## 1AC

### 1AC Allied Coop Adv

#### Adv 1- Allied terror cooperation:

#### Domestic and international support for the US drone program is collapsing, threatening to shut it down entirely. Reform 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.

#### Lack of legal oversight on targeted killing collapses allied cooperation on terrorism, which is critical to intelligence sharing.

Human Rights First 13 (How to Ensure that the U.S. Drone Program does not Undermine Human Rights BLUEPRINT FOR THE NEXT ADMINISTRATION, Updated April 13, http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\_Targeted\_Killing\_blueprint.pdf)

The Obama Administration has dramatically escalated targeted killing by drones as a central feature of its counterterrorism response. Over the past two years, the administration has begun to reveal more about the targeted killing program, including in a leaked Department of Justice White paper on targeted killing1 and in public remarks by several senior officials.2 While this information is welcome, it does not fully address our concerns. Experts and other governments have continued to raise serious concerns about: The precedent that the U.S. targeted killing policy is setting for the rest of the world, including countries that have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights; The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence-sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries; The impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability and provide economic aid; The number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations; and Whether the legal framework for the program that has been publicly asserted so far by the administration comports with international legal requirements. The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis, and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. government’s strategy for targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences. How the U.S. operates and publicly explains its targeted killing program will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles (UAVs) is an increasingly global industry and drone technology is not prohibitively complicated. Some 70 countries already possess UAVs3 —including Russia, Syria and Libya4 —and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: the United States is "establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians."5 By declaring that it is in an armed conflict with al Qaeda’s “associated forces” (a term it has not defined) without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all “members” of such groups are legally targetable, the United States is establishing exceedingly broad precedent for who can be targeted, even if it is not utilizing the full scope of this claimed authority.6 As an alternative to armed conflict-based targeting, U.S. officials have claimed targeted killings are justified as self-defense responding to an imminent threat, but have referred to a “flexible” or “elongated” concept of imminence,7 without adequately explaining what that means or how that complies with the requirements of international law. In a white paper leaked to NBC news in February 2013, for example, the Department of Justice adopts what it calls a “broader concept of imminence” that has no basis in law. According to the white paper, an imminent threat need be neither immediate nor specific. This is a dangerous, unprecedented and unwarranted expansion of widely-accepted understandings of international law.8 It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al Qaeda have been killed in drone attacks, studies show that the vast majority of victims are not high-level terrorist leaders.9 National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial costs of the targeted killing program, including growing antiAmerican sentiment and recruiting support for al Qaeda. 10 General Stanley McChrystal has said: “What scares me about drone strikes is how they are perceived around the world. The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates.”11 The broad targeted killing program has already strained U.S. relations with its allies and thereby impeded the flow of critical intelligence about terrorist operations.12

#### Drone policy is more important than the spying and data scandal to European partners-threatens allied intelligence cooperation.

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Allied cooperation on intelligence is critical to effective counterterrorism

McGill and Gray 12 (Anna-Katherine Staser McGill, David H. Gray, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

#### Terrorists have means and motive for nuclear attacks, now-expertise and materials are widespread and multiple attempts prove.

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

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

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Only judicial ex post review provides the accountability necessary to solve confidence in targeting—key to viability of the program

Corey, Army Colonel, 12 (Colonel Ian G. Corey, “Citizens in the Crosshairs: Ready, Aim, Hold Your Fire?,” http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA561582)

Alternatively, targeted killing decisions could be subjected to judicial review. 103 Attorney General Holder rejected ex ante judicial review out of hand, citing the Constitution’s allocation of national security operations to the executive branch and the need for timely action.104 Courts are indeed reluctant to stray into the realm of political questions, as evidenced by the district court’s dismissal of the ACLU and CCR lawsuit. On the other hand, a model for a special court that operates in secret already exists: the Foreign Intelligence Surveillance Court (FISC) that oversees requests for surveillance warrants for suspected foreign agents. While ex ante judicial review would provide the most robust form of oversight, ex post review by a court like the FISC would nonetheless serve as a significant check on executive power.105 Regardless of the type of oversight implemented, some form of independent review is necessary to demonstrate accountability and bolster confidence in the targeted killing process. Conclusion The United States has increasingly relied on targeted killing as an important tactic in its war on terror and will continue to do so for the foreseeable future.106 This is entirely reasonable given current budgetary constraints and the appeal of targeted killing, especially UAS strikes, as an alternative to the use of conventional forces. Moreover, the United States will likely again seek to employ the tactic against U.S. citizens assessed to be operational leaders of AQAM. As demonstrated above, one can make a good faith argument that doing so is entirely permissible under both international and domestic law as the Obama Administration claims, the opinions of some prominent legal scholars notwithstanding. The viability of future lethal targeting of U.S. citizens is questionable, however, if the government fails to address legitimate issues of transparency and accountability. While the administration has recently made progress on the transparency front, much more remains to be done, including the release in some form of the legal analysis contained in OLC’s 2010 opinion. Moreover, the administration must be able to articulate to the American people how it selects U.S. citizens for targeted killing and the safeguards in place to mitigate the risk of error and abuse. Finally, these targeting decisions must be subject to some form of independent review that will both satisfy due process and boost public confidence.

#### Accountability is impossible from executive internal measures- no one trusts Obama on drones—Court action is key.

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

### 1AC Imminence Adv

#### Advantage 2- Imminence:

#### The executive’s current definition of imminence is so vague and broad it makes overuse and abuse of the drone program inevitable.

Greenwald 13 (Glenn, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo)

4. Expanding the concept of "imminence" beyond recognition The memo claims that the president's assassination power applies to a senior al-Qaida member who "poses an imminent threat of violent attack against the United States". That is designed to convince citizens to accept this power by leading them to believe it's similar to common and familiar domestic uses of lethal force on US soil: if, for instance, an armed criminal is in the process of robbing a bank or is about to shoot hostages, then the "imminence" of the threat he poses justifies the use of lethal force against him by the police. But this rhetorical tactic is totally misleading. The memo is authorizing assassinations against citizens in circumstances far beyond this understanding of "imminence". Indeed, the memo expressly states that it is inventing "a broader concept of imminence" than is typically used in domestic law. Specifically, the president's assassination power "does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future". The US routinely assassinates its targets not when they are engaged in or plotting attacks but when they are at home, with family members, riding in a car, at work, at funerals, rescuing other drone victims, etc. Many of the early objections to this new memo have focused on this warped and incredibly broad definition of "imminence". The ACLU's Jameel Jaffer told Isikoff that the memo "redefines the word imminence in a way that deprives the word of its ordinary meaning". Law Professor Kevin Jon Heller called Jaffer's objection "an understatement", noting that the memo's understanding of "imminence" is "wildly overbroad" under international law. Crucially, Heller points out what I noted above: once you accept the memo's reasoning - that the US is engaged in a global war, that the world is a battlefield, and the president has the power to assassinate any member of al-Qaida or associated forces - then there is no way coherent way to limit this power to places where capture is infeasible or to persons posing an "imminent" threat. The legal framework adopted by the memo means the president can kill anyone he claims is a member of al-Qaida regardless of where they are found or what they are doing. The only reason to add these limitations of "imminence" and "feasibility of capture" is, as Heller said, purely political: to make the theories more politically palatable. But the definitions for these terms are so vague and broad that they provide no real limits on the president's assassination power. As the ACLU's Jaffer says: "This is a chilling document" because "it argues that the government has the right to carry out the extrajudicial killing of an American citizen" and the purported limits "are elastic and vaguely defined, and it's easy to see how they could be manipulated."

