# 2AC

### NATO

#### NATO is still relevant, will continue despite austerity, and solves multiple scenarios for conflict

Kamp 13 (Karl-Heinz, research director at the NATO Defense College in Rome, “Is NATO Set to Go on Standby?” <http://www.atlanticcouncil.org/images/publications/NATO_Set_to_Go_on_Standby.pdf>)

NATO’s Strengths in the Post-2014 World NATO had its real identity crisis in the early 1990s, when the dissolution of the Warsaw Pact, marking the end of the overarching Soviet threat, seemed to have deprived the Alliance of its raison d’être. The result was an agonizing debate on NATO’s future roles and missions, culminating in the idea, particularly in European security circles, of transforming NATO into a subcontractor of the United Nations (UN) in order to justify its further existence. Nowadays, more than two decades later, it is generally understood that NATO would be ill-suited to function as a world policeman or as a military arm of the UN. Moreover, it has become evident that NATO does not need any proxy functions to assure its survival: the Alliance exists primarily because twenty-eight member states want it to exist as a means of collective defense. With the end of the Afghanistan mission, NATO loses one of its major occupations of recent times. However, for at least four reasons, the Alliance looks in a far better position today than it was after the collapse of the Soviet Union. First, there is no compelling nexus between the justification of a political-military Alliance and ongoing combat missions: NATO does not need to be constantly engaged in military operations to prove what it is worth or why it is needed. What is fundamental for NATO is a rationale, in the form of common threats or challenges, that gives a reason for its existence. Such a rationale certainly exists, given the broad range of dangers to NATO members’ security interests, from potentially escalating crises in the Middle East and Northern Africa, to the rise of nuclear powers like North Korea or Iran, and disruptive threats to critical computer networks. In other words, NATO’s standing as a cost-effective and mutually advantageous instrument of protection, deterrence, and defense is undeniable, regardless of whether it is actually running military assignments at any given time. This holds all the more true as NATO has adapted in recent decades to deal with a broad spectrum of security challenges, extending well beyond the risk of direct military attacks on Alliance territory. Second, in Afghanistan NATO has shown incredible political cohesion. Who would have seriously believed in 2001 that NATO Allies would stand together in Afghanistan for more than twice the duration of the Second World War? At the same time, the Alliance has also demonstrated its military capabilities, fighting for years on one of the world’s most demanding battlefields: an extremely poor, landlocked country thousands of kilometers away with hardly any infrastructure. The result is that all NATO allies today have experienced and combat-hardened military forces. There was also the experience of the Libyan campaign: NATO showed that it is capable not only of acting swiftly in reaction to an immediate crisis, but also of terminating a military operation in time and not allowing itself to be drawn down the slippery slope towards the quagmire of an endless engagement. Despite the complaints about lacking European capabilities in Libya in areas like intelligence and refueling capacities, NATO forces were much better equipped there than they would have been in a comparable situation in the early 1990s, and this difference would have been even clearer if all European NATO members had contributed militarily to the mission. It is therefore no coincidence that NATO is perceived from outside as the most successful (and most powerful) political-military alliance in history, despite its internal debates and navel gazing. Third, the basis of NATO—i.e., the transatlantic link, based on shared benefit—is still valid and persuasive to both the North Americans and the Europeans. Skeptics tend to point out that, with the generational changes on both sides of the Atlantic, the positive connotations of European-American friendship and the support for a transatlantic security alliance might fade away. In addition, it is sometimes claimed that NATO is being eroded by dwindling financial resources and increasing transatlantic debates over military spending, commitments, and burden sharing. According to such a view, the United States is becoming increasingly unwilling–and unable–to pay for the military shortcomings of its European allies. Yet, the almost habitual NATO quarrels about burden sharing miss one crucial point: nations join and keep up an alliance not for altruistic reasons or nostalgia, but to serve their interests. Europe and North America don’t invest in NATO to please each other, but because the mutual benefits outweigh the investments. NATO was founded and kept up during the Cold War because it was advantageous for both sides of the Atlantic. The United States provided protection for Europe, whereas the European allies in turn guaranteed Washington's influence in Europe. Such a transatlantic bargain still exists, in a slightly different perspective. Through NATO, the United States guarantees its influence in today's Europe, a continent which is stable, prosperous (the Euro crisis notwithstanding, Europe's combined economy is greater than that of the United States), benign and, above all, politically like- minded. No other region in the world combines these attributes in a similar manner, and no other continent is open to such a strong US voice in its own affairs. Moreover, the European NATO members, all committed to transatlantic values and all firm democracies (even if some Southeastern European allies have to further mature in that respect), can provide political legitimacy for military actions conducted by the US beyond its own borders. Lastly, Europe remains a logistical hub for global US military operations. Europe, in turn, benefits from the transatlantic security partnership in at least three respects. The United States still provides military protection (with conventional as well as nuclear forces) - a benefit which is of tremendous importance for many Eastern European NATO members. In addition, the United States protects the global commons, for instance, sea lines of communication and unlimited access to air and space. Finally, the United States is a decisive power of global order and stabilizes regions that are important for the European allies. Thus, for both sides of the Atlantic, membership in NATO means benefit sharing rather than burden sharing. The fourth and final consideration is that, even if 2014 is a major turning point for NATO, the Alliance will not go out of business. Instead, it will do what it did before Afghanistan: stay militarily engaged in the Balkans or the Horn of Africa, conduct training exercises, plan for all kinds of contingencies, and continue to develop common standards and procedures. Furthermore, NATO members have the chance to consult on any emerging security problems and to assess means of collective or individual action. This possibility of preemptively taking on upcoming challenges is codified in Article 4 of the Washington Treaty. Unfortunately, NATO allies have not always made use of these consultation mechanisms because some NATO members want to limit the Alliance primarily on its military dimension and try to avoid too many political debates in the North Atlantic Council. This shortcoming needs to be addressed. Finally, NATO members also will develop and advance their international partnership network with states and organizations, in order to cope with the realities of a globalized security environment.

### Warming

#### CO2 in the atmosphere doesn’t make warming inevitable, we can still keep it below 2 degrees.

Hansen and Kharecha et al 2013

James, adjunct professor in the Department of Earth and Environmental Sciences at Columbia University, and Pushker, Ph.D. Geosciences and Astrobiology, NASA Goddard, Assessing "Dangerous Climate Change": Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature, 12-3-13, http://www.columbia.edu/~jeh1/mailings/2013/20131202\_PopularSciencePlosOneE.pdf

