international so-¶ 36¶ ciety only on other people’s terms. How could such a system be perceived to be legitimate? ¶ There is, of course, a reason why international law works in this fash- ion. Because no world government can compel states to comply with inter- national law, states will comply with international law only when doing so is in their interest. In this way, international law always depends on state consent. So international law must take states as they are, which means that little states, big states, good states, and bad states, all exist on a plane of equality. ¶

#### Other things cause air pollution – factories and industry specially

#### Detention is a massive alt cause

Tarnogorski 10

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USA and Laws of War (Al-Bihani v. Obama)

http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=112282

The significance of this appellate ruling extends beyond one specific case of a Yemeni petitioner kept in detention. Firstly, it could sway the direction of judicial decisions in similar cases—though this seems rather unlikely in view of the shift of the Obama administration’s stance on the treatment of enemy combatants and Supreme Court’s Hamdi v Rumsfeld (2004) and Boumediene v. Bush (2008) decisions. Secondly and more importantly, the court took a position on the powers of the U.S. president as the commander-in-chief under the 18 September 2001 Authorization for Use of Military Force against states, organizations and persons responsible for the terrorist attacks of 11 September 2001. The court found that these presidential prerogatives were not limited by the international laws of war, which had not been transposed as a whole into the domestic law. It is for the legislative branch, not for international law, to delineate the limits of the president’s constitutional powers to use armed force. These powers extend to leaving at the president’s discretion the detention of persons deemed to be enemy belligerents or supporters thereof. The Al-Bihani v. Obama decision is consistent with the U.S. dualist stance on international law, as reflected, for instance, in the Supreme Court’s Medellin v. Texas ruling (2008). The United States respects binding international laws, but the extent of its commitment is at all times determined by the American sovereign. The ruling on Al-Bihani’s appeal does not amount to a permission to violate international law; it only means that international law does not constitute the basis for judicial decisions of a U.S. court. This judgment is without prejudice to the binding power of international humanitarian law, yet it effectively restricts the application of international public law and contributes to cementing a negative image of the U.S. as a power given to opportunistic treatment of international standards.

#### Crossx proves they can’t articulate how aligning with norms creates new treaties

#### No disease can cause human extinction – they either kill their hosts too quickly or aren’t lethal

**Posner 05** (Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1)

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

#### USA can’t solve agreements.

Schreurs ’12 [Miranda A. Schreurs, Director of the Environmental Policy Research Centre, Free University of Berlin, "Breaking the impasse in the international climate negotiations: The potential of green technologies," Energy Policy 48, September 2012, pp. 5-12, Elsevier]

The Durban outcome has kept the international negotiation process alive, but does not reﬂect the urgency of the problem at hand. That no post-Kyoto agreement is expected to enter into force until 2020 and the content of the agreement still needs to be developed also raises the question of whether the international community will be able to put a break on rising greenhouse gas emissions, let alone reduce them on the order that will be necessary to stay within the 1.5 to 2.0 degree Centrigrade temperature goal. The general scientiﬁc consensus is that if the rise in greenhouse gases is not halted by 2020 and then reduced on the order of 50% below 1990 levels by 2050, then it will be next to impossible to maintain the rise in greenhouse gases to within the 2 degrees Centigrade range. One very major challenge to the future agreement is the domestic political situation in the United States, which makes passage of national climate legislation, let alone ratiﬁcation of a global climate agreement highly unlikely in the near future. Already in Cancun, Japan made it clear that it opposes a second phase for the Kyoto Protocol. Yoshito Sengoku, Japan’s Chief Cabinet Secretary, announced that Japan would ‘‘sternly oppose debate for extending the Kyoto Protocol into a second phase which is unfair and ineffective.’’ (United Press International (UPI), 2010; MOFA, 2010). With its rapidly rising greenhouse gas emissions tied to the extraction of oil from tar sands in Alberta, Canada has pulled out of the agreement. Also problematic is the resistance of many developing countries to the establishment of binding emission reduction targets and timetables. India strongly pushed the perspective of per capita equity arguing that it should not be held captive by a problem largely caused by other countries. With its low per capita greenhouse gas emission levels as a result of high levels of poverty, India will be reluctant to accept commitments that could affect its economic growth perspectives.

#### Alt causes to treaty failure – uneven adoption and unequal requirements

#### No impact to warming

Taylor 117/27/2011 [James Taylor, senior fellow for environment policy at The Heartland Institute and managing editor of Environment & Climate News “New NASA Data Blow Gaping Hole In Global Warming Alarmism,” http://www.forbes.com/sites/jamestaylor/2011/07/27/new-nasa-data-blow-gaping-hold-in-global-warming-alarmism/]

NASA satellite data from the years 2000 through 2011 show the Earth’s atmosphere is allowing far more heat to be released into space than alarmist computer models have predicted, reports a new study in the peer-reviewed science journal Remote Sensing. The study indicates far less future global warming will occur than United Nations computer models have predicted, and supports prior studies indicating increases in atmospheric carbon dioxide trap far less heat than alarmists have claimed. Study co-author Dr. Roy Spencer, a principal research scientist at the University of Alabama in Huntsville and U.S. Science Team Leader for the Advanced Microwave Scanning Radiometer flying on NASA’s Aqua satellite, reports that real-world data from NASA’s Terra satellite contradict multiple assumptions fed into alarmist computer models. “The satellite observations suggest there is much more energy lost to space during and after warming than the climate models show,” Spencer said in a July 26 University of Alabama press release. “There is a huge discrepancy between the data and the forecasts that is especially big over the oceans.” In addition to finding that far less heat is being trapped than alarmist computer models have predicted, the NASA satellite data show the atmosphere begins shedding heat into space long before United Nations computer models predicted. The new findings are extremely important and should dramatically alter the global warming debate. Scientists on all sides of the global warming debate are in general agreement about how much heat is being directly trapped by human emissions of carbon dioxide (the answer is “not much”). However, the single most important issue in the global warming debate is whether carbon dioxide emissions will indirectly trap far more heat by causing large increases in atmospheric humidity and cirrus clouds. Alarmist computer models assume human carbon dioxide emissions indirectly cause substantial increases in atmospheric humidity and cirrus clouds (each of which are very effective at trapping heat), but real-world data have long shown that carbon dioxide emissions are not causing as much atmospheric humidity and cirrus clouds as the alarmist computer models have predicted. The new NASA Terra satellite data are consistent with long-term NOAA and NASA data indicating atmospheric humidity and cirrus clouds are not increasing in the manner predicted by alarmist computer models. The Terra satellite data also support data collected by NASA’s ERBS satellite showing far more longwave radiation (and thus, heat) escaped into space between 1985 and 1999 than alarmist computer models had predicted. Together, the NASA ERBS and Terra satellite data show that for 25 years and counting, carbon dioxide emissions have directly and indirectly trapped far less heat than alarmist computer models have predicted. In short, the central premise of alarmist global warming theory is that carbon dioxide emissions should be directly and indirectly trapping a certain amount of heat in the earth’s atmosphere and preventing it from escaping into space. Real-world measurements, however, show far less heat is being trapped in the earth’s atmosphere than the alarmist computer models predict, and far more heat is escaping into space than the alarmist computer models predict. When objective NASA satellite data, reported in a peer-reviewed scientific journal, show a “huge discrepancy” between alarmist climate models and real-world facts, climate scientists, the media and our elected officials would be wise to take notice. Whether or not they do so will tell us a great deal about how honest the purveyors of global warming alarmism truly are.