#### 2 Impacts- first, Pakistan

#### This broad definition of imminence has increased the frequency of attacks and the scope of who can be targeted, which decreases the program’s effectiveness because it reduces the ratio of high-value decapitations to accidental kills

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

The Bush administration's increased reliance on the program started in 2008; however, it is with the Obama administration that we see the most rapid proliferation of attacks. The final phase of the drone program is characterized by an even greater increase in attack frequency and an expansion of the target list to include targets of opportunity and unidentified militants of dubious rank — and funerals.12 As of May 2011, the CIA under the Obama administration has conducted nearly 200 drone strikes. This suggests that the drone target list now includes targets of opportunity, likely including some selected in consultation with the Pakistani authorities in order to facilitate the increasingly unpopular program. This development, in turn, has now decreased the effectiveness of the program when assessed in terms of the ratio of high-value to accidental kills. As Figure 2 shows, the steady increase in drone attacks conducted in Pakistan between 2004 and 2010 has resulted in a far higher number of deaths overall, but a lower rate of successful killings of high-value militant leaders who command, control and inspire organizations. If we define a high-value target as an organizational leader known to intelligence sources and the international media prior to attack and not someone whose death is justified with a posthumous militant status, we see fewer and fewer such hits — the alleged killing of al-Qaeda commander Ilyas al-Kashmiri in 2009 and again in June 2011 notwithstanding.13 Data analysis shows that at the beginning of the drone program (2002-04), five or six people were killed for each defined high-value target. As part of that high-value target's immediate entourage, they were much more likely to be militants than civilians. By 2010, one high-value target was killed per 147 total deaths. The increased lethality of each attack is due to larger payloads, broader target sets such as funeral processions, and probable new targeting guidelines (including targets of opportunity).14 Over time, these more deadly drone attacks have failed to effectively decapitate the leadership of anti-U.S. organizations but have killed hundreds of other people subsequently alleged to be militants; many were civilians.15 The rapidly growing population of survivors and witnesses of these brutal attacks have emotional and social needs and incentives to join the ranks of groups that access and attack U.S. targets in Afghanistan across the porous border. Drone attacks themselves deliver a politically satisfying short-term "bang for the buck" for U.S. constituencies ignorant of and indifferent to those affected by drone warfare or the phenomenon of blowback. In the Pakistani and Afghan contexts, they inflame the populations and destabilize the institutions that drive regional development. In addition to taking on an unacceptable and extrajudicial toll in human life, the drone strikes in unintended ways complicate the U.S. strategic mission in Afghanistan, as well as the fragile relationship with Pakistan. As a result, the U.S. military's counterinsurgency project in Afghanistan becomes a victim of the first two forms of blowback.

#### Overuse of drones in Pakistan empowers the military and makes a coup inevitable

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan collapse risks war with India and loose nukes

Twining 13 (Daniel Twining is Senior Fellow for Asia at the German Marshall Fund, Pakistan and the Nuclear Nightmare, Sept 4, http://shadow.foreignpolicy.com/posts/2013/09/04/pakistan\_and\_the\_nuclear\_nightmare)

The Washington Post has revealed the intense concern of the U.S. intelligence community about Pakistan's nuclear weapons program. In addition to gaps in U.S. information about nuclear weapons storage and safeguards, American analysts are worried about the risk of terrorist attacks against nuclear facilities in Pakistan as well as the risk that individual Pakistani nuclear weapons handlers could go rogue in ways that endanger unified national control over these weapons of mass destruction. These concerns raise a wider question for a U.S. national security establishment whose worst nightmares include the collapse of the Pakistani state -- with all its implications for empowerment of terrorists, a regional explosion of violent extremism, war with India, and loss of control over the country's nuclear weapons. That larger question is: Does Pakistan's nuclear arsenal promote the country's unity or its disaggregation? This is a complicated puzzle, in part because nuclear war in South Asia may be more likely as long as nuclear weapons help hold Pakistan together and embolden its military leaders to pursue foreign adventures under the nuclear umbrella. So if we argue that nuclear weapons help maintain Pakistan's integrity as a state -- by empowering and cohering the Pakistani Army -- they may at the same time undermine regional stability and security by making regional war more likely. As South Asia scholar Christine Fair of Georgetown University has argued, the Pakistani military's sponsorship of "jihad under the nuclear umbrella" has gravely undermined the security of Pakistan's neighborhood -- making possible war with India over Kargil in 1999, the terrorist attack on the Indian Parliament in 2001, the terrorist attack on Mumbai in 2008, and Pakistan's ongoing support for the Afghan Taliban, the Haqqani network, Lashkar-e-Taiba, and other violent extremists. Moreover, Pakistan's proliferation of nuclear technologies has seeded extra-regional instability by boosting "rogue state" nuclear weapons programs as far afield as North Korea, Libya, Iran, and Syria. Worryingly, rather than pursuing a policy of minimal deterrence along Indian lines, Pakistan's military leaders are banking on the future benefits of nuclear weapons by overseeing the proportionately biggest nuclear buildup of any power, developing tactical (battlefield) nuclear weapons, and dispersing the nuclear arsenal to ensure its survivability in the event of attack by either the United States or India. (Note that most Pakistanis identify the United States, not India, as their country's primary adversary, despite an alliance dating to 1954 and nearly $30 billion in American assistance since 2001.) The nuclear arsenal sustains Pakistan's unbalanced internal power structure, underwriting Army dominance over elected politicians and neutering civilian control of national security policy; civilian leaders have no practical authority over Pakistan's nuclear weapons program. Whether one believes the arsenal's governance implications generate stability or instability within Pakistan depends on whether one believes that Army domination of the country is a stabilizing or destabilizing factor. A similarly split opinion derives from whether one deems the Pakistan Army the country's most competent institution and therefore the best steward of weapons whose fall into the wrong hands could lead to global crisis -- or whether one views the Army's history of reckless risk-taking, from sponsoring terrorist attacks against the United States and India to launching multiple wars against India that it had no hope of winning, as a flashing "DANGER" sign suggesting that nuclear weapons are far more likely to be used "rationally" by the armed forces in pursuit of Pakistan's traditional policies of keeping its neighbors off balance. There is no question that the seizure of power by a radicalized group of generals with a revolutionary anti-Indian, anti-American, and social-transformation agenda within Pakistan becomes a far more dangerous scenario in the context of nuclear weapons. Similarly, the geographical dispersal of the country's nuclear arsenal and the relatively low level of authority a battlefield commander would require to employ tactical nuclear weapons raise the risk of their use outside the chain of command. This also raises the risk that the Pakistani Taliban, even if it cannot seize the commanding heights of state institutions, could seize either by force or through infiltration a nuclear warhead at an individual installation and use it to hold the country -- and the world -- to ransom. American intelligence analysts covering Pakistan will continue to lose sleep for a long time to come.