We conclude that the widely accepted target of limiting human-made global climate warming to 2 degrees Celsius (3.6 degrees Fahrenheit) above the preindustrial level is too high and would subject young people, future generations and nature to irreparable harm. Carbon dioxide (CO2) emissions from fossil fuel use must be reduced rapidly to avoid irreversible consequences such as sea level rise large enough to inundate most coastal cities and extermination of many of today's species. Unabated global warming would also worsen climate extremes. In association with summer high pressure systems, warming causes stronger summer heat waves, more intense droughts, and wildfires that burn hotter. Yet because warming causes the atmosphere to hold more water vapor, which is the fuel that drives thunderstorms, tornadoes and tropical storms, it also leads to the possibility of stronger storms as well as heavier rainfall and floods. Observational data reveal that some climate extremes are already increasing in response to warming of several tenths of a degree in recent decades; these extremes would likely be much enhanced with warming of 2°C or more. We use evidence from Earth's climate history and measurements of Earth's present energy imbalance as our principal tools for inferring climate sensitivity and the safe level of global warming. The inferred warming limit leads to a limit on cumulative fossil fuel emissions. It is assessed that humanity must aim to keep global temperature close to the range occurring in the past 10,000 years, the Holocene epoch, a time of relatively stable climate and stable sea level during which civilization developed. The world cooled slowly over the last half of the Holocene, but warming of 0.8°C (1.4°F) in the past 100 years has brought global temperature back near the Holocene maximum. We note that policies should emphasize fossil fuel carbon, not mixing in carbon from forest changes as if it were equivalent. Most of the carbon from fossil fuel burning will stay in the climate system for of order 100,000 years. Of course carbon dioxide from deforestation also causes warming and policies must address that carbon source, but good land use policies could restore most of that carbon to the biosphere on a time scale of decades to centuries. However, maximum biospheric restoration is likely to be only comparable to the past deforestation source, so fossil fuel sources must be strictly limited. We conclude that human-made warming could be held to about 1°C (1.8°F) if cumulative industrial-era fossil fuel emissions are limited to 500 GtC (gigatons of carbon, where a gigaton is one billion metric tons) and if policies are pursued to restore 100 GtC into the biosphere, including the soil. This scenario leads to reduction of atmospheric CO2 to 350 ppm by 2100, as needed to restore Earth's energy balance and approximately stabilize climate. In contrast, we conclude that the target to limit global warming to 2°C, confirmed by the 2009 Copenhagen Accord of the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change, would lead to disastrous consequences. For example, Earth's history shows that 2°C global warming is likely to result in eventual sea level rise of the order of six meters (20 feet). Moreover, we note that such a warming level would induce "slow amplifying feedbacks". These amplifying feedbacks include a reduction of ice sheet area, vegetation changes including growth of forests in high latitudes of Asia and North America that are now sparsely vegetated, and an increase of atmospheric gases such as nitrous oxide and methane. These slow feedbacks are small if climate stays within the Holocene range, but substantial if warming reaches 2°C or more.

### 2AC Restriction

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### We meet-Ex post review is a restriction on targeting killing authority-Ex Ante isn’t

Jaffer-Director ACLU Center for Democracy-13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), <http://www.harvardlawreview.org/issues/126/april13/forum_1002.php>)

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats. These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse. But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so. Proponents of a specialized targeted killing court are right to recognize that the judiciary has a crucial role to play in articulating and enforcing legal limits on the government’s use of lethal force. Congress need not establish a new court, however, in order for the judiciary to do what the Constitution already empowers and obliges it to do.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 **Power refers to an agent's** ability or **capacity to produce a change** in a legal relation (whether or not the principal approves of the change), **and authority refers to the power given (permission granted) to the agent** by the principal to affect the legal relations of the principal; **the distinction is between what the agent can do and what the agent may do**.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Their interpretation is flawed

#### A. Over limits- core cases revolve around regulating behavior not banning policies. Their interp eliminates topic lit.

#### B. Affirmative Ground-Ban policies are dead against agent counterplans. Err aff because the range of good affs is small and the neg is strapped with generics.

#### ---Reasonability-competing interpretations causes substance crowd. Good is good enough when the topic is already limited and our aff is squarely in the lit

### Warfighting

#### Backlash causes drone basing kickout- increasing credibility is key.

Zenko, CFR Fellow, 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### Case turns the DA – lack of judicial review collapses CMR which makes the military isolated from the civilian branch, chills operations – that’s key to hegemony which checks every major war

#### The plan doesn’t reduce drone use – it just strengthens targeting capability

Adelsberg 12 (Samuel S., \* J.D. Candidate 2013, Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens” Harvard Law & Policy Review 6 Harv. L. & Pol'y Rev. 437, Lexis)

 [\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens. Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### Deference to the executive encourages whisteblowers, the media, and other countries to backlash – causes volatile restrictions of policy and worse intel leaks

Marguilies ‘10 Peter, Professor of Law, Roger Williams University, “Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law” IOWA LAW REVIEW Vol. 96:195

The categorical-deference approach also fails to acknowledge that those stymied by the lack of formal redress can substitute for litigation other paths that pose greater danger. For example, consider the perspective of the official who leaks a document, not to advance a personal agenda, but to focus public attention on government policy.170 Whistleblowers of this kind, like Daniel Ellsberg, who leaked the Pentagon Papers to the New York Times, 171 are advancing a constitutional vision of their own in which senior officials have strayed from the limits of the original understanding.172 If the courts and Congress do not work to restore the balance, the whistleblower engages in self-help. Because leakers are risk-seekers who believe the status quo is unacceptable, they lack courts’ interest in safeguarding sensitive information. Policy shaped by blowback from leaks is far more volatile than policy reacting to judicial precedent.173 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

### A2 Complexity --- 2ac Frontline

#### ---The affirmative is a prerequisite to the critique ---

#### solves their link claims better --- The plan reduces government authority to conduct unnecessary and poorly designed targeted killing strikes.

#### Framework – the role of the ballot should be dependent on evaluating federal government restrictions on presidential war power authority – only predictable and fair standard since the resolution sets the ground for all debates and the negative has the ability to access multiple arbitrary self-serving frameworks---method focus steamrolls politics

Jackson, associate professor of IR – School of International Service @ American University, ‘11

(Patrick Thadeus, The Conduct of Inquiry in International Relations, p. 57-59)

Perhaps the greatest irony of this instrumental, decontextualized importation of “falsification” and its critics into IR is the way that an entire line of thought that privileged disconfirmation and refutation—no matter how complicated that disconfirmation and refutation was in practice—has been transformed into a license to **worry endlessly about foundational assumptions.** At the very beginning of the effort to bring terms such as “paradigm” to bear on the study of politics, Albert O. **Hirschman** (1970b, 338) **noted this very danger**, suggesting that without “a little more ‘reverence for life’ and a little less straightjacketing of the future,” the **focus on** producing internally **consistent** packages of **assumptions instead of** actually examining **complex empirical situations would result in scholarly paralysis.** Here as elsewhere, Hirschman appears to have been quite prescient, inasmuch as the major effect of paradigm and research programme language in IR seems to have been a series of debates and discussions about whether the fundamentals of a given school of thought were sufficiently “scientific” in their construction. Thus **we have debates about how to evaluate scientific progress**, and attempts to propose one or another set of research design principles **as uniquely scientific**, and inventive, “reconstructions” of IR schools, such as Patrick James’ “elaborated structural realism,” supposedly for the purpose of placing them on a **firmer scientific footing** by making sure that they have all of the required elements of a basically Lakatosian19 model of science (James 2002, 67, 98–103).

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### We did a complexity analysis and figured out this is what’s right

#### ---This is best---

#### (A.) Key to policy education --- Separating complexity analysis from material policy alternatives crushes political effectiveness.