#### Warming inevitable and not anthropogenic.

**Bell 3-19** [Larry, climate, energy, and environmental writer for Forbes, University of Houston full/tenured Professor of Architecture; Endowed Professor of Space Architecture; Director of the Sasakawa International Center for Space Architecture; Head of the Graduate Program in Space Architecture; former full Professor/ Head of the University of Illinois Industrial Design Graduate Program; Associate Fellow, American Institute for Aeronautics and Astronautics, “The Feverish Hunt For Evidence Of A Man-Made Global Warming Crisis” http://www.forbes.com/sites/larrybell/2013/03/19/the-feverish-hunt-for-evidence-of-a-man-made-global-warming-crisis/2/]

Indeed, climate really does change without any help from us, and we can be very grateful that it does. Over the past 800,000 years, much of the Northern Hemisphere has been covered by ice up to miles thick at regular intervals lasting about 100,000 years each. Much shorter interglacial cycles like our current one lasting 10,000 to 15,000 years have offered reprieves from bitter cold.¶ And yes, from this perspective, current temperatures are abnormally warm. By about 12,000 to 15,000 years ago Earth had warmed enough to halt the advance of glaciers and cause sea levels to rise, and the average temperature has held fairly constant ever since, with brief intermissions.¶ Although temperatures have been generally mild over the past 500 years, we should remember that significant fluctuations are still normal. The past century has witnessed two distinct periods of warming. The first occurred between 1900 and 1945, and the second, following a slight cool-down, began quite abruptly in 1975. That second period rose at quite a constant rate until 1998, and then stopped and began falling again after reaching a high of 1.16ºF above the average global mean.¶ But What About Those “Observed” Human Greenhouse Influences?¶ The IPCC stated in its last 2007 Summary for Policymaker’s Report that “Most of the observed increase in globally averaged temperature since the mid-20th century [which is very small] is very likely due to the observed increase in anthropogenic [human-caused] greenhouse gas concentrations.” And there can be no doubt here that they are referring to CO2, not water vapor, which constitutes the most important greenhouse gas of all. That’s because the climate models don’t know how to “observe” it, plus there aren’t any good historic records to enable trends to be revealed.¶ Besides, unlike carbon, there is little incentive to attach much attention to anthropogenic water vapor. After all, no one has yet figured out a way to regulate or tax it.¶ A key problem in determining changes and influences of water vapor concentrations in the Earth’s atmosphere is that they are extremely variable. Differences range by orders of magnitude in various places. Instead, alarmists sweep the problem to one side by simply calling it a CO2 “feedback” amplification effect, always assuming that the dominant feedback is “positive” (warming) rather than “negative” (cooling). In reality, due to clouds and other factors, those feedbacks could go both ways, and no one knows for sure which direction dominates climate over the long run.¶ Treating water vapor as a known feedback revolves around an assumption that relative humidity is a constant, which it isn’t. Since it is known to vary nearly as widely as actual water vapor concentrations, no observational evidence exists to support a CO2 warming amplification conclusion.¶ But let’s imagine that CO2 is the big greenhouse culprit rather than a bit-player, and that its influences are predominately warming. Even if CO2 levels were to double, it would make little difference. While the first CO2 molecules matter a lot, successive ones have less and less effect. That’s because the carbon that exists in the atmosphere now has already “soaked up” its favorite wavelengths of light, and is close to a saturation point. Those carbon molecules that follow manage to grab a bit more light from wavelengths close to favorite bands, but can’t do much more…there simply aren’t many left-over photons at the right wavelengths. For those of you who are mathematically inclined, that diminishing absorption rate follows a logarithmic curve.¶ Who Hid the Carbon Prosecuting Evidence?¶ Since water vapor and clouds are so complex and difficult to model, their influences are neglected in IPCC reports. What about other evidence to support an IPCC claim that “most” mid-century warming can “very likely” be attributed to human greenhouse emissions? Well, if it’s there, it must me very well hidden, since direct measurements seem not to know where it is.¶ For example, virtually all climate models have predicted that if greenhouse gases caused warming, there is supposed to be a telltale “hot spot” in the atmosphere about 10 km above the tropics. Weather balloons (radiosondes) and satellites have scanned these regions for years, and there is no such pattern. It wasn’t even there during the recent warming spell between 1979 (when satellites were first available) and 1999.¶ How have the committed greenhouse zealots explained this? They claim that it’s there, but simply hidden by “fog in the data”…lost in the statistical “noise”. Yet although radiosondes and satellites each have special limitations, their measurements show very good agreement that the “human signature” doesn’t exist. Suggestions to the contrary are based upon climate model data outputs which yield a wide range of divergence and uncertainty…an example of garbage in, gospel out.

#### Drones are highly effective - eliminate important terrorist human capital and prevent communication and training

Byman 13 (Daniel L., Research Director of Saban Center for Middle East Policy, “Why Drones Work: The Case for Washington's Weapon of Choice”, Foreign Affairs, July/August 2013, <http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>)

The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers.¶ Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders.

#### Terrorism goes nuclear---high risk of theft and attacks escalate

Dvorkin 12 (Vladimir Z., Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html)

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

#### No spillover – Courts lack competence to enforce international law

McGinnis, 6 – Professor of Law, Northwestern University School of Law (John O., “FOREIGN TO OUR CONSTITUTION,” Northwestern University Law Review, 100 Nw. U.L. Rev. 303. Lexis.)

It should be noted that the Court has not engaged in this kind of analysis. Instead it has cited to foreign and international law without undertaking the hard work of interrogating the nature of the international law at issue or surveying the field of all relevant foreign law. In Lawrence, for instance, it cited to European law without considering relevant differences between the United States and Europe, either in culture or legal system, or providing a rule of decision about why the different laws of other nations might be more relevant. But more fundamentally, judges would have very limited ability to make these kinds of determinations. To understand whether a foreign law casts doubt on the wisdom of our own law, one would have to undertake a systematic comparative enterprise of the two different cultures and legal systems to determine whether the other legal culture had sufficiently good methods of rule generation, and whether the systems were sufficiently alike that it made sense to conclude that the difference between their rules and ours on an issue cast doubt on the beneficence of ours. The question is not a strictly legal one but demands comparative cultural sociology as well as comparative law. Moreover, one could not pick out one or a few other nations for comparisons to ours because that would be selection bias. All nations, including those agreeing with our approach, would have to be factored into any calculus, again after making allowances for relevant difference in circumstances. This enterprise, a kind of global regression analysis, seems beyond judicial competence, particularly if it were done according to some set of neutral principles, on all constitutional issues or even all issues involving substantive due process. [n61](http://www.lexisnexis.com/lnacui2api/frame.do?reloadEntirePage=true&rand=1296546187849&returnToKey=20_T11130458015&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.651063.4896517337" \l "n61)Even a justice-seeking conception of the Constitution must take seriously questions of institutional competence.

# 2NC Round 2

## SS DA

### Impact – Navy – 2NC

#### Strong navy key to allied response- creates a super-deterrent

Lyons, 13 -- retired Navy admiral

[James, commander in chief of the U.S. Pacific Fleet and senior U.S. military representative to the United Nations, "Where are the carriers?" Washington Times, 1-15-13, l/n, accessed 1-22-13, ]

To keep pressure on and **raise** **the level of deterrence**, movement of naval forces, particularly carrier strike groups, must remain unpredictable. In a deteriorating crisis situation, our Navy gains maximum impact by moving the carrier strike group into the crisis area. That sends a **special signal** of our intent to respond to our potential enemies and to our allies as well. Such a signal has a telling effect on our regional allies and encourages them to **employ their** air force and naval **assets in a coordinated manner**, which certainly should **raise the deterrent equation**.

#### Naval power key to humanitarian efforts

Conway, Roughead, and Allen, 07- \*General of U.S. Marine Corps and Commandant of the Marine Corps, \*\*Admiral of U.S. Navy and Chief of Naval Operations, \*\*\*Admiral of U.S. Coast Guard and Commandant of the Coast Guard (\*James Conway, \*\*Gary Roughead, \*\*\*Thad Allen, "A Cooperative Strategy for 21st Century Seapower", Department of the Navy, United States Marine Corps, United States Coast Guard, http://www.navy.mil/maritime/MaritimeStrategy.pdf, KONTOPOULOS)

Building on relationships forged in times of calm, we will continue to mitigate human suffering as the vanguard of interagency and multinational efforts, both in a deliberate, proactive fashion and in response to crises. Human suffering moves us to act, and the expeditionary character of maritime forces uniquely positions them to provide assistance. Our ability to conduct rapid and sustained non-combatant evacuation operations is critical to relieving the plight of our citizens and others when their safety is in jeopardy.