#### Miscalculation means this could escalate to nuclear winter and extinction

Hundley 12 (TOM HUNDLEY, Senior Editor-Pulitzer Center, “Pakistan and India: Race to the End,” http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### Scenario 2- Yemen and Somalia:

#### Drone overuse wrecks stability in Yemen—errors and collateral damage are high now.

Greenfield and Kramer 13 (DANYA GREENFIELD & DAVID J KRAMER, Time to curb American drones, April 5,

http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/international/05-Apr-2013/time-to-curb-american-drones)

The US has played a significant role in Yemen’s transition, which ensured the exit of former president Ali Abdullah Saleh, in exchange for immunity, and inaugurated a unity government and consensus president overseeing a national dialogue launched last month. The US has pledged support for the dialogue, which will lead to a constitutional referendum and new elections. To many Yemenis, however, Washington is narrowly focused on the short-term security concerns and the fight against terrorism. The US, they think, cares little about real political change. As Yemen’s transition enters a critical stage, Washington has an opportunity to change this image by redirecting its policy to greater emphasis on stability, prosperity and democracy, which will advance both US and Yemeni interests. Despite considerable US humanitarian aid and development support to their government, most Yemenis associate US engagement with the ongoing drone campaign to destroy Al-Qaeda in the Arabian Peninsula (AQAP) and they see it as having little regard for its effect on civilians. A number of former US military and intelligence officials argue that the drone programme’s costs may exceed its benefits. Retired General Stanley McChrystal has articulated the hazards of overreliance on drones, and General James E Cartwright, former vice-chairman of the Joint Chiefs-of-Staff, cautioned last month against unintended consequences, arguing that no matter how precise drone strikes may be, they breed animosity among targeted communities and threaten US efforts to curb extremism. With drone attacks breeding discontent and anti-American sentiment, the Barack Obama administration must rethink how the US can advance its objectives without letting tactics dictate strategy. Washington seeks to balance multiple priorities in Yemen: Supporting stability in the Arabian Peninsula, disrupting terrorist networks, securing waterways and aiding Yemen’s transition to democracy. By focusing primarily on acute, short-term threats, the US risks the long-term security that benefits both nations and can be achieved only through a sustained investment in the humanitarian, economic and political development of the Yemeni people. Thirty-one foreign policy experts and former diplomats sent a letter to President Obama last week that said the administration’s expansive use of unmanned drones in Yemen is proving counterproductive to US security objectives: As faulty intelligence leads to collateral damage, extremist groups ultimately win more support. The lack of transparency and accountability behind the drone policy set a dangerous global precedent and damage Washington’s ability to influence positive change in Yemen and the region. Drone strikes heighten animosity towards the US and Yemen President Abd Rabbo Mansour Hadi’s government for compromising Yemeni sovereignty. The US, the letter counselled, should reduce its reliance on drone strikes and instead invest in a long-term security agenda. This will include strengthening institutions that enhance the capacity and professionalism of Yemen’s security forces - not only counterterrorism units - to address threats to internal security. Washington already supports the restructuring of Yemen’s military, a step mandated by the transition agreement, but the Defence and State departments should ensure that America’s military assistance does not repeat the mistakes made during Saleh’s tenure - such as ignoring power concentrated in the hands of elites or not prosecuting human rights abuses. And building a capable police force recruited from residents in partnership with local communities is essential to securing this territory. Americans and Yemenis have a strong shared interest in combating extremism, as Al-Qaeda and its local affiliate, Ansar Al Sharia, spread out in the south and pledge acts of terrorism against both Yemeni and US targets. The US should not ignore this threat, but beyond the security portfolio, Yemenis need to feel that Washington is committed to supporting democratic institutions and the prosperity of the Yemeni people. Although the State Department and the US Agency for International Development are engaging Hadi’s government on development and humanitarian issues, most Yemenis feel only the negative effects of US counterterrorism policy. Rather than the steady stream of military delegations, a more robust economic assistance programme and public diplomacy strategy - including a visit by Secretary of State John Kerry and other high-level diplomats - will signal support for Yemen’s transition and its democratic aspirations. Yemen’s national dialogue is an ideal opportunity to break with a legacy of corrupt leaders who sought personal gain at the nation’s expense. The Obama administration can encourage this process by providing international cover for the difficult decisions delegates must make to craft a new political system based on equitable power-sharing, active citizenship and tolerance. This requires the administration to examine its own policies and shift course where the status quo undermines America’s shared interests. Despite negative attitudes towards US policy, Yemenis are eager to have an authentic partnership with the US - built on transparency, accountability and a demonstrated commitment to their future.

#### Executive overreliance causes blowback and instability in Yemen and Somalia- risks violent escalation.

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

It is possible that the exchange of personnel among the military, the intelligence community and the Department of Defense will clear up the confusion over command and targeting, though this is far from given. The more serious forms of blowback stemming directly from the effects of extrajudicial killing, however, do not seem to have been addressed. If the Pakistani campaign spawned purposeful vengeance, like the Khost bombing, and opportunities for recruitment of noncombatants for retaliatory attacks, then the same purposeful and accidental escalation will most likely occur in the Arabian Peninsula and the Horn of Africa, compounding Yemen's and Somalia's volatility. In many ways, Yemen resembles both Afghanistan and Pakistan, and the undeclared drone war there will share the most dysfunctional characteristics of both sides of the Af/Pak theatre. Like Afghanistan, Yemen is a fragmented tribal society ideally suited for harboring pockets of militancy in a de-centered system with strong social ties.33 Like Pakistan, Yemen's military and the other institutions of a failing state may still function well enough to both channel counterterror funds from the United States and apply them according to its own interests and criteria.34 Another whisky-swilling military steeped in hypocrisy and addicted to counterterror as a way to make a living is hardly the ideal local spotter for U.S. attacks from the skies.35 Drone warfare as it has evolved in the Af/Pak theatre is not the answer to Yemen's unrest. The lessons of drone warfare in Pakistan are clear. First, if extrajudicial dispatching of high-value targets is a goal, such targets are best dealt with as Osama bin Laden was — through face-to-face assaults by crack JSOC troops based on reliable intelligence. Second, chronic testing of national sovereignty through an undeclared war of drone attacks puts fragile governing structures in the target country under enormous pressure while exacerbating social volatility, a recipe for unpredictable outcomes.36 Third, the complacency engendered in the American public, which is largely blind to the costs and consequences of, and anesthetized to, the legal and moral issues of drone warfare, precludes recognition, let alone discussion of this new form of warfare. Finally, a trend in increasing "collateral damage" ­— in which thousands of noncombatants may be extrajudicially killed, traumatized and materially damaged — fuels instability and escalates violent retaliation against convenient targets. With Yemen and Somalia as the east-west axis of a maritime system that unites South Asia with the Horn of Africa through one of the world's most sensitive and pirate-infested shipping channels, counterterror measures must be both precise and well-reasoned. The Pakistani model is neither. Drone strikes leave little scope for the civic reform that the Arab Spring in Yemen demands.37

#### Instability in Yemen and Somalia makes maritime terrorism in critical chokepoints around the Horn of Africa inevitable.