Roe 1999

Emery, Director of the Center for Sustainable Resource Development at UC Berkeley, *Except Africa*, pg 184-185

Second, the conjunction of politics and complexity places up-front the core dilemma many power advocates have been happy to obscure. The social scientist or cultural theorist who finds, for example, that power is more complex than commonly supposed can leave the matter at that. No need to make anything like a practical recommendation about what real people with real problems in real time should do now that things have been shown to be more complex. Their critique is policy relevant simply by virtue of being a critique of power, and what is more policy relevant than power, right? Wrong. This trick won’t work in a politics of complexity. Here you can’t criticize your way to policy relevance. A politics that starts with complexity has always to ask: how do we underwrite and stabilize the assumptions for policy-making in the face of that complexity? How can we make policy choices in the presence of recurrent surprise and persistent unpredictability*?* Chapter 1 outlined six answers to the questions, while the bulk of Except-Africa has focused on one, the counternarrative option. Each option, however,shares the same implications. Each means avoiding the person who believes that the real objective of analysis is to critique and destabilize without obligation to provide an alternative to that which is being criticized. Each means avoiding people who automatically assume their analysis is policy relevant, who wouldn’t ever dirty their hands in such low-life things as having to choose the losers of a public policy, who in other words couldn’t care less whether they had access to policymakers who treated their work seriously and used it in making decisions. Each means, finally, avoiding people who think that just because something can be criticized, something needs to be criticized. In short—and this is the sobering part—it means avoiding precisely many advocates of the polarized power narrative.

#### (B.) Solves their offense --- They can have indicts into our research process as long as they’re tied to reasons why the plan is a bad idea.

#### There should be a high barrier of disproving our analysis – worst case thought is inevitable but ours is based in probability not possibility.

Vlek 2009

Charles, professor emeritus of environmental psychology and decision research in the Faculty of Behavioural and Social Sciences, Groningen University, A PRECAUTIONARY-PRINCIPLED APPROACH TOWARDS UNCERTAIN RISKS: REVIEW AND DECISION-THEORETIC ELABORATION Erasmus Law Review [Volume 02 Issue 02] http://www.erasmuslawreview.nl/files/Vlek\_-\_issue\_Pieterman\_d.d.\_27\_augustus.pdf

A basic proposition inherent to the PP is that more caution is justified when there is greater uncertainty about possible negative consequences and/or about the seriousness of those consequences. Another proposition is that any risk problem always implies at least two choice alternatives: go/do not go, accept/reject, or permit/restrict. Also, there are at least two 'states of nature\*: there is a serious threat or there is not. This elicits two possible basic decision errors: (1) a false positive, when you take costly precautions while there actually is no threat, and (2) a false negative, when you neglect real danger. The gravity of these two errors is relative to the corresponding benefits of deciding 'correctly': being costly precautious when there is a threat, and being profitably careless when there is none. A further point is that a precautionary decision often is provisional; a revised choice can be made when new information becomes available. When one knows more about the possible consequences of a target course of action, about their manageability by further safety measures, and/or about feasible alternatives, then the initial cautious decision may be revised, and the original goal(s) may be achieved in a safer way. Thus there are in fact not two but three basic decision options: do, do not do, or defer (see Section 4.4.4). The fundamental problem not of the PP but of uncertain-risk situations, is the great uncertainty about the possibility of serious harm. This may lead one to call it a normative principle, but only if one does not accept the rationality of temporarily shrinking back from a course of action that might lead into disaster.\*\* 4.2 Nature and seriousness of potential harm What is a 'serious threat\* that could initially trigger and later justify precaution? It must be something that could thoroughly disrupt a person's, life, harming its positive development, bringing about long-term trauma, and causing very high costs of recovery, reversal, or compensation. Or, at the societal level, a serious threat might cause severe social disruption, environmental damage, and political shock, which would take many years, numerous debates, and considerable funds to overcome. In view of these considerations, the notion of serious harm may be assessed in terms of the criteria assembled in Box 2; these link up with basic results from riskrisk- perception research. Psychologically, a focus on possible worst cases or potential catastrophality is more obvious the greater the uncertainty about its actual, often very unlikely, occurrence.59 This 'probability neglect\* may be enhanced by the emotions surrounding images of disaster.60 Godard's61 warning about radical 'catastrophism' lines up with Starr's,62 who ascribes present-day 'hypothetical fears\* (e.g. of global warming, irradiated foods, and GMOs) as arising from a primitive instinct to suspect the unknown, which leads to the PP - seen by Starr - as a barrier to an adaptive future.63 Thus, under great uncertainty, worst-case analysis may be inevitable, but 'worst-case thinking' may be a tricky affair, which should be guarded from improper influences and considerations, such as special interests, exaggerated fears, and unreasonable assumptions. In cases of catastrophic potential, however, there is a high burden of proving their impossibility.

#### Case turns the K -- overuse of drones causes massive blowback in Pakistan-this is the consensus of research and assumes unique Pakistani cultural traits

**Dengler, US Secret service Assistant to the Special Agent in Charge, 2013**

(Judson, “An examination of the collateral psychological and political damage of drone warfare in the FATA region of Pakistan”, September, <http://calhoun.nps.edu/public/bitstream/handle/10945/37611/13Sep_Dengler_Judson.pdf?sequence=1>, ldg)