#### Conventional deterrence is more credible and effective against regional adversaries

Gormley 9 – Dennis Gormley, Senior Fellow in the James Martin Center for Nonproliferation Studies at the Monterey Institute for International Studies, Fall 2009, “The Path to Deep Nuclear Reductions: Dealing with American Conventional Superiority,” online: http://www.ifri.org/files/Securite\_defense/PP29\_Gormley.pdf

Of course, the decided advantage that precision conventional weapons have over nuclear weapons is that an adversary knows full well that the United States is highly likely to use its conventional advantage should its security interests become seriously threatened. As for nuclear threats, the only ones that may prove salient are ones that threaten nuclear retaliation during an ongoing conventional war against a regional state in possession of a small nuclear capability. But still, U.S. reliance on precision conventional weapons represents the best form of deterrence – pre-war and intra-war – if only because of the declining value of the threat of nuclear use. As previously noted, Paul Nitze argued in 1994 that nuclear weapons were unlikely to deter regional aggressors as well as precision conventional weapons, not least because of the growing effectiveness of non-nuclear options but also because American presidents would be unwilling to use nuclear weapons.22 Notably, after the 1991 Persian Gulf War, Colin Powell dismissed the utility to nuclear use, while his commander-in-chief, President George H.W. Bush, acknowledged in his memoir that he had ruled out a nuclear response in that war.23

### Link Wall – 2NC – Judiciary

#### State secrets are not subject to judicial review – the plan must overrule that doctrine

Windsor 12 (Lindsay – J.D. candidate and Master of Security Studies candidate at Georgetown University, “IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT”, 2012, 43 Geo. J. Int'l L. 897, lexis)

This case is the most recent invocation of a long-established government privilege which frequently results in barring all further litigation of the issue. n7 From 1954 through 2008, the state secrets privilege was adjudicated in about a hundred cases. n8 In most, but not all, the assertion of the privilege was upheld. n9 The state secrets privilege has become particularly important since September 11, 2001, because in a [\*900] number of cases involving issues such as torture, n10 extraordinary rendition, n11 and domestic warrantless surveillance, n12 the Bush Administration argued that the privilege is based in inherent executive power and not subject to judicial review. n13 The Obama Administration has continued this assertion, arguing in Al-Aulaqi, for example, that the protection of state secrets from disclosure in litigation is within "[t]he ability of the Executive." n14

#### They are in a double-bind – either judicial review doesn’t happen or the plan links and dismisses the state secret doctrine

Ziegler 8 (Margaret, “Pay No Attention to the Man Behind the Curtain: The Government's Increased Use of the State Secrets Privilege to Conceal Wrongdoing”, 2008, 23 Berkeley Tech. L.J. 691, lexis)

B. Hepting Exemplifies More Expansive Use of the State Secrets Privilege The government, in facing these allegations of warrantless wiretapping, is not defending its actions based on compliance with FISA or the scope of Fourth Amendment protections. Instead, the government insists that the case must be dismissed under the state secrets privilege because it claims that judicial review of such claims would jeopardize national security. The state secrets privilege has been invoked in a number of wiretapping cases, both in the aftermath of the Vietnam War and recently. n132 The government, however, has recently enhanced its requests under the privilege; instead of using state secrets to hold back certain scientific evidence, it is asking that entire cases be dismissed. One scholar has referred to the state secrets privilege as "the most powerful privilege available to the President" because it prevents disclosure of information to the courts and prevents a judicial check on the executive. n133 Also, given how superficial judicial review of state secrets claims has become, abuse of the privilege is far more likely. "The plain fact is that if department heads or the president know that assertion of the privilege is tantamount to conclusive on the judiciary, and that federal judges rarely order documents for inspection, then there is great incentive on the part of the executive branch to misuse the privilege." n134

#### Drones are protected as state secrets – plan requires circumventing the doctrine

Rosen 11 (Richard D. – Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law, “PART III: ARTICLE: DRONES AND THE U.S. COURTS”, 2011, 37 Wm. Mitchell L. Rev. 5280, lexis)

V. State Secrets: The Death Knell of Drone Cases Assuming a complaint survives the jurisdictional, justiciability, immunity, and other hurdles to lawsuits challenging U.S. drone policy, the state secrets doctrine is likely to bring the suit to a quick end. n93 Under the doctrine, the United States may prevent the disclosure of information in judicial proceedings if there is a reasonable danger of revealing military or state secrets. n94 Once the privilege is properly invoked and a court is satisfied that release would pose a reasonable danger to secrets of state, "even the most compelling necessity cannot overcome the claim of privilege." n95 Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case, n96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets, n97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing [\*5293] protected secrets. n98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation's military tactics and strategy as well as its delicate relations with friendly nations. n99 As such, lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed.

## T

### 2NC Cards

#### Signature strikes undermine global norms and international law – kills solvency

Roth 13 (Kenneth, “What Rules Should Govern US Drone Attacks?”, 4/4, http://www.nybooks.com/articles/archives/2013/apr/04/what-rules-should-govern-us-drone-attacks/?pagination=false)

There are several conceivable rationales for the use of drones in such places, but the Obama administration has articulated none of them with clarity. One is to say that the United States is fighting a global enemy that sometimes operates from areas that do not look like traditional battlefields. The Obama administration has dispensed with its predecessor’s language of the “global war on terror,” but it cites to much the same effect the nation’s inherent right of self-defense as well as the congressional authorization for using military force to respond to the September 11 attacks. The administration continues to claim legal authority to attack terrorist suspects wherever they are found. But can the rationale based on war be stretched this far? Should the administration really have the right to attack anyone it might characterize as a combatant against the United States? What if that person is walking the streets of London or Paris? The administration, in a statement by John Brennan, says as a matter of policy that it has an “unqualified preference” to capture rather than kill all targets. But away from a traditional battlefield, international human rights law requires the capture of enemies if possible.2 Failing to apply that law encourages other governments to circumvent it as well; they may summarily kill suspects simply by announcing a “global war” without there being an actual armed conflict. Imagine the mayhem that Russia could cause by killing alleged Chechen “combatants” throughout Europe, or China by killing Uighur “combatants” in the United States. Indeed, China may already be applying this elastic definition of war, as it reportedly considered using a drone to kill a drug trafficker in Burma. Moreover, even when there is an armed conflict, the laws of war—for example, the additional protocols to the Geneva Conventions—allow targeting only combatants.3 The act of associating with alleged militants is apparently crucial to the administration’s selection of many “signature” strikes, i.e

., attacks on people whose identities are not known but who are deemed to be combatants by virtue of their behavior.4 But this is not enough to demonstrate the direct participation in hostilities that distinguishes someone who can be targeted in an armed conflict from a civilian in a mere support role—a driver, cook, doctor, or financier. Such civilians cannot be targeted under international law.

#### And they are the majority of drone strikes – that takes out all advantages

Heller 12 (Kevin Jon – Associate Professor at Melbourne Law School JD - Stanford Law School, “'One Hell of a Killing Machine': Signature Strikes and International Law”, 10/30, U of Melbourne Legal Studies Research Paper No. 634, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2169089)

The vast majority of drone attacks conducted by the U.S. have been signature strikes – strikes that target “groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose identities aren’t known.” In 2010, for example, Reuters reported that of the 500 “militants” killed by drones between 2008 and 2010, only 8% were the kind “top-tier militant targets” or “mid-to-high-level organizers” whose identities could have been known prior to being killed. Similarly, in 2011, a U.S. official revealed that the U.S. had killed “twice as many ‘wanted terrorists’ in signature strikes than in personality strikes.”

## I-Law

### AT: Air Pollution

#### No health impact

CORDATO 2003 (Roy, Vice president for research and resident scholar at the Locke Foundation. From 1993 to 2000 he served as the Lundy Professor of Business Philosophy at Campbell University, Ground-Level Ozone: Myths, Facts, and Politics, Published by the John Locke Foundation, March)

When setting ozone standards, then, the public policy issue is one of comparative risks. That is, are the risks that will be avoided in terms of “pulmonary degradation” by any given ozone standard, be greater or less than the risks that will be incurred in terms of skin cancers and cataracts? There have been several studies that have looked at this question and attempted to quantify the results. In the paper by Lutter and Wolz, cited above, it was concluded that the 80 ppb standard would generate no net health benefits. “Our preliminary analysis suggests that the value of increased UV-B-related health effects from tropospheric ozone reductions may be similar in magnitude to the value of decreased respiratory health effects.”20 In prepar-ing extensive comments on the 80 ppb ozone standard for the Center for the Study of Public Choice at George Mason University, Susan Dudley concluded that “the proposal could result in negative health benefits of $282 million” per year.21 That is, the 80 ppb standard as adopted by North Carolina could actually be generating net harm. Since the state does not officially recognize the fact that ground-level ozone generates any benefits, it is not surprising that the Division of Air Quality did not consider these benefits when choosing to adopt the 80 ppb threshold. Likewise, the legislature, in adopting the Clean Smokestacks bill, made no inquir-ies regarding the effects of the legislation on skin cancer or cataracts. In fact, there was no cost-benefit analysis of any kind to justify enactment of the legislation. North Carolina is not alone in ignoring the full health effects of ground-level ozone. The Federal Clean Air Act (CAA) sets a clear standard for the EPA in its efforts to evaluate the health effects of new regulations. In setting emission standards, the EPA must submit a “Cri-teria Document” that evaluates “all identifiable effects on public health or welfare which may be expected from the presence of such pollutants in the ambient air.”22 But in setting its crite-ria, the EPA not only presented no quantitative analysis of the UV-B effects of ozone but, in its official Criteria Document, it did not even mention these effects. In other words, when con-sidering the health impacts of its proposed standard, the EPA looked only at the benefits and ignored the costs. In doing so it insured the conclusion that the new standard would be justi-fied.