Ulrichsen 11 (Kristian Coates, The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula, Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

Multiple fault lines have thus opened up, facilitated by (and accelerating) processes of state weakness and the relative empowerment of non-state actors. The result is more political violence and endemic criminality in and off the coast of Somalia and the Horn. Nevertheless, the new dimension to this nexus of terrorism, piracy, gun-running and people-smuggling is its growing transregional dimension. This defines the core challenge facing the regional and global security agenda, in addition to attempts at diplomatic mediation and conflict resolution throughout the area. Intensifying illicit networks and rent-seeking criminality are part of a broader pressure on fragile state structures. They are already struggling to control and adapt to pressures arising from the accelerated flows of information, communication and migration in a rapidly globalizing environment. The coincidence of these processes in Somalia and Yemen is changing the geopolitics of insecurity in the Horn of Africa and the Arabian Peninsula, as the following sections detail. MARITIME AND ENERGY SECURITY The problem of fragile and collapsed states on both sides of the Bab al-Mandab introduces potent new elements of maritime and energy security into the regional — and global — equation. The incidence of maritime piracy in the Gulf of Aden and the Red Sea more than doubled in 2008-09, and their operational reach steadily increased. Much of the piracy was launched from the semi-autonomous region of Puntland, on Somalia's tip of the Horn, where patterns of rent-seeking and gangsterism converge with the absence of effective state authority and licit sources of income. Moreover, at least one of the seven different groups of pirates operating off the Somali coast is believed to be based in the Socotra archipelago in Yemen, while at least some of the financial proceeds are believed to pass through money-laundering channels in Dubai and Kenya.44 This underlines the growing regional and international risk from both maritime piracy and maritime terrorism. Incidents such as the seizure of the Sirius Star by Somali-based pirates in November 2008 and the attack on the Japanese supertanker M Star in the Strait of Hormuz in July 2010 illustrate both phenomena. Maritime commerce and international shipping that link the oil-exporting Gulf states to Western economies must navigate two regional chokepoints, the Strait of Hormuz and the Bab el-Mandab, in addition to the hazardous waters of the Gulf of Aden and the Red Sea. Pirates' growing aggressiveness has centered on this geostrategically and commercially vital region. It reflects the interlocking dangers stemming from a crisis of governance and spreading conflicts. In 2009, the International Maritime Board recorded a total of 406 actual and attempted attacks, the majority of which occurred in the Gulf of Aden and off the Somali coast.45 However, due to underreporting, often for fear of higher insurance premiums, the figures may be much higher. Numerous factors underlie the rise in maritime piracy off the Somali coast. These include opportunistic motivations, which are among the principal drivers of pirate groups, as well as the ready availability of targets (through high volumes of trade passing by) and means (including inadequate law enforcement and ready access to weaponry). It is contextualized by the impact of conflict, poverty and weak state capacity.46 Indeed, in the Somali case, state collapse is a major determinant of piracy. Piracy declined sharply during the short-lived projection of power and authority by the UIC in 2006 and subsequently resurged following their removal through the reappearance of pirate groups operating under warlord protection.47 With the TFG unable to control its territory, let alone its coastline and territorial waters, increased naval patrolling activity by external actors (including the EU, NATO, China, Russia, India and Iran) may offer a degree of protection to shipping but leaves untouched the root causes of piracy as a symptom of state collapse and lack of legitimate economic opportunities. Maritime terrorism presents the second major threat to international security at sea. It has similar causal facilitators to maritime piracy; the erosion of governance in littoral regions creates security gaps that may be exploited by terrorist organizations. The threat from maritime terrorism is low-level yet potentially high-impact. It encompasses subthreats ranging from maritime criminality to better-organized groupings of insurgents or militants who take advantage of the pressure on littoral states to exploit their maritime resources and the fuzzy margins between domestic and international governance of international waterways and shipping lanes. Although the number of maritime terrorist incidents has been relatively small, it does present a challenge to a global supply chain and logistical system increasingly predicated on "just-in-time" deliveries. It also encompasses the role of non-state actors with access to sophisticated weaponry operating in international waters where jurisdiction is unclear and the "seams of globalization" become vulnerable to exploitation.48

#### These attacks risk global economic collapse

Neubauer 13 (Sigurd, Defense and foreign affairs specialist, member of the International Institute for Strategic Studies, Somalia: A Terrorist-Piracy Nexus?, May 22, http://www.huffingtonpost.com/sigurd-neubauer/somalia-piracy\_b\_3320406.html)

Piracy, like terrorism has been a scourge of mankind for centuries and, though its practitioners, real (Blackbeard, Anne Bonny and Henry Morgan) and mythical (Captain Jack Sparrow in the Pirates of the Caribean movie stories) have achieved heroic stature in popular culture, its contemporary manifestations represent a major threat to the global economy and to national security. Significant strides have been made in recent years towards combating piracy, especially off the coast of Somalia, but a robust international grand strategy is urgently needed in order to forestall an ever more dangerous global threat as pirates develop ever more sophisticated organizational structures, many of which are already linked to criminal gangs and even, in some cases to terrorist groups. Their activities already impose heavy financial and human costs not only on the maritime industry but also on the countries from which they operate. Heretofore, the area around Somalia has been the most dangerous area but significant progress has been made in reducing piracy there. Last year, pirates succeeded in capturing 13 vessels, compared to 49 in 2010 and 28 in 2011, according to the International Maritime Organization (IMO). Part of that success can at least be partially explained by the European Union's heavy naval presence around the Horn of Africa, in the Gulf of Aden while improving intelligence sharing with NATO, the Combined Maritime Forces (CMF), the UK Maritime Trade Operations (UKMTO), and the International Maritime Bureau (IMB) Piracy Reporting Center. Additional measures implemented by shipping companies such as providing more armed security aboard merchant vessels while securing the ship's perimeter with razor or barbed wire have also led to the significant decrease in the number of piracy attacks. Equally important, however, was the 2009 implementation of the Djibouti Code of Conduct, a code concerning the repression of piracy and armed robbery against ships. Under the code, aside from committing themselves to abiding by various counter-piracy United Nations Security Council Resolutions, the signatories also pledged to overhaul their domestic counter-piracy legislation. As a result, a record number of pirates were sentenced by local courts around the world last year. The significance of these developments should not, however, be overstated. First, the cost remains enormous -- in 2011, it is estimated that Somali piracy cost the global economy an estimated 7 billion USD through higher insurance premiums, security enhancements, and business disruption and earned the pirates some 160 million USD in ransoms. These figures do not include the psychological burdens borne by the captives or the costs imposed on Somalia. And, the actual costs are probably even higher due to widespread underreporting. Second, while piracy off the coast of Somalia has decreased, pirates are gradually focusing their efforts where patrols are not available for protection, now operating in the wider Indian Ocean. As pirates are extending their reach from Oman to the Maldives, they have also proven to be excellent entrepreneurs, building large well-financed organizations that are able to execute ever more sophisticated attacks such as hijacking oil tankers off the coast of Nigeria and stealing the valuable cargo. Moreover, pirate groups are becoming increasingly international and are extending their reach from national bases to neighbors -- from Nigeria, for example to Benin and the Ivory Coast, usually in cooperation with powerful local elements. Economically speaking, piracy already presents an enormous challenge and it is conceivable that as pirates face stiffer resistance on the high seas by an increasingly stronger international naval presence, their political and ideological motivations could radicalize over time. Currently, terrorist groups already cooperate with criminal gangs to raise funds and piracy could potentially become a lucrative source of income for radical groups. A second plausible scenario is that as pirates struggle to capture more ships, pirates could resort to attacking shipping directly as criminal motivations could subside to radical ideology propagated by al Qaeda and its splinter groups. Hence, it is easy to envision a nightmare scenario wherein terrorists, supported by a pirate group, hijack an oil tanker not just to steal the oil or collect the ransom but to blow it up in a major port with devastating economic consequences across the globe. A separate threat scenario that should not be underestimated entails terrorists capturing a liqueﬁed natural gas carrier that can be used as a ﬂoating bomb, which can either be detonated at a major port or near a flotilla of ships in the open seas. Piracy and terrorism can also be used as means to exert economic warfare against the United States and the international community as maritime attacks oﬀer terrorists an alternate means of causing mass economic destabilization. After all, terrorists have already attacked ships -- al Qaeda, the USS Cole (2000), Abu Sayyaf a ferryboat in the Philippines (2004) and the Mumbai attacks (2008).