University of Arizona researchers Hudson, Owens, and Flannes state there are five distinct, yet overlapping, forms of blowback from the use of drones in counter-terror operations: the purposeful retaliation against the United States, the creation of new insurgents, complications in the Afghan-Pakistan theatre, further destabilization of Pakistan and the deterioration of U.S. and Pakistani relations.45 The authors, who are members of the Southwest Initiative for the Study of Middle East Conflicts (SISMEC), capture the main arguments against drone warfare. Most of the literature I reviewed seems to fall into one of the five categories listed above. There is an abundance of scholarly sources which support the findings of these researchers. Definitive statistical support of the negative aspects of drone warfare is difficult to assess due to intervening factors in this volatile region. Many factors can influence the criteria established by Hudson, Owens, and Flannes. In his discussion about the history of the CIA’s covert drone warfare program, University of Massachusetts—Dartmouth history faculty member Brian Glyn Williams adds to the case against drone warfare. He finds the collateral damage of drone strikes gives the media and religious leaders an opportunity to rally anti-American sentiment in Pakistan and the Islamic world in general.46 This article highlights the ability of radicals to easily use drone strikes, regardless if successful or not, to their advantage to manipulate the views of the local population. This view was supported by multiple other materials I reviewed. Writing for the German based Institute for the Study of Labor (IZA), Jaeger and Siddique discuss an example of retaliation by the Taliban which is attributed to drone strikes.47 This is typical of many examples of the Taliban or al-Qaeda directly stating their attack against the local government or U.S. was in response to drone policy in the region. In his Georgetown University Master’s thesis, Luke Olney evaluates the long term effectiveness of drone warfare. He supports the previously mentioned findings with particular emphasis on drones inspiring further radicalization, increased recruitment opportunities and further destabilization of local governments. However, he does note that drones may have some short-term success in disrupting militant groups.48 This seems to be a reoccurring theme in much of the readings I have conducted. Most researchers support the short-term advantage of drone strikes because they eliminate the target but drones have only been used extensively over the last ten years and questions exist about their effectiveness over time. The elimination of the militant is positive. But at what point does this victory become outweighed by the long-term effects of the killing? Support of the argument that drones have a negative political and diplomatic impact is made by Anne L. Oblinger in her 2011 Georgetown University thesis depicting the moral, legal, and diplomatic implications of drone warfare. Her thesis discusses the cultural and religious motivations behind terrorist activities which will be useful in a socio-cultural examination of this topic. She notes that despite their precision, drones still create many diplomatic hurdles for the U.S.49 This is another example of research which states that despite their tactical success, negative consequences still exist when leveraging drones. The majority of the literature indicates that there is a strong possibility of drone strikes having a negative overall influence in the FATA. Researchers from the University of Massachusetts, Dartmouth, Plaw, Fricker, and Williams, find that civilian casualties, real or perceived, will be the primary instigator. No matter how precise drone strikes are executed or how much technology improves, Pakistani press and society will be prone to believe that high percentages of civilians are being targeted. While the U.S. keeps details of the program somewhat secure, this practice allows the targeted groups to report the details of drone strikes to their advantage.50 There are numerous examples available of the collateral damage and devastation that drones inflict on the local community. Even if the strike successfully hits the intended target, statistics can be manipulated by the Taliban or Pakistani government. Investigative journalist Porter Gareth criticizes drone strikes because they are based on “scant evidence” in his article for The Washington Report for Middle East Affairs. He finds that the U.S. is targeting militant groups rather than al-Qaeda planning global terrorism.51 This was one of the few pieces of information which discussed who was being targeted by drone strikes and I found it particularly valuable. There should be more such information available, or forthcoming, because who is being targeted is critical to evaluating drone warfare. Ken Dilanian, of the Los Angeles Times, finds that the U.S. drone program has killed dozens of al-Qaeda operatives and hundreds of low-level militants but is has also infuriated many Pakistanis. Some officials in the State Department and National Security Council say these strikes are counterproductive because they only kill easily replaceable militants and the civilian casualties, which the U.S. disputes, destabilize the government of President Asif Ali Zardari of Pakistan. The number of drone strikes has grown since 2008 and now includes targeting of individuals based on a “pattern of life” that suggests involvement with insurgents. A former senior U.S. intelligence official stated that the CIA maintains a list of the top 20 targets and has at times had difficulty finding high value militants to add to the list. Are lower-level militants being targeted just to fill the list? This official is among those urging the CIA to reconsider its approach because the agency cannot kill all Islamic militants and drones alone will not solve challenge presented in the region. One former senior State Department official stated that drone strikes probably give motivation to those that fight us. Dilanian offers that it is impossible to independently assess the accuracy or effectiveness of the strikes because the program is classified, the Obama administration refuses to release information about the program and Pakistan has barred access to FATA from Western journalists or humanitarian agencies.52 This is one of Dilanian’s many pieces documenting drone warfare in Pakistan. Considering the sources of information he uses for this article, it appears that many in the military and intelligence community are beginning to realize the potential negative aspects of this tactic. He also identifies why it is so difficult to accurately and independently report on the impact of drone strikes and how data can be easily manipulated by the U.S., Pakistan, and militants. The New America Foundation database reflects the aggregation of credible news reports about U.S. drone strikes in Pakistan. The media outlets that New America relies upon are the three major international wire services (Associated Press, Reuters, Agence France Presse), the leading Pakistani newspapers (Dawn, Express Times, The News, The Daily Times), leading South Asian and Middle Eastern TV networks (Geo TV and Al Jazeera), and Western media outlets with extensive reporting capabilities in Pakistan (CNN, New York Times, Washington Post, LA Times, BBC, The Guardian, Telegraph). The New America Foundation makes no independent claims about the veracity of casualty reports provided by these organizations. The purpose of this database is to provide as much information as possible about the covert U.S. drone program in Pakistan. The Obama administration dramatically increased the frequency of the drone strikes, in comparison to the Bush Administration, with the peak number of drone attacks occurring in 2010, but the ratio of civilians killed in drone strikes fell to just over two percent. Despite the record 122 strikes in 2010, an average of 0.3 civilians were killed per strike, the lowest civilian death rate per strike until 2012, which saw only 0.1 civilians killed per attack in the first eight months of the year. According to data collected as of the summer of 2011, only one out of every seven drone strikes killed a militant leader. Under President Bush, about one-third of the militants killed were identified as leaders, but under President Obama, just 13 percent have been militant leaders. Drone strikes dropped sharply in 2011, as the relationship between the United States and Pakistan deteriorated. During the first half of 2012, the rate of strikes continued to fall and the civilian death ratio was close to zero. Since the U.S. drone campaign in Pakistan began in 2004, 84 to 85 percent of those killed were reported to be militants; six to eight percent were reported to be civilians and seven to nine percent remain “unknown.”53 The New America Foundation and Terror Free Tomorrow conducted the first comprehensive public opinion survey covering sensitive political issues in FATA. This survey was conducted from June 30 to July 20, 2010, and consisted of face-to-face interviews of 1,000 FATA residents age 18 or older across 120 villages or sampling points in all seven tribal Agencies of FATA. The respondents were 99 percent Pashtun, and 87 percent Sunni. Among their findings were that nearly nine out of ten opposed the U.S. following al-Qaeda and the Taliban into FATA and most would prefer that the Pakistani military fight these forces in FATA. Seventy-six percent are opposed to U.S. drone strikes, 16 percent believe they accurately target militants and just under half believed that drones predominantly kill civilians. The majority of FATA residents reject the presence of the Taliban or al-Qaeda in their region. Their top priorities included lack of jobs which was closely followed by lack of schools, good roads and security, poor health care and corruption of local official officials.54 Avner uses psychoanalysis, psychology, psychiatry, sociology, anthropology, and Islamic studies to understand Islamic terror. His research discusses the religion and culture of Islam, the psychology of Islam, the Muslim family and Muslim society from which many terrorists originate. Avner finds that terror can originate with emotions such as rage, hatred, fear and surprisingly, love and longing.56 Shame is an excessively painful feeling and is prevalent in Muslim culture. Shame, loss of honor, loss of face, and humiliation are unbearable feelings. Hamady found that shame was the worst and most painful feeling for an Arab. Preserving one’s honor and the honor of their tribe or clan is crucial. Any injury, real or imagined, causes unbearable shame that must be repaired through acts of revenge against those that damaged your honor.57 The importance of pride, honor and dignity is critical in Muslim culture. “Everything must be done to erase one’s humiliations and to regain one’s honor.”58 For Muslims who feel they have been shamed or humiliated, the only way to repair these feelings is by humiliating those that inflicted shame and humiliation on them.59 Avner’s research identifies multiple psychological factors which may explain the existing anger within segments of the Muslim community. Honor and shame is a tremendous motivator in Islam and may provide a solid predisposition for action against the offending party to regain one’s honor. Maintaining your honor or the honor of your tribe is of high importance to the Pashtun tribesmen of FATA. Once this has been violated, retaliation is obligated against those that have humiliated you. Stern reveals that the real or perceived national humiliation of the Palestinian people by Israeli policies gives rise to desperation and uncontrollable rage. Citing Mark Jurgensmeyer, Stern notes that suicide bombers are attempting to “dehumiliate” the deeply humiliated and traumatized. Through their actions, suicide bombers belittle their enemies and provide themselves with a sense of power. Repeated, small humiliations add up to a feeling of nearly unbearable despair and frustration, which can result in atrocities being committed in the belief that attacking the oppressor restores dignity.60 A skilled terrorist leader can strengthen and utilize feelings of betrayal and the desire for revenge.61 Stern shows the extent to which a Muslim will go to in order to restore their honor after being humiliated. The uncontrollable rage may not be proportionate when measured by Western standards. Even small humiliations will build to the point of suicide attacks to repair the loss of dignity. The hopelessness and aggravation many may feel in FATA should not be overlooked or diminished. Charismatic militant leaders can manipulate shame to motivate groups to action against whom they perceive has wronged their group. The most important psychoanalytic idea for understanding terrorism, according to Avner, is Heinz Kohut’s notion of narcissistic rage, “The need for revenge, for righting a wrong, for undoing a hurt by whatever means, and a deeply anchored, unrelenting compulsion in the pursuit of all these aims, which gives no rest to those that have suffered a narcissistic injury. These are the characteristic features of narcissistic rage in all its forms and which set it apart from other kinds of aggression.” This boundless rage, together with unconscious factors and the traditional Muslim family dynamic may explain Islamic terrorism, including suicidal versions.62 Kohut’s finding that narcissistic rage is the most important psychoanalytic factor for understanding is significant. The narcissistic aspect depicts how personal the hostility is and rage shows the intensity of the emotion which drives terrorists. Narcissistic rage allows the militant to pursue those that they perceive have wronged them by using extreme measures to regain their honor.