## Deterrence

### 2NC No Model

#### Drones inevitable – global demand too strong

Mclean and Sussex 13 (Wayne McLean, PhD Researcher, Politics and International Relations Program at University of Tasmania and Matthew Sussex, Director, Politics and International Relations at University of Tasmania, May 28, 2013 “The debate over military technology: in defence of drones,” The Conversation, <http://theconversation.com/the-debate-over-military-technology-in-defence-of-drones-14627>)

Drones are therefore becoming a fact of warfare, and the US is not alone in integrating unmanned systems into its defence forces. China has an active drone program and recently considered using them in Myanmar to counter drug-trafficking. Indonesia’s drone program, underway since 2004, includes the “Wulung” drone that is primarily used for surveillance. But weaponising them is a relatively simple process.¶ For its part, Australia is actively embracing drones as vital tools on the modern battlefield. The recently released Defence White Paper tacitly calls for further integration of unmanned equipment into the force. Currently, the ADF uses leased Israeli Heron drones in Afghanistan, but lags behind many global and regional competitors. At the same time, Australia is likely to becoming increasingly linked to (and reliant on) the core US systems.¶ The answer, then, is not to fear drones irrationally. They are a reality, and will become more widespread in militaries worldwide. In fact, drones bring many benefits to the Australian Defence Force. They are cheap, for one thing: a Predator drone costs only A$4 million compared to A$67 million for an F/A-18 Super Hornet. They ameliorate many of the costs associated with maintaining large standing armies, or a large border protection service. They enable better integration with US forces, and the technology used to develop them often has highly marketable civilian applications.

## DA

### Links – Judicial Review

#### Federal judicial review of targeted killing undermines intelligence gathering

Rasdan and Murphy 11 (Afsheen and Richard, Professor of Law, William Mitchell College of Law + AT&T Professor of Law, Texas Tech University School of Law, "ARTICLE: MEASURE TWICE, SHOOT ONCE: HIGHER CARE FOR CIA-TARGETED KILLING," lexis)

Determining an appropriate scope of review still leaves open who should conduct that review of CIA drone strikes. The Israelis rely on a mix of executive and judicial actors. In the United States, federal judges have great independence because of lifetime tenure and protections of their salaries. They are obvious candidates. But using federal courts to review CIA targeted killing raises a host of problems. Few judges are military and intelligence experts, and the transparency of civilian courts goes against the secrecy necessary for some military and intelligence operations. As a compromise, one might try a national security court to keep intelligence sources and methods from unauthorized disclosure. n179 But, putting aside academic debates, Congress does not seem interested in a new court. Another problem with regular courts is the "standing" requirement of a plaintiff who is ready and able to bring suit. The targets of attacks, even if they survive, are unlikely to travel from Afghanistan or Pakistan to file suit, and it is not clear who else could be a proper plaintiff. n180

#### Judicial review of targeted killing undermines the war on terror – complicates operations and judges lack competence

Murphy and Rasdan 9 (Richard and Afsheen, AT&T Professor of Law, Texas Tech University + Professor, William Mitchell College of Law, "DUE PROCESS AND TARGETED KILLING OF TERRORISTS," 32 Cardozo L. Rev. 405, lexis)

Yet - in favor of executive autonomy - we live in an imperfect world where judicial obstacles to killing could hinder national security. It would be silly, for instance, to require the military to use the full procedures of the law enforcement model to decide what to bomb in the midst of a war. Likewise, given the conflict with al Qaeda, it may be silly to judicialize the process for killing its committed members. Moreover, not only does judicialization threaten national security, it might not deliver countervailing benefits because courts lack the competence to improve military and national security decisions. n192¶ n192. Cf. Hamdi, 542 U.S. at 583 (Thomas, J., dissenting) ("With respect to certain decisions relating to national security and foreign affairs, the courts simply lack the relevant information and expertise to second-guess determinations made by the President.").

# 1NR

## XO

### A2 Perm – Do Both

#### The counterplan aloneis key to effective drone operations---the permutation sends the signal that the rest of the government sides with critics of drones over the executive---that delegitimizes drones and collapses the program

Anderson 10 (Kenneth, Professor of International Law at American University, 3/8/10, “Predators Over Pakistan,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>)

Obama deserves support and praise for this program from across the political spectrum. More than that, though, the drone strikes need an aggressive defense against increasingly vocal critics who are moving to create around drone warfare a narrative of American wickedness and cowardice and of CIA perfidy. ¶ Here the administration has dropped the ball. It has so far failed to provide a robust affirmation of the propositions that underwrite Predator drone warfare. Namely: ¶ n Targeted killings of terrorists, including by Predators and even when the targets are American citizens, are a lawful practice; ¶ n Use of force is justified against terrorists anywhere they set up safe havens, including in states that cannot or will not prevent them; ¶ n These operations may be covert—and they are as justifiable when the CIA is tasked to carry them out secretly as when the military does so in open armed conflict. ¶ n All of the above fall within the traditional American legal view of “self-defense” in international law, and “vital national security interests” in U.S. domestic law. ¶ There are good reasons for Republicans and centrist Democrats to make common cause in defending these propositions. On the one hand, they should want to aggressively protect the administration against its external critics—the domestic and international left—who are eager to prosecute Americans for their actions in the war on terror. They should also want to make clear that in defending drone strikes, they are defending the American (and not just the Obama) legal and strategic position. Moreover, it will be the American view of domestic and international law for future administrations, Democratic and Republican. ¶ At the same time, congressional Republicans and centrist Democrats need to put Obama’s senior legal officials on the record and invite them to defend their own administration, defend it to the full extent that the Obama administration’s actions require. Which is to say, Congress needs to hear publicly from senior administration lawyers and officials who might be personally less-than-enthused about targeted killings of terrorists and not eager to endorse them publicly, or to do so only with hedged and narrow legal rationales from which they can later walk away. ¶ Consider, for instance, the diffidence of Harold Koh, the legal adviser of the Department of State. In an informal public discussion with his predecessor, John Bellinger, aired on C-SPAN on February 17, he was asked about drones and targeted killings and declined to say that the practice was lawful. (Granted, it was in an unscripted setting, which cannot be taken as anyone’s last word and on which it would be unfair to place too much weight.) All he said was that if he concluded that it was unlawful, he would, if he thought it appropriate, resign his position. He added that he remained at his post. The statement falls far short of the defense one might hope for from such a high-ranking administration lawyer. More than a year into the new administration, that ought surely to strike the general counsels of the CIA, the Pentagon, the Director of National Intelligence, the NSC, and other agencies directly conducting these activities as somewhat less than reassuring. ¶ In fact, the administration’s top lawyers should offer a public legal defense of its policies, and congressional Republicans and Democrats should insist on such a defense. This is partly to protect the full use-of-force tools of national security for future administrations, by affirming the traditional U.S. view of their legality. But it is also to protect and reassure the personnel of the CIA, NSC, and intelligence and military agencies who carry out these policies that they are not just effective but lawful policies of the U.S. government and will be publicly defended as such by their superiors. ¶ Even as the Obama administration increasingly relies on Predator strikes for its counterterrorism strategy, the international legal basis of drone warfare (more precisely, its perceived international legal legitimacy) is eroding from under the administration’s feet—largely through the U.S. government’s inattention and unwillingness to defend its legal grounds, and require its own senior lawyers to step up and defend it as a matter of law, legal policy, and legal diplomacy. On the one hand, the president takes credit for the policy—as frankly he should—as taking the fight to the enemy. His vice president positively beams with pride over the administration’s flock of Predator goslings. On the other hand, the Obama administration appears remarkably sanguine about the campaign gearing up in the “international law community” aimed at undermining the legal basis of targeted killing as well as its broad political legitimacy, and ultimately at stigmatizing the use of Predators as both illegal and a coward’s weapon. ¶ Stigmatizing the technology and the practice of targeted killing is only half of it, though. The other half is to undermine the idea that the CIA may use force and has the authority to act covertly under orders from the president and disclosure to Congress, as long provided in U.S. law. The aim is to create a legal and political perception that, under international law, all uses of force must be overt—either as law enforcement or as armed conflict conducted by uniformed military. ¶ The Obama administration is complacent about this emerging “international soft law” campaign. But Obama’s opponents in this country, for their part, likewise underestimate and ignore the threat such a campaign presents to national security. That’s apparently because many on the right find it hard to imagine that mere congeries of NGOs, academics, activists, U.N. officials, and their allies could ever overcome “hard” American national security interests, particularly when covered by the magic of the Obama administration. Both liberal and conservative national security hands, looking at the long history of accepted lawfulness of targeted killings under American law, think, “Come on, there’s obvious sense to this, legal and political. These arguments in domestic and international law have long been settled, at least as far as the U.S. government is concerned.” But if there’s a sense to it, there’s a sensibility as well, one that goes to the overall political and legal “legitimacy” of the practice within a vague, diaphanous, but quite real thing called “global public opinion,” the which is woven and spun by the interlocking international “soft law” community and global media. ¶ It’s a mistake to remain oblivious to either the sense or the sensibility. Outside of government, the oblivious include hard-realist conservatives. Inside government, some important political-legal actors are struggling impressively both to overcome bureaucratic inertia and get in front of this issue, and to overcome factions within government unpersuaded by, if not overtly opposed to, this program—particularly as conducted by the CIA. Those actors deserve political support from congressional Republicans and Democrats. Because obliviousness to the sensibility of lawfulness and legitimacy—well, we should all know better by now. Does anyone still believe that the international legal-media-academic-NGO-international organization-global opinion complex cannot set terms of debate over targeted killing or covert action? Or that it cannot overcome “hard” American security interests? Or that this is merely another fringe advocacy campaign of no real consequence, whether in the United States, or abroad in Europe, or at the United Nations?¶ The Obama administration assumes that it uniquely sets the terms of legal legitimacy and has the final word on political sensibility. This is not so—certainly not on this issue. The international soft-law campaign looks to the long-term if necessary, and will seek the political death of targeted killings, Predator drones, and their progeny, and even perhaps to CIA covert action, by a hundred thousand tiny paper cuts. The campaign has already moved to the media. Starting with Jane Mayer’s narrative of Predator drone targeted killing in the New Yorker last October, and followed by many imitators, the ideological framework of the story has shifted. In the space of a year—Obama’s year, no less—it has moved from Candidate Obama’s brave articulation of a bold new strategy for attacking terrorists to the NGOs’ preferred narrative of a cowardly, secretive American CIA dealing collateral damage from the skies. Here’s the thumbnail version of drone warfare, as portrayed in the media.