#### Nuclear war

Kemp 10 Geoffrey, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, pg. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

#### The plan is key- Ex post review resolves the broad definition of imminence- redress key to check the errors which cause blowback.

Hafetz, former ACLU National Security Project attorney, 13 (Jonathan Hafetz, former senior attorney at the ACLU’s National Security Project, a litigation director at NYU’s Brennan Center for Justice, and a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons, P.C, Reviewing Drones, March 8, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html)

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes. Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large. For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings. Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat. Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.

#### The plan would result in a balanced definition of imminence. The court would apply a standard that still allows decapitation of high value targets and out-of-battlefield operations– Hamdi proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Su- preme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that al- lows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### Navy Plan

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 1AC Solvency

#### Ex post review makes our drone operations better—incentivizes better intel gathering and it doesn’t chill battlefield ops

Taylor, Senior Fellow-Center for Policy & Research, 13 (Paul, Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, and is veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, “Former DOD Lawyer Frowns on Drone Court,” March, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/)

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

## 2AC

### Solvency

#### Ex Post review of drone strikes would effectively constrain executive action

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.

### 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.

#### 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

### 2AC “Agamben”

#### The alt fails – The 1NC alt is about biopower and the link and impact are weaponitis – no evidence that “Whatever being” can magically wish away the military and militarism

#### The K cannot turn the case—massive executive overreach is the status quo- that’s our imminence advantage. (even if they win the alt solve the case, the aff alone still cannot make the status quo WORSE)

#### The alt fails because it kills all political resistance and Agamben is wrong about being able to reform legal institutions

Huysmans 8 (Jef, Chair in Security Studies, director of the Centre for Citizenship, Identities, Governance (CCIG) at the Faculty of Social Sciences, “The Jargon of Exception – On Schmitt, Agamben and the Absence of Political Society”, International Political Sociology (2008) 2, p. 179)

Deploying the jargon of exception and especially Agamben’s conception of the exception-being-the-rule for reconfiguring conceptions of politics in a biopolitical age comes at a serious cost, though. It inserts both a diagnosis of our time and a conceptual apparatus for rethinking politics that has no place for the category that has been central to the modern democratic tradition: the political significance of people as a multiplicity of social relations that condition politics and that are constituted by the mediations of various objectified forms and processes (for example, scientific knowledge, technologies, property relations, legal institutions…). Even if one would argue that Agamben’s framing of the current political conditions are valuable for understanding important changes that have taken place in the twentieth century and that are continuing in the twenty first, they also are to a considerable extent depoliticizing. Agamben’s work tends to guide the analysis to unmediated, factual life. For example, some draw on Agamben to highlight the importance of bodily strategies of resistance. One of the key examples is individual refugees protesting against their detention by sewing up lips and eyes. They exemplify how individualized naked life resists by deploying their bodily, biological condition against sovereign biopolitical powers (for example, Edkins and Pin-Fat 2004:15–17). I follow Adorno and others, however, that such a conception of bodily, naked life is not political. It ignores how this life only exists and takes on political form through various socioeconomic, technological, scientific, legal, and other mediations. For example, the images of the sewed-up eyelids and lips of the individualized and biologized refugees have no political significance without being mediated by public media, intense mobilizations on refugee and asylum questions, contestations of human rights in the courts, etc. It is these mediations that are the object and structuring devices of political struggle. Reading the politics of exception as the central lens onto modern conceptions of politics, as both Agamben and Schmitt do, erases from the concept of politics a rich and constitutive history of sociopolitical struggles, traditions of thought linked to this history, and key sites and temporalities of politics as well as the central processes through which individualized bodily resistances gain their sociopolitical significance.

#### And, “whatever being” alt fails to cause structural change--- legal and social structures are inevitable – any change must be implemented using existing social structures

Balkin 05(Jack, Professor of Constitutional Law and the First Amendment, Yale Law School, DERRIDA/AMERICA: THE PRESENT STATE OF AMERICA'S EUROPE: LAW: DECONSTRUCTION'S LEGAL CAREER, Cardozo Law Review, November, 27 Cardozo L. Rev. 719)

Second, the antihumanist assumptions of deconstruction tended to undermine the notion of "false necessity" implicit in CLS scholarship. **Social structures and** legal doctrines **might be "contingent**" in the sense that they did not have to take any particular form, **but once they were in place they** would not melt away simply by an act of will. Moreover, changes and reforms would have to be implemented using the social meanings and social structures already in place. Individuals who had been socially conditioned to see existing social structures and legal categories as normal and natural would not easily be able to transcend the limits of their perspectives. Moreover, **it might be difficult to change conventional social meanings and practices that were grounded in the interlocking expectations and actions of vast numbers of people**. **Even if** conventions **were "conventional" rather than necessary, that did not mean that they** were **not also** durable and powerful**,** offering considerable resistance to attempts to alter or overthrow them**. Deconstruction** did suggest that legal and social structures had unstable and flexible boundaries, but it **did not imply that these structures could easily be transformed through individual thought or effort.** Even if legal concepts had multiple meanings, it did not follow that individuals would be able to manipulate and change the shared social meanings of these concepts in any way they liked; **moreover, their social construction suggested that they would not even desire to change shared meanings in some of these ways**. 23 Third, using deconstruction to demonstrate the incoherence of the categories and distinctions of legal orthodoxy proved entirely too much. If the concepts and categories used by the status quo were deconstructible, so too would be any concepts and categories offered by Critical Legal Scholars. If deconstructibility meant incoherence, then it also meant the incoherence of any positive progressive program forCritical Legal Studies andany radical alternatives to mainstream legal thought**.**

#### 1NC link evidence is a critique of making war more humane instead of preventing it – but that’s not the question anymore – the drone program is far more precise than alternatives – casualties are way down---our ev uses the best data

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits". Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates. Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

#### No risk of endless warfare

**Gray 7**—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### --Specific demands are key- their call for universal opposition to war is doomed to fail