#### ---Permutation Do Both --- <Do the plan and critically examine the affirmatives methodology in light of complexity>

#### The aff is key – converts the alternative into a viable narrative of global warming which solves the impact

Veldman 2012

Robin Globus, doctoral candidate in the Religion and Nature program at the University of Florida, Narrating the Environmental Apocalypse, Ethics & the Environment, Volume 17, Number 1, Spring

Outside of human minds exist billions of interacting events and processes—atoms, humans, animals, plants, microbes, and so on—whose ultimate trajectory is uncertain, if not in many cases impossible to predict. I have suggested that the apocalyptic ending is one solution to the problem of how to convert this impersonal complexity into a meaningful story that draws and holds peoples’ attention for long enough to influence their actions. It does so through a story that simply and succinctly tells listeners that there is a problem, that it may have disastrous consequences, and that certain kinds of actions therefore must taken in order to avoid them. And while it is always in this space between the tangible present and the imagined future that the opportunity for moral engagement with the world arises, I argue that it is especially when the connection between the two feels tenuous that such an opportunity comes to be experienced as an obligation. [End Page 17] Certainly the apocalyptic mode has its shadow side. Paranoia, self-righteousness, and feverish hope skirt the edge of disappointment, leading many both within and outside of the environmental movement to view it with suspicion. Indeed, many environmentalists would do well to heed Catherine Keller’s call for a more self-critical discourse of “counter-apocalypse” (1996), rather than falling prey to the temptation to demonize the anti-environmental other. But this should not prevent scholars from attending to the important role apocalypticism plays within the movement. As much as some in the movement try to disclaim such discourse, it is clear that many adherents draw inspiration from it. So much so that they are moving to distant communities where they believe they will be able to live more ecologically sensitive lives; they are teaching their neighbors to grow their own food because transporting it from other parts of the country has too large of a carbon footprint; and they are “paper monkey-wrenching” in Washington, D.C. and in courtrooms around the country in order to ensure that the environment is legally protected to the greatest extent possible. They are putting environmental values into practice, and many are doing so because they seriously believe that if they do not, disaster will follow. Even if observers of the movement disagree with their conclusions about what constitutes ethical behavior or worthwhile activism, this demonstrated willingness to make substantial sacrifices seems to make the project of understanding their motivations worthwhile.

#### ---Complexity doesn’t take out the aff

#### (A.) Cuts both ways --- Complexity is an impact magnifier since it’s just as possible that the affirmative UNDERESTIMATED the severity of advantage impacts.

#### (B.) Even if our climate predictions may be wrong, the alternative locks in giving up – we must act now.

Atkisson 01 (Alan, former executive editor of the pioneering journal In Context: A Quarterly of Humane Sustainable Culture, co-founded the Sustainable Seattle initiative, later recognized by the United Nations as a model project in urban sustainability and indicator development, “Sustainability is Dead— Long Live Sustainability,” October, http://www.rrcap.ait.asia/uneptg06/course/Robert/SustainabilityManifesto2001.pdf)

Modest Changes are Not Enough Change is clearly possible. Modest changes in the direction of greater sustainability are now underway, and modest, incremental changes in both technology and habitual practice can ameliorate—indeed, have ameliorated—some dangerous trends in the short run. But overall, incremental change of this sort has proven exceedingly slow and difficult to effect, and most incremental change efforts fall far short of what is needed. Carbon emissions, which are now causing visible climate change, provide a good example: current global agreements for modest reductions are hard to reach, impossible to enforce, and virtually without effect; and even if they were successful, they would have a negligible impact on the critical trend. Far more dramatic changes are required. Dramatic, rapid change, in the form of extremely accelerated innovation in the Noösphere (conscious awareness and understanding) and the Technosphere (physical practice) is necessary both to prevent continuing and ever more catastrophic damage to the Biosphere, and to adapt to those irreversible changes to which the planet is already committed, such as some amount of climatic instability. The rapid evolution of many social, economic, and political institutions, which mediate between the Noösphere and the Technosphere, is obviously necessary as well. Without extraordinary and dramatic change, the most probable outcome of industrial civilization's current trajectory is convulsion and collapse. “Collapse” refers not to a sudden or apocalyptic ending, but to a process of accelerating social, economic, and ecological decay over the course of a generation or two, punctuated by ever-worsening episodes of crisis. The results would likely be devastating, in both human and ecological terms. The onset of collapse is probably not ahead of us in time, but behind us: in some places, such as storm-ravaged Orissa, Honduras, Bangladesh, Venezuela, even England and France, collapse-related entropy may already be apparent. Trend, of course, is probability, not destiny. It is still theoretically possible, albeit very unlikely, that civilization could continue straight ahead, without any conscious effort to direct technological development and the actions of markets in more environmentally benign and culturally constructive ways, and escape collapse through an unexpected (though currently unimaginable) technological breakthrough or improbable set of events. Some have called this the “Miracle Scenario.” But hoping for a miracle is by far the riskiest choice. The future may be fundamentally unknowable, but certain physical processes are predictable, given adequate knowledge about current trends, causal linkages, and systemic effects. Prediction based on extrapolation is not just the province of physics: much of our economy is focused on efforts to accurately predict the future based on past trends. The Internet economy, for example, relies upon Moore’s Law (that the speed and capacity of semiconductor chips doubles roughly every 18 months). Insurance companies base their entire portfolio of investments and fees on statistical assessments of past disasters and projected trends into the future. When it comes to the prospects for sustaining our civilization, we have to trust our species’ best judgment, which comes from the interpretations and extrapolations of our best experts. These experts—such as the respected Intergovernmental Panel on Climate Change—are reporting a disturbingly high degree of consensus about the level of threat to our future well-being. We are in trouble. We must transform our civilization.