### A2: Perm – Do Both

#### -- Links to state secrets – oversight requires the disclosure of classified material regarding presidential war powers – to present that evidence, the courts must rule against the state secret privilege

#### The CP alone is the best way to boost U.S. legitimacy

Anderson 11 (Kenneth, Professor of International Law at American University, 10/3/11, “Public Legitimacy for Targeted Killing Using Drones,” <http://www.volokh.com/2011/10/03/public-legitimacy-for-targeted-killing-using-drones/>)

Jack Goldsmith, writing at Lawfare, urges the Obama administration to release a redacted version of the Justice Department’s memo concluding that the targeting of Al-Awlaki was lawful – if not a redacted version, then some reasonably complete and authoritative statement of its legal reasoning. I agree. The nature of these operations abroad is that they will almost certainly remain beyond judicial review and, as a consequence, OLC opinions will serve as the practical mechanism of the rule of law. ¶ The best argument against disclosure is that it would reveal classified information or, relatedly, acknowledge a covert action. This concern is often a legitimate bar to publishing secret executive branch legal opinions. But the administration has (in unattributed statements) acknowledged and touted the U.S. role in the al-Aulaqi killing, and even President Obama said that the killing was in part “a tribute to our intelligence community.” I understand the reasons the government needs to preserve official deniability for a covert action, but I think that a legal analysis of the U.S. ability to target and kill enemy combatants (including U.S. citizens) outside Afghanistan can be disclosed without revealing means or methods of intelligence-gathering or jeopardizing technical covertness. The public legal explanation need not say anything about the means of fire (e.g. drones or something else), or particular countries, or which agencies of the U.S. government are involved, or the intelligence basis for the attacks. (Whether the administration should release more information about the intelligence supporting al-Aulaqi’s operational role is a separate issue that raises separate classified information concerns.) We know the government can provide a public legal analysis of this sort because presidential counterterrorism advisor John Brennan and State Department Legal Advisor Harold Koh have given such legal explanations in speeches, albeit in limited and conclusory terms. These speeches show that there is no bar in principle to a public disclosure of a more robust legal analysis of targeted killings like al-Aulaqi’s. So too do the administration’s many leaks of legal conclusions (and operational details) about the al-Aulaqi killing. ¶ The public accountability and legitimacy of these vital national security operations is strengthened to the extent that the public is informed and, through the political branches, part of the debate on the law of targeted killing. That cannot be operational discussion, for obvious reasons. But there is still a good deal that could be said about the underlying legal rationales, without compromising security. I myself favor revisions, either as internal executive branch policy or, in a better world, as formal legal revisions to Title 50 (CIA, covert action, etc.) and the oversight and reporting processes. One of those revisions would be to get beyond the not just silly, but in some deeper way, de-legitimizing insistence that these operations cannot be acknowledged even as a program; I would establish a distinct category of “deniable” rather than “covert,” and a category of programs that can be acknowledged as existing even without comment on particular operations. ¶ John Bellinger, the former State Department Legal Adviser in the last years of the Bush administration, raises concerns in the Washington Post today about the best way to defend the international legitimacy of these operations. He notes the deep hostility of the international advocacy groups, UN special raporteurs, numbers of foreign governments, and the studied silence of US allies (even as NATO, I’d add, has relied upon drones as an essential element of its Libyan air war). ¶ [T]he U.S. legal position may not satisfy the rest of the world. No other government has said publicly that it agrees with the U.S. policy or legal rationale for drones. European allies, who vigorously criticized the Bush administration for asserting the unilateral right to use force against terrorists in countries outside Afghanistan, have neither supported nor criticized reported U.S. drone strikes in Pakistan, Yemen and Somalia. Instead, they have largely looked the other way, as they did with the killing of Osama bin Laden. ¶ Human rights advocates, on the other hand, while quiet for several years (perhaps to avoid criticizing the new administration), have grown increasingly uncomfortable with drone attacks. Last year, the U.N. rapporteur for summary executions and extrajudicial killings said that drone strikes may violate international humanitarian and human rights law and could constitute war crimes. U.S. human rights groups, which stirred up international opposition to Bush administration counterterrorism policies, have been quick to condemn the Awlaki killing. ¶ Even if Obama administration officials are satisfied that drone strikes comply with domestic and international law, they would still be wise to try to build a broader international consensus. The administration should provide more information about the strict limits it applies to targeting and about who has been targeted. One of the mistakes the Bush administration made in its first term was adopting novel counterterrorism policies without attempting to explain and secure international support for them. ¶ The problem of international legitimacy is always tricky, as Bellinger knows better than anyone. I look at it this way. Tell the international community that we care about legitimacy – which is to say, that we care about their opinion in relation to our practices – and all of sudden we have handed other folks a rhetorical hold-up, to a greater or lesser degree. Unsurprisingly, the price of their good opinion and their desire to exercise control over our actions goes up. This is nothing special to this; it’s just standard bargaining theory. ¶ On the other hand, ignore them altogether, and they – particularly, note, our allies, those who say that they are acting roughly within our shared sphere of values discourse, not the Chinese or the Russians – develop a set of norms that they then apply in such a way as to mark us as the outlier and the deviant. Again, this is just drawn from any standard account of norm-negotiation; it’s not a statement of nefarious intent; it’s an acknowledgment that both we and our allies are invested in norms, and that we are not merely societies of narrow interests. At its worst, developing a quite separate norm regime and then characterizing us as genuinely deviant from it might lead to arrest warrants issued for current or former US officials, and much distrust between sides. It might also lead to places where even our allies might not want to go – putting themselves outside of the US security umbrella in particular matters that turn out to concern them a lot, such has having access to drones in Libya. ¶ If the norm envelope is pushed hard enough, however, then our allies wind up depriving themselves of access to the weapon, which clearly they don’t want to do. So they have reasons not to push too hard – both for fear of us simply ignoring them altogether (in effect withdrawing the acceptance that their opinion matters to the legitimacy of the activity) and because they want at least “parts” of it. ¶ The best place to be, then, for both sides, is roughly in the middle that Bellinger stakes out. (Note that nothing I’ve said here should be attributed to him; these are my views on the negotiation stakes.) Meaning that we have reasons to talk with our allies at length and in detail, in private and public, to try and persuade them to our views, and to persuade them that genuflecting to their advocacy and NGO groups will be worse for them than accepting our space to act, insofar as we can give a plausible interpretation of law. Plausibility is the central touchstone for international law in relations among states, finally; we and they don’t have to agree, only to agree that our several interpretations are within the ballpark of acceptability. It might involve alterations of our practice; it might not. ¶ This will never satisfy the non-governmental advocates or the academics, of course. They have no skin in the game and hence can always hold out for the most extreme position with only an indirect cost in credibility. In the case of drones, in which even some of the advocates are belatedly realizing that the weapon is indeed more precise and sparing of civilians, ignoring the NGO advocates as profoundly mistaken has spared a human tragedy in collateral damage over the long run. But the striking thing about the interstate negotiations among allies is that they don’t have to reach a conclusion – an agreement – and probably won’t. An acceptance of the plausibility of each side’s position and an agreement to continue discussion around alternatives that are considered plausible is sufficient.