Pascal Bruckner 86, Maître de conférence at the Institut d’Études Politiques de Paris, 1986

(Tears of the White Man)

Here again, though, our analysis must be refined. A universal and angelic and limitless fellowship would be disembodied, insufficient to deal with the misfortunes of any particular category or group of people. Through large-scale institutions, unions, political parties, and associations, I can reinforce and enlarge it to global dimensions, and through them I am obliged to make gestures of abstract charity in the form of food, medicine, and money, to countries whose names I do not know. But we choose our causes as our causes choose us, in an inner encounter with the outside world, in which the world proposes as much as we dispose. This is why we cannot honestly embrace all causes and also why we cannot be disinterested in any of them. When we express concern for Poland, we may be scolded by those who would have us also remember El Salvador, Lebanon, or South Africa. We must reply that a thousand causes for outrage are only so many reasons to do nothing, and that if we are urged not to prefer one struggle over another, East or West or South, we are being pushed toward an involvement that has no limits, which is really complete lack of involvement. It would mean the fairyland of solidarity with no concern. I feel solidarity, period, like some mystical and bloodless love that floats in the air. To be effective, solidarity has to be circumscribed and channeled. Other solidarities can be based on it, but only as aims sought by other people. To be effective, responsibility must choose a limited field of action and a specific geographic area (which is not related to its distance). Without that, it is indeterminate, blind. Our need for political action and sympathy beyond national borders must be tailored to the scale of causes in a particular area, beyond which there is nothing but the hubbub and babbling of the news media. In this respect, too much generosity is suspicious. A fellowship that expresses itself in general terms and that is incapable even of saying the name of those people whom it helps is the solidarity of armchair windbags. It dies of its own purity, from choosing everything. It is nothing but a grandiose slogan, like the postwar label “existentialist,” which was invoked everywhere and anytime. It gives support to the most dissimilar causes with the same enthusiasm. The same people who support the PLO in July with similar arguments, and six months later will support some other guerilla movement. Details are minimized in all cases, and common denominators are sought where historical details should call for exact analyses, strict attention to the facts. It is purely sentimental attachment to people in the outside world, and the Cambodians, Palestinians, and Lebanese all march through the square marked “Victim.”; it is the same preordained ritual for different participants. This kind of solidarity is for mercenaries. of the news media who must impartially cover all the active spots on earth. Let us not ask more of the media than what they already do quite well---make us aware of human problems. Our sort of attachment to the outside world cannot follow the rhythm of the news, even if we do care about it. We must learn to detach ourselves from the hassle of the headlines and hot stories, so we can take root somewhere on earth. Newspapers and television cannot possibly serve as a guide to action because, when the TV screen stops talking about a country, it continues to exist. If we based our attention to the world on the pattern of the news media, we would develop the flexibility of public opinion, which is too apt to take a stand for one group one day and another the next. That is a kind of technological solidarity for the busy ~~man~~ who wastes his effort and spreads ~~him~~self too thinly. A hand held out in this way will soon be pulled back; reflex solidarity provides aid, but then takes it back again.

#### Don't focus on representations

Tuathail 96 (Gearoid, Department of Georgraphy at Virginia Polytechnic Institute, Political Geography, 15(6-7), p. 664, science direct)

While theoretical debates at academic conferences are important to academics, the discourse and concerns of foreign-policy decision- makers are quite different, so different that they constitute a distinctive problem- solving, theory-averse, policy-making subculture. There is a danger that academics assume that the discourses they engage are more significant in the practice of foreign policy and the exercise of power than they really are. This is not, however, to minimize the obvious importance of academia as a general institutional structure among many that sustain certain epistemic communities in particular states. In general, I do not disagree with Dalby’s fourth point about politics and discourse except to note that his statement-‘Precisely because reality could be represented in particular ways political decisions could be taken, troops and material moved and war fought’-evades the important question of agency that I noted in my review essay. The assumption that it is representations that make action possible is inadequate by itself. Political, military and economic structures, institutions, discursive networks and leadership are all crucial in explaining social action and should be theorized together with representational practices. Both here and earlier, Dalby’s reasoning inclines towards a form of idealism. In response to Dalby’s fifth point (with its three subpoints), it is worth noting, first, that his book is about the CPD, not the Reagan administration. He analyzes certain CPD discourses, root the geographical reasoning practices of the Reagan administration nor its public-policy reasoning on national security. Dalby’s book is narrowly textual; the general contextuality of the Reagan administration is not dealt with. Second, let me simply note that I find that the distinction between critical theorists and post- structuralists is a little too rigidly and heroically drawn by Dalby and others. Third, Dalby’s interpretation of the reconceptualization of national security in Moscow as heavily influenced by dissident peace researchers in Europe is highly idealist, an interpretation that ignores the structural and ideological crises facing the Soviet elite at that time. Gorbachev’s reforms and his new security discourse were also strongly self- interested, an ultimately futile attempt to save the Communist Party and a discredited regime of power from disintegration. The issues raised by Simon Dalby in his comment are important ones for all those interested in the practice of critical geopolitics. While I agree with Dalby that questions of discourse are extremely important ones for political geographers to engage, there is a danger of fetishizing this concern with discourse so that we neglect the institutional and the sociological, the materialist and the cultural, the political and the geographical contexts within which particular discursive strategies become significant. Critical geopolitics, in other words, should not be a prisoner of the sweeping ahistorical cant that sometimes accompanies ‘poststructuralism nor convenient reading strategies like the identity politics narrative; it needs to always be open to the patterned mess that is human history.

### 2AC OLC

#### Perm – do both

#### a. OLC rubber stamps---external oversight key—(their text does NOT remedy this)

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

**But I am** more **skeptical** than Balkin **that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional.** **Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and** from **State Department Legal Adviser Harold Koh. Bush**, of course, **got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation**. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough **consultation with executive branch lawyers can prevent** the president from undertaking **actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear**. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, **for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside executive branch** – that is, **from Congress, the courts,** and public opinion. **These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line**. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

**b. OLC not binding, gets circumvented---empirically true**

Bruce **Ackerman 11**, Sterling Professor of Law and Political Science at Yale University, “LOST INSIDE THE BELTWAY: A REPLY TO PROFESSOR MORRISON,” Harvard Law Review Forum Vol 124:13, http://www.harvardlawreview.org/media/pdf/vol124forum\_ackerman.pdf