#### (C.) Winning an epistemological challenge doesn’t disprove the affirmative --- Disproving the possibility of epistemic certainty also disproves the possibility of total epistemic uncertainty meaning even winning 100% of their argument only functions as partial case defense.

Cowen 2004

Tyler, Department of Economics @ George Mason University, The Epistemic Problem Does Not Refute Consequentialism, http://www.gmu.edu/centers/publicchoice/faculty%20pages/Tyler/Epistemic2.pdf

The epistemic critique relies heavily on a complete lack of information about initial circumstances. This is not a plausible general assumption, although it may sometimes be true. The critique may give the impression of relying more heavily on a more plausible assumption, namely a high variance for the probability distribution of our estimates concerning the future. But simply increasing the level of variance or uncertainty does not add much force to the epistemic argument. To see this more clearly, consider another case of a high upfront benefit. Assume that the United States has been hit with a bioterror attack and one million children have contracted smallpox. We also have two new experimental remedies, both of which offer some chance of curing smallpox and restoring the children to perfect health. If we know for sure which remedy works, obviously we should apply that remedy. But imagine now that we are uncertain as to which remedy works. The uncertainty is so extreme that each remedy may cure somewhere between three hundred thousand and six hundred thousand children. Nonetheless we have a slight idea that one remedy is better than the other. That is, one remedy is slightly more likely to cure more children, with no other apparent offsetting negative effects or considerations. Despite the greater uncertainty, we still have the intuition that we should try to save as many children as possible. We should apply the remedy that is more likely to cure more children. We do not say: “We are now so uncertain about what will happen. We should pursue some goal other than trying to cure as many children as possible.” Nor would we cite greater uncertainty about longer-run events as an argument against curing the children. We have a definite good in the present (more cured children), balanced against a radical remixing of the future on both sides of the equation. The definite upfront good still stands firm. Alternatively, let us assume that our broader future suddenly became less predictable (perhaps genetic engineering is invented, which creates new and difficult-to-forecast possibilities). That still would not diminish the force of our reason for saving more children. The variance of forecast becomes larger on both sides of the equation – whether we save the children or not – and the value of the upfront lives remains. A higher variance of forecast might increase the required size of the upfront benefit (to overcome the Principle of Roughness), but it would not refute the relevance of consequences more generally.

#### ---Essentialist impact and internal link claims are good --- Individually empowering and self-correcting as debater skill level improves.

Zwarensteyn 2012

Ellen C., Masters Candidate in Communications at Grand Valley State University, High School Policy Debate as an Enduring Pathway to Political Education: Evaluating Possibilities for Political Learning, Masters Theses. Paper 35, http://scholarworks.gvsu.edu/theses/35

One frustration a few debaters expressed was the relatively reductionist style of argumentation early debaters often employed. Questions of unrealistic internal link chains or oversimplified impact arguments might attract initial intrigue in the argument but was cautioned against as part of an actual political education. As one person noted it was empowering to develop extravagant analysis inevitably resulting in nuclear war and/or extinction – it brought a sense that she may have important issues to think and talk about that adults were willing to listen to. Overall, most felt that over time this tendency toward reductionist claims is self-correcting; the more time in the activity the more time there is to research the nuance, realities, and complexities of argumentation.

# 1AR

## DA

### No spillover

#### Judicial review on targeted killing doesn’t spillover to other restrictions on military force

Brooks, prof of Law @ Georgetown, 13 (Rosa, Senior Fellow at the New America Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing”, Testimony Before the Senate, April 23, 2013, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf)

It is also worth noting that the practical concerns militating against justiciability in the context of traditional wartime situations do not exist to the same degree here. On traditional battlefields, imposing due process or judicial review requirements on targeting decisions would be unduly burdensome, as many targeting decisions must be made in situations of extreme urgency. In the context of targeted killings outside traditional battlefields, this is rarely the case. While the window of opportunity in which to strike a given target may be brief and urgent, decisions about whether an individual may lawfully be targeted are generally made well in advance.

### Marguilles

#### Finish the card here

73 Similarly, the media has a constitutional role to play that includes investigative reporting. The media will step up its efforts if other institutions like courts take a more deferential stance.174 When government hides information, the media’s sense of its own role leads to greater distrust of government and a willingness to both uncover and publish more information. On some occasions, the First Amendment will oblige us to tolerate journalists’ disclosure of operational details of covert programs.175 Journalists will understandably view government’s claims that information is sensitive with greater skepticism when government has methodically locked down information in other settings. Similarly, shutting off damage suits regarding terrorism issues leaves other kinds of litigation, including litigation the government has initiated. Journalists and activists will seek to scrutinize and mobilize around these cases, even if the avenue of civil suits is closed. Indeed, activism may be distorted in these other venues when they are the only game in town. For example, journalists may be more inclined to credit even outlandish claims made by some lawyers on behalf of detainees when the government has a track record of concealing information.176 While some might argue that courts should not speculate about future conduct of third parties, a court that makes empirical predictions about the effect of liability should not selectively ignore major unintended consequences of its holding. There are parallel developments in international law. Some countries have prosecuted criminal cases against American agents who allegedly were complicit in extraordinary renditions. In Italy, a number of American government employees and personnel were convicted in absentia because of legal action generated by popular pressure.177 U.S. public-interest organizations, like the Center for Constitutional Rights, have encouraged these assertions of universal jurisdiction. These prosecutions occurred because of officials’ sense that they were above the law. Judicial remedies available in the United States can check these officials, thereby reducing the incidence and impact of universal-jurisdiction proceedings in the future.

### U

#### Court link is not unique- tons of cases have restrained the executive

Bejesky 13 (Robert, The author has taught international law courses for the Department of Political Science at the University of Michigan, American Government and Constitutional Law courses for Alma College, and business law courses at Central Michigan University and the University of Miami, “Dubitable Security Threats and Low Intensity Interventions as the Achilles' Heel of War Powers,” 32 Miss. C. L. Rev. 9, lexis)

The judiciary is not reluctant to become involved in issues subsidiary to the use of force. The Court not only decided war power cases such as Hamdi v. Rumsfeld, 469 Rasul v. Bush, 470 Hamdan v. Rumsfeld 471 and Boumediene v. Bush, 472 but the decisions contradicted legal advice on detention and interrogation that was provided by Bush Administration attorneys. 473 In Hamdan, the Court held that the judiciary has the final authority to interpret treaties relating to the conduct of war, which meant that the Court was asserting authority to curtail the President's use of discretion as Commander-in-Chief as it relates to treaty interpretation. 474

### No Korean War

#### No Korean war-provocations are the norm

**Lankov, ANU adjunct research fellow, 2013**

(Andrei, “Serious armed clash on the Korean Peninsula unlikely”, 3-28, <http://www.eastasiaforum.org/2013/03/28/a-serious-armed-clash-on-the-korean-peninsula-is-unlikely/>, ldg)