### A2: Perm – Do CP

#### Authority is power vested in an agent by a principal

Oxford Dictionary of Law 9 (“Authority,” Oxford University Press via Oxford Reference, Georgetown University Library)

authority

n.

1 Power delegated to a person or body to act in a particular way. The person in whom authority is vested is usually called an agent and the person conferring the authority is the principal.

#### Changing authority requires the principal – the agent only operates within the powers it has been given

Hohfeld 19 (Wesley, Yale Law, http://www.hku.hk/philodep/courses/law/HohfeldRights.htm)

Many examples of legal powers may readily be given. Thus, X, the owner of ordinary personal property "in a tangible object" has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts known as abandonment; and-simultaneously and correlatively-to create in other persons privileges and powers relating to the abandoned object,-e. g., the power to acquire title to the latter by appropriating it. Similarly, X has the power to transfer his interest to Y, that is to extinguish his own interest and concomitantly create in Y a new and corresponding interest. So also X has the power to create contractual obligations of various kinds. Agency cases are likewise instructive. By the use of some metaphorical expression such as the Latin, qui facit per alium, facit per se\* the true nature of agency relations is only too frequently obscured. **The creation of an agency relation involves**, inter alia, **the grant of legal powers to the so-called agent**, and the creation of correlative liabilities in the principal. That is to say, one party, P, has the power to create agency powers in another party, A,-for example, the power to convey P's property, the power to impose (so called) contractual obligations on P, the power to discharge a debt owing to P, the power to "receive" title to property so that it shall vest in P, and so forth. In passing, it may be well to observe that **the term** "**authority**," so frequently used in agency cases, **is** very ambiguous and **slippery in its connotation**. **Properly employed** in the present connection, the word seems to be an abstract or qualitative term corresponding to the concrete "authorization," the latter consisting of a particular group of operative facts taking place between the principal and the agent. All too often, however, the term in question is so used as to blend and **confuse these operative facts with the powers and privileges thereby created in the agent**. A careful discrimination in these particulars would, it is submitted, go far toward clearing up certain problems in the law of agency.

#### -- Severs the mechanism –

#### Statutory restrictions require congressional statutes

Barron and Lederman 8 (David J. – Professor of Law, Harvard Law School, and Martin S. – Visiting Professor of Law, Georgetown University Law Center, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING”, January, 121 Harv. L. Rev. 689, lexis)

2. Congress (Almost) Always Wins Under the Separation of Powers Principle. - We must also consider a related argument for congressional supremacy. This claim is based on the doctrinal test that generally governs separation of powers issues arising from clashes between the President and the Congress in the domestic setting. n149 Under this test, the "real question" the Court asks is whether the statute "impedes the President's ability to perform" his constitutionally assigned functions. n150 And even if such a potential for disruption of executive authority is present, the Court employs a balancing test to "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." n151 Thus, under the general separation of powers principle, even a "serious impact ... on the ability of the Executive Branch to accomplish its assigned mission" might not be enough to render a statute invalid. n152 This approach appears to have a pro-congressional tilt; yet it actually does little more than relocate the dilemma it is impressed to avoid. Even under this deferential test, it is well understood that certain statutes can infringe the President's constitutionally assigned authority to exercise discretion; a statutory restriction on the pardoning of a given category of persons is an obvious example. Nothing in the application of the separation of powers test, then, explains why certain core executive powers (including merely discretionary authorities, rather than obligatory duties) cannot be infringed, even though it is generally understood that such inviolable cores might exist. For this reason, the general separation of powers principle does not actually resolve the question that arises in a Youngstown Category Three case. In all [\*739] events, the question remains whether the President possesses an illimitable reserve of wartime authority. Insofar as the separation of powers principle is thought to provide affirmative support for congressional control, it seems objectionable because it, too, fails to require the analyst to explain why the particular wartime power the President is asserting is not one that Congress can countermand. It simply asserts that it is not.

#### Statutes are enacted by legislative action

Ballentine’s 10 (Ballentine’s Law Dictionary, “Act”, 2010, lexis)

1. Verb: To perform; to fulfill a function; to put forth energy; to move, as opposed to remaining at rest; to carry into effect a determination of the will. Holt v Middlebrook (CA4 Va) 214 F2d 187, 52 ALR2d 1043. To simulate; to perform on stage, screen or television. 2. Noun: A thing done or established; a part of a play or musical comedy; a deed or other written instrument evidencing a contract or an obligation. A statute; a bill which has been enacted by the legislature into a law, as distinguished from a bill which is in the form of a law presented to the legislature for enactment.

#### Judicial restrictions are imposed by courts

Kang 6 (Michael – Assistant Professor, Emory University School of Law, “De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform”, 2006, 84 Wash. U. L. Rev. 667, lexis)

The Court's general reluctance to restrict partisan gerrymandering appeared motivated by a lack of judicial confidence. Judicial restriction of gerrymandering would draw courts, which are putatively nonpartisan and apolitical institutions, n39 into the untenable position of managing what is fundamentally a political exercise. Justice Kennedy emphasized the difficulty for courts of "acting without a legislature's expertise" and the unwelcome task of removing from the democratic process "one of the most significant acts a State can perform to ensure citizen participation in republican self-governance." n40 Indeed, challenges to gerrymanders demand more of courts than simply striking down excessively partisan plans. Today, judicial intervention against gerrymandering almost necessarily brings with it active judicial management of the redistricting process. A court that strikes down a redistricting plan, for whatever reason, n41 invariably is drawn into authorship of a new redistricting plan to replace it, or a close interaction with legislators working to formulate a new plan (or both). n42 Courts "become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections." n43 When courts have involved themselves in redistricting matters, namely in racial gerrymandering and one person, one vote cases, [\*675] the courts have drawn heavy criticism. n44 Even so, Justice Stevens predicted that "the present "failure of judicial will' will be replaced by stern condemnation of partisan gerrymandering." n45 Greater judicial direction of the redistricting process is a price that Justice Stevens and reformers seem happy to pay. They are more than willing to trade the costs of judicial entanglement for the perceived benefits of judicial oversight in redistricting. I further discuss the costs of this approach in Part III.

#### Severance is a voter – makes the aff a moving target and makes it impossible for the neg to have stable ground because of shifting, late-breaking debates

#### They destroy legal precision about agency implementation that’s key to topic education and the ability to test “statutory/judicial restrictions”

#### Severs –

#### US can’t be the executive

Cox 89 (Bartholomew, Legal Historian; A.B. 1959, Princeton University; M.A. 1962, Ph.D. 1967, George Washington University; J.D. 1976, George Washington University National Law Center, "Raison d'Etat and World Survival: Who Constitutionally Makes Nuclear War?," August, 57 Geo. Wash. L. Rev. 1614, lexis)

The formal Constitution also seems to allocate ultimate power in governmental matters to Congress. Despite language to the contrary from executive branch lawyers and even the Supreme Court, "the state" or "the government" or "the United States" is surely not to be equated with the executive branch. n23 The United States is [\*1619] a single metaphysical entity, encompassing state, society, and government in one artificial being. As a single entity, when disputes arise between the branches, the plain language of the document of 1787 requires the legislature to prevail. For example, Congress under Article III has express power to regulate the appellate jurisdiction of the Supreme Court, a power sustained more than a century ago in Ex parte McCardle. n24 Of more direct, present relevance, Article I, section 8, clause 18, reads: "The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, n25 and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." William Van Alstyne has argued that this clause plainly gives Congress "horizontal" powers to control the activities of the other two branches. n26 The problem thus becomes not whether Congress may exercise such control under the formal Constitution, but whether it will. Professor Charles Black appears to agree: The powers of Congress are adequate to the control of every national interest of any importance, including all those with which the president might, by piling inference on inference, be thought to be entrusted. And underlying all the powers of Congress is the appropriations power, the power that brought the kings of England to heel. . . . [B]y simple majorities, Congress could at the start of any fiscal biennium reduce the president's staff to one secretary for answering social correspondence, and . . . by two-thirds majorities, Congress could put the White House up at auction. n27

#### -- Severs the actor –

#### A) “The” means all parts

**Encarta 9** (World English Dictionary, “The”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495)

2. indicating **generic** class: used to refer to a person or thing **considered** **generically or universally**  
Description: bulletDescription: transExercise is good for **the heart**.  
Description: bulletDescription: transShe played the violin.  
Description: bulletDescription: transThe dog is a loyal pet.