The problem is confirmed by Morrison’s very useful data analysis, which shows that **only thirteen percent of OLC opinions have provided a more- or- less clear “no” to the White House** during the past generation.34 **Morrison’s data- set doesn’t include OLC’s unpublished opinions — which typically involve confidential matters involving national security. Since OLC is almost- certainly more deferential to the White House in these sensitive areas, the percentage of “no’s” would likely sink into the single- digits if these secret opinions could be included in Morrison’s data set.**35 And remember, **quantitative data can’t take into account the occasions on which the White House is especially exigent in its telephonic demands**.36 ¶ **\*\*\*TO FOOTNOTES\*\*\***¶ 36 Morrison is undoubtedly right in suggesting that stare decisis plays a restraining role in garden-variety cases. But he also notes that **the OLC overrules** (or substantially modifies**) its own decisions in more than five percent of the opinions in his sample**. See Alarmism, supra note P, at NTOP n.NPN. **This is a significant percentage, given my focus on the likely way the OLC will function in high-stress situations. It indicates that stare decisis is by no means a rigid rule, and** that **the OLC cannot credibly claim that its hands are tied when the White House is pressuring it to overrule existing case- law to vindicate a high-priority presidential initiative**. ¶ Similarly, Morrison is undoubtedly correct in suggesting that his data fails to reflect the fact that the OLC sometimes informally deflects the White House from a legally problematic initiative. See Alarmism, supra note P, at NTNV. But **on high-priority initiatives, the White House won’t easily take** an informal **“no” for an answer — it will either push the OLC to write a formal opinion saying “yes” or** it will **withdraw the issue from its jurisdiction and rely on the WHC to uphold the legality of the President’s plan**. As a consequence, I believe that Morrison’s data provides an overestimate, not an under-estimate, of likely OLC resistance: it fails to count unreported national security opinions (on which the OLC is probably extremely deferential), and this failure is not mitigated by its additional failure to detect informal modes of OLC resistance.

#### The executive can’t create a cause of action

Bernstein, Law Prof-Chicago, 12 (ANYA BERNSTEIN, Bigelow Teaching Fellow and Lecturer in Law, The Universityof Chicago Law School, CONGRESSIONAL WILL AND THE ROLE OF THE EXECUTIVE IN BIVENS ACTIONS: WHAT IS SPECIAL ABOUT SPECIAL FACTORS, http://mckinneylaw.iu.edu/ilr/pdf/vol45p719.pdf)

Of course, the judiciary and the legislature are not the only branches that have a hand in crafting remedies. The modern executive branch, with its administrative remedial schemes and its prominent role in the process of legislation, also plays a part. However, as the Bivens case discussed throughout this Article indicates, the Executive’s role in remedy-creation is still subordinate to that of Congress. Administrative remedial schemes must be authorized through a delegation of congressional power to the Executive and are subject to legislative strictures and specifications. Although the President often plays a significant role in the crafting of legislation and must sign a bill into law, it is still Congress that debates and passes it. Responding to these realities, case law 16 regarding constitutional damages consistently looks to congressional will to ensure that judge-made remedies do not disturb the balance of authority between the judiciary and the legislature.

### 2AC PQD

#### A. Actively undermining productive action on climate

Weatherford 11/5/2013 (Katie, regulatory policy analyst for the Center for Effective Government’s regulatory policy team, “Congress Continues Efforts to Thwart Climate Change Emissions Limits”, http://www.foreffectivegov.org/congress-continues-efforts-thwart-climate-change-emissions-limits)

Carbon Emissions Limits Are Central to President's Climate Action Plan The limits on CO2 from new power plants are a critical component of President Obama's action plan to address climate change. Carbon dioxide is the primary greenhouse gas contributing to global warming and climate changes that have occurred over the past several decades; fossil fuel combustion for electricity generation "is the largest single source of CO2 emissions in the nation." By EPA's calculations, CO2 emissions accounted for roughly "38% of total U.S. CO2 emissions and 32% of total U.S. greenhouse gas emissions in 2011." EPA first proposed emissions limits in April 2012 in response to a 2010 settlement agreement. But after receiving heavy criticism from the coal industry, the Obama administration decided to revise the rule. On Sept. 20 of this year, EPA announced a new proposal for new power plants. When finalized, the rule will require large gas-fired plants to limit carbon emissions to 1,000 pounds per megawatt-hour of electricity produced and require smaller gas-fired plants and all new coal-fired plants to meet a limit of 1,100 pounds of CO2 per megawatt-hour. The rule has yet to be published in the Federal Register, presumably because of a backlog of publications caused by the government shutdown during the first weeks of October. Once published, a 60-day comment period will officially begin and the docket will be made available online. Meanwhile, EPA has already posted the proposal on its website, scheduled public hearings across the U.S., and started accepting public comments. Legislative Efforts to Silence EPA Are Underway Even before EPA's initial proposal in 2012, anti-regulatory forces in Congress were seeking to undermine efforts to reduce carbon pollution. According to a database compiled by the House Energy and Commerce Committee minority staff, during the 112th Congress (January 2011 to January 2012), the House voted 53 times to block actions to address climate change. The 2011 Continuing Resolution (H.R. 1) prohibited EPA from using funds to issue or enforce any regulation on emissions of greenhouse gases due to climate change concerns. Rep. Ted Poe (R-TX) offered an amendment to the resolution that would have blocked EPA from regulating greenhouse gas emissions from stationary sources for any reason. Representatives also attached "riders" to both the FY 2012 and FY 2013 House Interior and Environment appropriations bills to prohibit or delay EPA from setting limits on carbon dioxide or other greenhouse gas emissions. The 113th Congress has continued efforts to prevent EPA action to address CO2 emissions. Just days before EPA announced its proposal to limit CO2 emissions from new power plants, Senate Minority Leader Mitch McConnell (R-KY) introduced legislation to prevent EPA from finalizing the standards. New Legislation: A Wolf in Sheep's Clothing On Oct. 28, Rep. Ed Whitfield (R-KY), joined by Sen. Joe Manchin (D-WV), released a discussion draft bill with the same prohibitive language of past efforts to prevent regulation of greenhouse gas emissions. However, upon releasing the draft text, Manchin called it "a consensus, middle, doable procedure that we can abide by." This bill is not moderate. The three major components of the bill would: Void EPA's Proposed Emissions Limits: The bill would repeal any proposed rule or guidance that EPA has issued to limit carbon emissions from new power plants. The bill says these "rules and guidelines shall be of no force or effect, and shall be treated as though such rules and guidelines had never been issued." Additionally, the bill prohibits EPA from proposing or finalizing a rule or guidance to limit emissions of any greenhouse gas from existing power plants. By requiring EPA to start again from scratch, the bill guarantees several more years of delay before EPA can move forward. Require Congress to Reauthorize EPA to Limit Emissions from Existing Plants and Set Deadline: Under the bill, EPA cannot limit emissions of any greenhouse gas from an existing or modified power plant until Congress enacts a law specifying the effective date of the rule or guidance. Further, no rule or guidance will become effective until EPA submits a report to Congress regarding the economic impact of the rule. Notably, this report would not be required to include any of the many benefits of limiting emissions. Impose an Unworkable Standard for Regulating Emissions of Any Greenhouse Gas: Before EPA can issue any emissions limits on new power plants, the agency would be required to establish a separate standard for gas-fired and coal-fired plants (as it has already done in its Sept. 20 proposal). Further, EPA must show that at least six commercial scale coal-fired power plants in different locations throughout the U.S. have achieved the proposed limits for a full year. For power plants fired with lignite coal, EPA must show that the standards were achieved for a full year by three units at different plants throughout the U.S. To ensure that EPA can never satisfy this standard, the law prevents the agency from using the results of "any demonstration project" in setting the standard. A demonstration project is defined as "a project to test or demonstrate the feasibility of carbon capture and storage technologies that has received government funding or financial assistance." EPA based its current proposal on projects across the country where carbon capture and storage technology has been installed to demonstrate that the standard is achievable. Under the new bill, these projects would not be valid evidence of the viability of the new standards. Instead, only efforts that industry undertakes voluntarily to use carbon capture and storage technology without any government assistance could be used to justify a new standard. Obviously, industry has no incentive to install this technology because doing so would subject it to regulation. Whitfield has even acknowledged this point. E&E News reports that when asked whether industry would invest in this technology without a mandate by EPA or financial assistance, Whitfield said "no." Rather, under this impossible standard, industry has a large incentive to continue emitting greenhouse gases so that EPA can never issue regulations to limit those emissions. The new legislation has not garnered the support of any prominent lawmakers or organizations that support stronger greenhouse gas emissions controls. Rep. Henry Waxman (D-CA) called it "scientific lunacy" in a statement opposing the bill. According to a recent poll, 74 percent of voters in swing Senate states support EPA's proposed emissions limits for coal-fired power plants, and 66 percent of all voters surveyed trusted EPA more than Congress to make decisions about issuing those regulations. If enacted, this bill would thwart efforts to reduce the nation's major source of climate change-causing carbon pollution. Conclusion When the president directed EPA to issue rules to cut carbon emissions from new and existing power plants, no one expected the task to be easy. Despite challenges from industry interests and climate-change deniers, EPA is moving forward; it needs to promptly finalize the limits it has proposed to cut CO2 emissions from new power plants. But the larger battle may be ahead. EPA is supposed to propose new emissions limits for existing power plants by the June 1, 2014 deadline set forth in Obama's Presidential Memorandum accompanying his climate action plan. Because the forthcoming rule will regulate the oldest and "dirtiest" facilities and will likely require new investments in carbon capture and storage technology, powerful interests will oppose tougher standards. But limits on both new and existing power plants are crucial if we are going to reduce the risks that carbon dioxide emissions pose to public health and to the environment. For the sake of future generations, this is a fight the EPA must win.