The international community is worried, to be sure, and some media outlets have begun to dispatch their correspondents to Seoul on the assumption that a conflict might break out very soon. But these media companies are likely to be wasting their money. The likelihood of any confrontation, let alone war, in Korea remains pretty low. What we are seeing now is just another round of political manipulation by Pyongyang. The DPRK’s show of menacing bellicosity is a performance aimed at both foreign and domestic audiences. This is well understood in Seoul — not only by the government but also by the public at large. While the South Korean media dutifully report the gothic threats that emanate from Pyongyang, the general public pays surprisingly little attention to these outbursts and seeming signs of danger. It is also telling that the South Korean stock market has not reacted in any noticeably negative way to the ‘crisis’. The reason for this calm is simple: South Koreans have seen this many, many times. As a matter of fact, they see such histrionics as often as once every year or two. North Korea has claimed that the 1953 armistice is null and void on a number of occasions in the past — the last time such statements were made was in May 2009, as part of a reaction against an earlier UN resolution, which, like the recent one, condemned a nuclear test. As for the recent promise to transform Seoul into a ‘sea of fire’, it has been repeated a number of times. It was first used in 1994 and repeated in 2003. Sometimes, the North Korean media has not limited itself to such general threats, but has become very specific about their supposed targets. For example, in July 2012, the North Korean official media threatened to blow up the headquarters of a major South Korean newspaper, which had published articles and materials not to Pyongyang’s liking. But nothing has happened to the newspaper’s headquarters or, for that matter, to the South Korean capital itself. North Korea has never made good on its threats, so the South Korean public is probably right to take another Pyongyang broadside very lightly. So why does North Korea behave this way? There seem to be at least two reasons behind Pyongyang’s noisy behaviour. First, this rhetoric seems to have become a standard reaction to UN Security Council resolutions that condemn nuclear and missile tests in the North. In spite of its high pitch this is a diplomatic gesture, a way to express North Korea’s dissatisfaction with the resolution and its resolute unwillingness to bow to outside pressure. But there is another reason for the DPRK’s verbal bellicosity. The North Korean populace has to be regularly reminded that their country is surrounded by scheming enemies. Otherwise, they might start asking politically dangerous questions — for example, they might wonder why their country, once the most industrially advanced in all of continental East Asia, is increasingly lagging behind China and, especially, South Korea. Outside threats are the best way to explain away never-ending economic difficulties, and an air raid drill or two does wonders when it comes to keeping people afraid and stopping them from having heretical thoughts. It will also remind North Koreans of the need to maintain discipline and unite around the current leader and his ‘glorious’ family. It therefore appears that the world has overreacted somewhat to North Korean rhetoric. This does not mean that the Korean Peninsula is a peaceful place. On the contrary, as decades of experience teaches us, we can be pretty sure that from time to time some clashes (of relatively small scale) are bound to happen on the land and sea borders between the two Koreas. But right now the chances of such clashes are low. The noise emanating from Pyongyang is, well, just noise.

#### No North Korean war-they know they would get crushed

**Fisher, Washington Post foreign affairs blogger, 2013**

(Max, “Why North Korea loves to threaten World War III (but probably won’t follow through)”, 3-12, <http://www.washingtonpost.com/blogs/worldviews/wp/2013/03/12/why-north-korea-loves-to-threaten-world-war-iii-but-probably-wont-follow-through/>, ldg)

But is North Korea really an irrational nation on the brink of launching “all-out war,” a mad dog of East Asia? Is Pyongyang ready to sacrifice it all? Probably not. The North Korean regime, for all its cruelty, has also shown itself to be shrewd, calculating, and single-mindedly obsessed with its own self-preservation. The regime’s past behavior suggests pretty strongly that these threats are empty. But they still matter. For years, North Korea has threatened the worst and, despite all of its apparent readiness, never gone through with it. So why does it keep going through these macabre performances? We can’t read Kim Jong Eun’s mind, but the most plausible explanation has to do with internal North Korean politics, with trying to set the tone for regional politics, and with forcing other countries (including the United States) to bear the costs of preventing its outbursts from sparking an unwanted war. Starting World War III or a second Korean War would not serve any of Pyongyang’s interests. Whether or not it deploys its small but legitimately scary nuclear arsenal, North Korea could indeed cause substantial mayhem in the South, whose capital is mere miles from the border. But the North Korean military is antiquated and inferior; it wouldn’t last long against a U.S.-led counterattack. No matter how badly such a war would go for South Korea or the United States, it would almost certainly end with the regime’s total destruction.

#### No loose WMD’s from North Korea collapse

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, 19.1, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, DOA: 3-13-13, ldg)

Many nuclear alarmists have painted a worst case scenario about the nuclear weapon states collapse and the likely possibility of nuclear weapons falling in the hands of terrorists. In this context, the safety and security of Pakistan and North Korea’s nuclear programs received a serious attention by the international nuclear security observers. However, the disintegration of former Soviet Union and Cultural Revolution in China in mid-1960s underlined that even during the chaos and turbulent times, the nuclear establishments in these states were able to keep their nuclear weapons and fissile material secure. Moreover, Islamabad always reiterates that it has institutionalized numerous precautionary measures to guarantee that these weapons would be remained out of the reach of the transnational terrorist groups during chaos or political crisis. For instance, it installed sophisticated firing mechanisms to prevent a launch by lone- wolf terrorist working within the nuclear establishment. Its Personal Reliability Program and Human Reliability Programs prevent its nuclear personnel from being infiltrated by extremists. Even if terrorists get hold of a Pakistani nuclear device, the nightmare scenario, would still be remote. They could not operate the device due to in-built protective code systems. The North Korea is a closed society and having an autocratic political system. Therefore, there is a dearth of information regarding its nuclear program safety and security apparatus.

### Terror

#### Odds are one in three billion

**Mueller, OSU political science professor, 2010**

(John, “Calming Our Nuclear Jitter”, Issues in Science and Technology <http://www.issues.org/26.2/mueller.html>, ldg)

In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, the likelihood that a group could surmount a series of them quickly becomes vanishingly small. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion.

#### Terrorists will use conventional weapons-overwhelming empirics.

**Mauroni, Air Force senior policy analyst, 2012**

(Al, “Nuclear Terrorism: Are We Prepared?”, Homeland Security Affairs, <http://www.hsaj.org/?fullarticle=8.1.9>, ldg)

The popular assumption is that terrorists are actively working with “rogue nations” to exploit WMD materials and technology, or bidding for materials and technology on some nebulous global black market. They might be buying access to scientists and engineers who used to work on state WMD programs. The historical record doesn’t demonstrate that. An examination of any of the past annual reports of the National Counterterrorism Center reveals that the basic modus operandi of terrorists and insurgents is to use conventional military weapons, easily acquired commercial (or improvised) explosives, and knives and machetes.8 It is relatively easy to train laypersons to use military firearms, such as the AK-47 automatic rifle and the RPG-7 rocket launcher. These groups have technical experts who develop improvised explosive devices using available and accessible materials from the local economy. Conventional weapons have known weapon effects and minimal challenges in handling and storing. Terrorists get their material and technology where they can. They don’t have the time, funds, or interests to get exotic. It’s what we see, over and over again.