#### B) That means all 3 branches have to act

Miller 86 (Arthur, Distinguished Visiting Professor of Law – Emory University, “Congress, the Constitution, and First Use of Nuclear Weapons”, Review of Politics, 48(3), Summer)

Three other points merit mention in this discussion of collective decision-making. First, both the formal and the secret constitutions allocate power over foreign relations and defense to the central government, to, that is, the United States of America visualized as a single entity. What, however, is "the" United States? The question has never been definitively answered; and indeed has sel-dom been asked in judicial opinion or scholarly discourse.42 Asked another way, the question is this: Where does sovereignty lie in the American polity? The formal constitution is supposedly based on popular sovereignty, with ultimate power resting in the people. That, however, is far from accurate. Proof positive that sover-eignty lies in the "state" came when General Robert E. Lee sur- rendered at Appomattox: "the people" of the South were not to be permitted to exercise their "sovereignty." The powers of the national government are supposedly only those delegated to it, either expressly or impliedly. But that is scarcely accurate, as 200 years of constitutional development attest. The Framers of the formal constitution established a governmental system that, as Justice Robert Jackson commented, would ensure that the dispersed powers of the federal government would be integrated into a workable government. "Separateness but interdependence, autonomy but reciprocity" was the constitutional command.43 The meaning is unmistakable: "the" United States is a single metaphysical entity, encompassing state, society, and government in one artificial being. These terms are not synonymous. The state is the fundamental entity; governmenits its apparatus; and society is composed of the individuals and groups governed. Much like the business corporation, the state-"the" United States-is an artificial construct, more a method than a thing. It exists in constitutional theory-in, for example, the state secrets privilege in litigation-even though judges and commentators alike often confuse the term with government and with society. A legal fiction that by itself can do no act, speak no work, and think no thought, the state (like the corporation) has "no anatomical parts to be kicked or consigned to the calaboose; no soul for whose salvation the parson may struggle; no body to be roasted in hell or purged for celestial enjoyment." 44 Despite loose language to the contrary from executive branch lawyers and even the Supreme Court, "the" state or "the" government-or "the" United States-is not to be equated with the executive branch. Nor with any one branch, for that matter; each branch is part of an indivisible whole.

### Object Fiat – 2NC

#### 1. CP is not object fiat – it doesn’t have the president restrict war power authority – it changes the use of that authority.

#### Even if it is object fiat – it’s justified in this instance

#### 2. It’s vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place by the executive vs. other branches

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

#### 3. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 4. Predictable and fair – they can read signal, credibility, and precedent advantages to congress or court action, it’s at the heart of the literature so there’s plenty of aff and neg lit, and it tests “statutory” and “judicial”.

#### 5. Aff side bias – most of the lit advocates decreasing war powers and four broad categories means there’s a litany of affs but few DA’s. The counterplan provides an inherent check on the topic for the negative so debates mirror the literature

#### 6. Gut check – affs should have to defend their actor. Process is important, otherwise neg ground would become torture and cyberwar good on this topic

#### 7. At worst, reject the argument not the team

### Judiciary Key/CP Solvency

#### Only the CP solves – the president will refuse the plan’s limitation

Siegel 97 (Jonathan R. – Associate Professor of Law, George Washington University Law School, “SUING THE PRESIDENT: NONSTATUTORY REVIEW REVISITED”, October, 97 Colum. L. Rev. 1612, lexis)

If an executive official refuses to obey a court's judgment, the court can order the official jailed for contempt. But who puts the official in jail? Not the judges personally. And the Marshals Service works for the President. n320 If the President really wanted to resist to the fullest a judgment against any federal official, he could order the marshals not to enforce any contempt judgment against that official. n321 The courts, therefore, are always dependent on the President for the enforcement of their judgments against executive officials. n322 The fact that a court's judgment will be unenforceable if the President chooses to [\*1688] defy it does not, however, prevent the court from issuing a judgment against any other executive official. A court's dependence on the President's willingness to enforce their judgments may be particularly poignant in a case against the President himself, but the situation is not, in reality, any different from the situation a court faces in any case against any executive official. The episode of President Lincoln's resistance to court decrees, often cited in support of the argument that courts cannot enjoin the President, n323 in fact illustrates very clearly why the identity of the defendant is irrelevant to the extent of a court's power. During the Civil War, Lincoln took it upon himself to suspend the writ of habeas corpus. Congress ratified his power to suspend the writ, but only after he had already been doing so for two years. n324 In Ex parte Merryman, n325 Chief Justice Taney, sitting as a circuit justice, issued a writ of habeas corpus with regard to a person being detained by military officers. The writ was ignored. The Chief Justice issued an order of attachment based on contempt, but that too was ignored, and, ultimately, the writ of habeas corpus went unenforced.

### Solvency – Targeted Killing – Drone Prolif/Norms

#### Solves their norms internal

#### Executive-branch transparency and bringing U.S. practice in line with policy builds the international diplomatic capital to press for drone norms

Roberts 13 (Kristin, News Editor, National Journal, 3/22/13, “When the Whole World Has Drones,” <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.¶ A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs.¶ Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.¶ The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

#### 1AC ev doesn’t have a court key warrant for the internals to either advantage – its all about changing our actions, not courts changing statues –

1 – Bowcott 12 – says it’s *obama’s attacks* that cause other states to flout human rights standards – stopping attacks solves – rule of law is weakened because of how we use targeted killings *in practice* – changing US policy solves the internal – Bowcott specificlally criticizes silence over drone attacks – CP solves that

2 – Boyle 13 – isolates the targeting killing *POLICY* as the reason for drone prolif – changing the policy solves that – the first line says An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology – if the Obama administration stops embracing drones, it solves the impact because their evidence isolates establishing the precedent as the reason for the internal link – double bind – either the CP solves or the case doesn’t because if policy shift isn’t enough drones that comply with i-law doesn’t solve an arms race – Freeman 13 proves – it’s the ability to create a deterrence norm that matters, not what branch creates it

### Solvency – International Law

#### Here’s evidence is solves international law -

#### 2- Counterplan internalizes international law

Bradford 4 (William – Associate Professor of Law, “In the Minds of Men\*: A Theory of Compliance with the Laws of War” 2004, 36 Ariz. St. L.J. 1243, lexis)

[Comments]

n134. Hathaway, supra note 11, at 1961 (describing internalization of international norms and rules in domestic law, a process carried out primarily by foreign policy personnel but also through executive orders, legislation, and judicial decisions, as central to evolution of cooperation). TLP theorists recognize that states will vary in the degree to which they internalize international law, but maintain that "every sizable government operates according to rules" and that invariably states will incorporate international legal obligations and thereby "produce respect for standing rules of international law." Fisher, supra note 25, at 147.