## T

#### Constitutional rights are restrictions

Boumediene Appellete Brief 2005 (Boumediene v. Bush 476 F.3d 981, 993, 375 U.S.App.D.C. 48, 60 (C.A.D.C.,2007)- Appellate brief)

\*993 \*\*60 As against this line of authority, the dissent offers the distinction that the Suspension Clause is a limitation on congressional power rather than a constitutional right. But this is no distinction at all. Constitutional rights are rights against the gov-ernment and, as such, are restrictions on governmental power. See H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 534, 69 S.Ct. 657, 93 L.Ed. 865 (1949) (“Even the Bill of Rights amendments were framed only as a limitation upon the powers of Congress.”). FN12 Consider the First Amendment. (In contrasting the Suspension Clause with provisions in the Bill of Rights, see Dissent at 995-96, the dissent is careful to ignore the First Amendment.) Like the Suspension Clause, the First Amendment is framed as a limitation on Congress: “Congress shall make no law ....” Yet no one would deny that the First Amendment protects the rights to free speech and religion and assembly.

#### Enforcement still restricts

Steele 76 (Sr. Dist. Judge Steel, Kovach v. Middendorf 424 F.Supp. 72, 76 -77 (D.C.Del. 1976)), from a 1976 case from a federal trial court in Delaware)

Defendants argue that in both its two year and four year aspects this case presents a political and not a judicial question within the constitutional power of the Court to decide. Defendants point out that Congress alone has the power under the Constitution “(T)o provide and maintain a Navy”, Art. I, s 8, Cl. 13 and “(T)o make \*77 Rules for the Government and Regulation of the . . . naval Forces”. Art. I, s 8, Cl. 14. Defendants argue that the Constitution has placed the power exclusively in Congress to legislate and in the President to execute in all areas relating to the conduct of the Navy, and that decisional responsibilities in those areas are beyond the constitutional limits of judicial power. Defendants rely primarily upon Orloff v. Willoughby, 345 U.S. 83, 93-94, 73 S.Ct. 534, 97 L.Ed. 842 (1953) and Gilligan v. Morgan, 413 U.S. 1, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973) to support this view. Neither of these cases nor the others referred to by plaintiffdiscuss the issue whether courts, under the power constitutionally conferred upon them, may impose restrictions upon legislative or executive decisions made in the exercise of their war powers if those decisions infringe upon constitutionally protected rights. That courts have the power to do so is settled. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 164-165, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). See United States v. MacIntosh, 283 U.S. 605, 622, 51 S.Ct. 570, 75 L.Ed. 1302 (1931)

### 1AR WM Authority

#### Authority includes ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

#### Authority is distinct from policy---Authority is a question of jurisdiction-the plan restricts executive jurisdiction over targeted killing by applying judicial due process.

Dictionary.com

http://dictionary.reference.com/browse/authority

au·thor·i·ty [uh-thawr-i-tee, uh-thor-] Show IPA

noun, plural au·thor·i·ties.

1.

the power to determine, adjudicate, or otherwise settle issues or disputes; jurisdiction; the right to control, command, or determine.

2.

a power or right delegated or given; authorization: Who has the authority to grant permission?

### 1AR-Judicial review = restriction on authority

---Judicial review over targeted killing is an on face restriction of executive authority

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

B. The Aulaqi Case in Federal Court In August 2010, Nasser al-Aulaqi, Anwar's father, filed suit in the District Court for the District of Columbia requesting an injunction against the targeted killing of his son. 36 Represented by the American Civil Liberties Union (ACLU), Nasser al-Aulaqi claimed that outside of the zone of armed conflict, the targeted killing of an American citizen represents an extrajudicial killing without due process of law. 37 The claim stated that under customary international law, the only circumstances allowing an exception to this general rule are those presenting a "concrete, specific, and imminent threat of death or serious physical injury." 38 The targeted killing of an American citizen outside of these circumstances is a violation of the Fourth and Fifth Amendments. 39 The complaint asserted three constitutional challenges to the targeted killing program. 40 By targeting an American for an extrajudicial killing outside of circumstances that present concrete, specific, and imminent threats of harm, the government had violated Aulaqi's Fourth Amendment right to be free from unreasonable seizure and his Fifth Amendment right not to be deprived of life without due process of law. 41 In addition, by refusing to disclose the standards used in determining that Aulaqi should be targeted for extrajudicial killing, the government violated the Fifth Amendment's notice requirement. 42 The complaint further asserted that by claiming this broad and unreviewable power, the Executive Branch permitted itself to conduct at-will extrajudicial killings of Americans, in secret, without any notice. 43 In the suit - filed against President Obama, then-Defense Secretary Robert Gates, and then-Director of the CIA Leon Panetta 44 - Nasser al-Aulaqi requested several forms of relief to [\*1360] prevent the targeted killing of his son. 45 He requested a preliminary injunction against the order to pursue Anwar al-Aulaqi with lethal force, and declaratory relief requiring the government to disclose the standards used for placing people on the targeted killing list. 46 In its brief in response, the DOJ moved for summary judgment on several alternative grounds, with emphasis on standing, the political question doctrine, and the state secrets privilege. 47 The DOJ argued that Nasser al-Aulaqi did not meet the requirements for next-friend standing for two reasons. 48 First, Aulaqi was not denied access to the courts. 49 Rather, Aulaqi seemed to be hiding in Yemen of his own accord. 50 Second, there was no evidence that Aulaqi desired to raise these claims in court to challenge the government's authority to conduct an extrajudicial killing against him. 51 Therefore, Nasser al-Aulaqi did not demonstrate that he was representing his son's interests or purpose. 52 The DOJ also challenged Nasser al-Aulaqi's complaint on grounds of executive authority, arguing that litigating this matter would violate established boundaries in the separation of judicial and executive power. 53 First, the government asserted that the decision to target Anwar al-Aulaqi was a nonjusticiable political question, and that conducting judicial review of this decision would require an infringement on textually committed executive authority. 54 Second, the government invoked the state secrets privilege, a rarely used but mostly successfully employed doctrine claiming that certain issues cannot be litigated because litigating them would require the disclosure of classified intelligence. 55 According to the state secrets doctrine, classified information cannot be disclosed through discovery and public trial because it would threaten national security and disrupt the Executive's ability to discharge its constitutional obligations. 56 The district court granted the defendant's motion to dismiss in December 2010. 57 The court held that Nasser al-Aulaqi did not have [\*1361] standing to raise these constitutional claims on his son's behalf. 58 By ruling on standing grounds the court focused on a narrow legal doctrine and avoided confrontation with the larger, more controversial issues in the suit. 59 However, the court also expressed discomfort with the outcome and its potential implications on due process rights and executive power. 60

#### Judicial review restricts war power authority

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power bcvx

In its brief in response, the DOJ argued that the President's power to conduct the targeted killing of Aulaqi comes from two sources of authority. 77 First, and more narrowly, the DOJ argued that the Authorization for the Use of Military Force (AUMF) serves as a statutory grant of authority to retaliate against threats of terrorism from al-Qaeda. 78 Second, and much more broadly, the DOJ argued that the authority to use defensive force against imminent threats of terrorism is inherent in the President's Article II military power. 79 Both arguments turn on the theory that targeted killing decisions are nonjusticiable political questions beyond judicial review. 80 As the following analysis demonstrates, this is a dubious assertion based on overbroad and inaccurate interpretations of the AUMF and the President's constitutional war powers.

#### We meet---we prohibit the President’s ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

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