### A2 Circumvention

#### Any 1AR articulation about the circumvention or solvency deficits implicate the aff just as much as the counterplan

#### Comparative risk of delay and circumvention is higher with the plan

**Metzger 9** (Gillian E., professor of law at Columbia, “THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, 59 Emory L.J. 423, Lexis)

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they **avoid** the **delay** in application that can hamper both judicial and congressional oversight. n76 Second, internal mechanisms often operate **continuously**, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. n77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. n78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. n79

**Err neg—their evidence is media hype**

**Sales 12 (**Nathan Alexander, Assistant Professor of Law, George Mason University School of Law, 8/29/, “Self-Restraint and National Security,” <http://jnslp.com/2012/08/29/self-restraint-and-national-security/>)

If the only thing we knew about national security was what we learned from Hollywood, we would come away with the impression that the Pentagon and CIA were populated entirely by rogue agents who routinely, if not gleefully, flout the legal restrictions that govern them. Think of Jack Bauer goading a captured terrorist into talking by staging a mock execution of his young son, or General Jack Ripper enthusiastically ordering a nuclear strike on the Soviet Union. That crude caricature is almost **the exact opposite of reality**. Military and intelligence officials are often scrupulously careful when deciding how to deploy the immense powers at their fingertips. They frequently adopt constraints on their ability to carry out certain national security operations, restrictions that go farther than what is required by

the applicable principles of domestic or international law. Recent history offers plenty of examples. Counterterrorism interrogators aren’t getting as close as possible to the lines drawn by the Convention Against Torture, the federal torture statute, and the Detainee Treatment Act; they are restricted to the relatively benign techniques authorized in the Army Field Manual. In the 1980s and 1990s, officials were reluctant to order targeted killings that they believed were perfectly consistent with domestic and international prohibitions on assassination; they either rejected them outright (in the case of Osama bin Laden) or modified them to camouflage their true purpose (in the case of Mohammar Qadaffi). Military officers aren’t itching to order attacks that are even arguably permissible under the law of war; they sometimes forego lawful strikes that members of the JAG corps regard as problematic for moral, economic, and other non-legal reasons. Justice Department lawyers didn’t aggressively promote information sharing under the Foreign Intelligence Surveillance Act; they built a wall that segregated cops from spies and set themselves up as the department’s information sharing gatekeepers. Why? Public choice theory can help answer that question. As developed in this article, there are at least two explanations that can account for the government’s tendency to tie its own hands in national security operations: cost-benefit asymmetry and empire building. Officials in military and intelligence agencies tend to be cautious for a straightforward reason. It is in their interest to be cautious. The expected costs of national security operations are often greater than the expected benefits. The best case scenario for a cop, spy, or soldier is that he gets a pat on the back; the worst is that he goes to jail. That gap naturally predisposes officials to play it safe**,** and senior government policymakers (and therefore their lawyers) are likely to be especially cautious. It shouldn’t come as much of a surprise, then, when attorneys in the intelligence community or the Pentagon veto an operation – even a concededly lawful operation – that has the potential to inspire demoralizing propaganda campaigns by adversaries, expose officials to criminal prosecutions, or worse. The lawyers are doing what all lawyers do – trying to keep their clients out of trouble. You may be convinced that it’s legal to bomb a particular convoy or share a particular intelligence report with your buddy at the FBI. But there’s no guarantee that Belgian war crimes prosecutors or the FISA Court will see things the same way. Why take the chance? Of course, lawyers are not pristinely disinterested altruists. They, too, are rationally self interested actors, and this insight suggests a second possible explanation for self-restraint. Vetoes can help attorneys build their bureaucratic empires. A Justice Department lawyer who wants to enhance his pull and that of his office knows that he can do so by raising doubts about the wisdom of the CIA’s proposal to gun down Osama bin Laden, or by preventing prosecutors in the Southern District of New York from getting too cozy with intelligence analysts at FBI headquarters. **Nobody respects a yes man**; the person they respect is the one who can keep them from doing what they want. Vetoes thus can magnify two of the things that turf warriors care about the most – their influence over senior policymakers and their autonomy to pursue their own agendas. The lawyers tend to say no because it’s in their interest to say no; doing so advances their personal and institutional welfare.

### A2 External Checks Key

#### The 2AC flags her external checks argument as dodging the law but Obama would not dodge because the CP repeals squo drone policy in favor of international law – he is explicitly lining up in favor of international law

#### Internal checks are comparatively more effective than external checks on executive power

Rasdan 10 (Afsheen, Professor @ William Mitchell College of Law, "Presidential Power in the Obama Administration: Early Reflections: BUSH AND OBAMA FIGHT TERRORISTS OUTSIDE JUSTICE JACKSON'S TWILIGHT ZONE," 26 Const. Commentary 551, lexis)

Back to my focus on the CIA, not only do I question the usefulness of Jackson's categories on issues of executive power, I challenge whether Congress is a significant check on intelligence activities. n35 More promising as checks on the intelligence community are the patrolling entities within the executive branch: the lawyers, the inspectors general, and the review boards within the clandestine service. Internal checks, in other words, are more effective than external checks on the CIA's manifestations of executive power. Congress's express or implied approval of intelligence activities, whether by appropriations or by more specific statutes, is superficial compared to deeper trends within the executive branch. In a sort of paradox, however, the most important checks are the most difficult to measure; empirical data on the CIA's Office of General Counsel, the Office of Inspector General, and the Accountability Review Boards are thin - and often classified. This paradox applies to both Presidents Bush and Obama.¶ So while Congress is not irrelevant, the importance of the congressional variable should not be overstated in the presidential formula. An academic's familiarity with the Jackson categories does not make them always relevant to reality. [\*564] Internal checks are much more important than the Jackson categories in understanding how Presidents Bush and Obama ensure that intelligence activities stay effective and legal.

### Theory – Agent CP – 2NC

#### Counterplan is legitimate –

#### 1. Tests “statutory” and “judicial” – executive action is a different mechanism. Its non-topical, core ground, and something they should be prepared for – that’s Duncan

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 3. Process key to education

Schuck 99 (Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

#### 4. Neg flex – we need to test from all angles – agent ground is vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place, not whether they should be there

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

#### 5. Fair & Predictable – they can defend “congress/judiciary key”, our net-benefit proves it’s not trivial, and it’s at the heart of the topic

#### 6. Not a voter – reject the argument, not the team

#### 7. DAs Aren’t Enough

#### A. Comparative necessity - backlash DAs don’t help decide which branch is better suited in foreign policy

#### B. CPs are needed to deal with entrenched status quo trends as well as understand different processes, instead of simply debating DAs every round that never get the heart of agent debates

## Deterrence

### 2NC Circumvention

#### The 2AC concedes that Obama has the capacity to circumvent the plan – this means that you can vote negative on presumption because their external check will never constrain the executive and thus bad strikes will continue to be used – means they solve none of their impacts

#### Obama won’t listen – there are special exceptions and covert actions that make attacks inevitable. More regulation could be revoked by the president because it’s a completely internal process that the other branches do not know about. That’s Lohmann

#### Obama refuses to seek Congressional approval for drone use

Alston 11—Professor of Law @ New York University [Philip Alston (UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010) “The CIA and Targeted Killings Beyond Borders,” Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 283, 2011]

And fourth, the Obama administration has signaled that it does not regard the deployment of drones to a foreign country for the purposes of killing to require congressional approval unless the strikes reached an unspecified but clearly high threshold such as if "we were carpet-bombing a country using Predators." n136 Drones thus become an especially attractive  [\*328]  way for a President to undertake lethal operations in various countries without seeking the sort of authorization that might provoke a sustained and structured public debate.

#### Ambiguity means the plan doesn’t establish a precedent

Westerland et al. 10—Professor of Political Science @ University of Arizona [Chad Westerland, Jeffrey A. Segal (Chair of Political Science and SUNY Distinguished Professor @ StonyBrook University), Lee Epstein (Professor of Law and Political Science @ Northwestern University), Charles M. Cameron (Professor of Politics and Public Affairs @ Princeton University) Scott Comparato (Professor of Political Science @ Southern Illinois University), “Strategic Defiance and Compliance in the U.S. Courts of Appeals,” American Journal of Political Science, Vol. 54, No. 4, October 2010, Pg. 891–905]

Two features of the “horizontal stare decisis” equilibrium stand out. First, adherence to precedent is less likely when the sitting court finds the precedent highly objectionable—in this sense, stare decisis is conditional. Defiance will be more likely if the policy preferences of the sitting court are distant from those of the enacting court. Second, adherence to precedent is less likely if the precedent is old. Essentially, the intergenerational log-roll involves amovingwindow: older precedents are discarded while younger ones are afforded respect, especially if they are not too objectionable. These two features seem likely to emerge in any model of horizontal stare decisis with actors whose policy preferences differ.

A third feature is not explicitly analyzed in Rasmusen’s formal model but seems worth considering: enacting High Court uncertainty or ambivalence about the best policy. If the initial enacting High Court is itself split or uncertain about the best policy—as manifest, for example, by numerous dissents and concurrences—this uncertainty may allow subsequent High Courts legitimately to deviate from the precedent. Subsequent High Court deference to precedent may require the enacting High Court to speak with a clear, unified voice, especially in complex cases. Pg. 899

### Turns Court Legitimacy

#### Wartime means Obama ignores the decision – that undermines Court legitimacy and makes the plan worthless

Pushaw, 4 – Professor of law @ Pepperdine University (Robert J. Jr., Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, Vol. 69)

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970