#### Err aff – their uniqueness evidence is from 2010, and there have been major shifts in congressional climate attitudes since then

Piltz 13 (Rick, June 26, former senior associate in the U.S. Climate Change Science Program, “Obama’s climate action plan: The devil is in the follow-through”, http://www.climatesciencewatch.org/2013/06/26/obamas-climate-action-plan-the-devil-is-in-the-follow-through/)

Of course, since that exchange in 2010 the Democrats lost their majority in the House and an obstructionist right-wing has rendered the current Congress dysfunctional, making meaningful legislative action on climate change as well as many other problems extraordinarily difficult, if not impossible. So now Obama’s plan focuses, appropriately, on executive branch action using existing authorities in order to circumvent Congress as much as possible – albeit the congressional budget and appropriations process could hinder making adequate resources available for some parts of the plan. (More on that to follow.)

#### Climate change suits are absolutely critical to solving global warming, we cannot wait for congress to act – three warrants

Flynn 13 (James, J.D. Candidate, 2013, Georgia State University College of Law; Assistant Legislation Editor, Georgia State University Law Review; Visiting Student, Florida State University College of Law, “CLIMATE OF CONFUSION: CLIMATE CHANGE LITIGATION IN THE WAKE OF AMERICAN ELECTRIC POWER V. CONNECTICUT”, lexis, accessed 1/5/2014)

2. Turning Up the Heat on Congress: Litigating to Legislate The only solution to anthropogenic global warming is a concerted global effort. 264 Such an effort cannot succeed without the leadership, or at least support, of the United States. 265 Real change in the United States requires comprehensive legislation that covers all facets of global warming: greenhouse gas emissions, land use, efficiency, and sustainable growth. In addition to maximizing time until the EPA either issues regulations or is prevented from doing so by Congress, litigation advances the goal of such comprehensive legislation in three ways. First, litigation keeps the pressure on fossil fuel companies and other large emitters. Comprehensive legislation is a near impossibility as long as the largest contributors to global greenhouse gas emissions are able to exert powerful control over the nation's [\*862] energy policy and the climate change discussion. 266 While the companies have the financial resources to battle in court, it is imperative that advocates and states make them do so. One need only look at the tobacco litigation of the 1960s through the 1990s to understand that success against a major industry is possible. 267 Here, though, the stakes are even higher. The chances of obtaining a largescale settlement from the fossil fuel industry is likely smaller now that the Court has ruled that some federal common law nuisance claims are displaced, because lower courts may hold that nuisance claims for money damages are also displaced. 268 However, advocates of climate change legislation should keep trying to obtain such a settlement through other tort remedies. A substantially damaging settlement may encourage fossil fuel companies to reposition their assets into more sustainable technologies to avoid more settlements, thus minimizing future emissions. Alternatively, if the fossil fuel companies feel threatened enough, they may begin to use their clout to persuade Congress to pass comprehensive legislation to protect their industry from such wide-ranging suits. 269 Second, litigation keeps the issue in the public consciousness during a time when the media is failing at its responsibilities to the public. 270 The media's coverage of climate change has been both inadequate and misleading. 271 Indeed, some polls suggest Americans [\*863] believe less in climate change now than just a few years ago. 272 Litigation, especially high-profile litigation, forces the issue into the public sphere, even though it may receive a negative connotation in the media. The more the public hears about the issue, the greater chance that people will demand their local and state politicians take action. Finally, litigation sends a clear message to Congress that simple appeasements will not suffice. 273 Comprehensive legislation is needed--legislation that mandates consistently declining emissions levels while simultaneously propping up replacement sources of energy. 274 Fill-in measures, like the EPA's authority to regulate emissions from power plants, are not sufficient. Humans need energy, and there can be no doubt that we must strike a balance between energy needs and risks to the environment. Catastrophic climate change, however, is simply a risk that we cannot take; it overwhelms the short-term benefits we receive from the burning of fossil fuels. 275 Advocates and states must demonstrate to Congress [\*864] through continuing litigation that the issue is critical and that plaintiffs like those in Kivalina and Comer are suffering genuine losses that demand redress that current statutes do not currently provide. CONCLUSION American Electric proved less important for the precedent it set than for the questions it left unanswered. While courts wrestled over standing, the political question doctrine, and displacement in climate change nuisance cases in the years preceding American Electric, the Supreme Court relied only on the clear displacement path illuminated by its earlier decision in Massachusetts. While the decision in American Electric narrowed the litigation options that climate change advocates have at their disposal, it subtly sent a message to Congress that greater federal action is needed. In writing such a narrow ruling, Justice Ginsburg also sent a message to states and advocates--whether intentionally or not--that climate change litigation is not dead. Until Congress enacts comprehensive climate change legislation, global warming lawsuits will, and must, continue.

## 1AR

### 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.

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That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what [Tennessee v. Garner](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

### OV

#### Debates about the state are key to norm setting - open up the need to revisit the work of law – only way to understand the camp.

Huysmans 8 (Jef, Chair in Security Studies, director of the Centre for Citizenship, Identities, Governance (CCIG) at the Faculty of Social Sciences, “The Jargon of Exception – On Schmitt, Agamben and the Absence of Political Society”, International Political Sociology (2008) 2, p. 179)

Looked at from this perspective, debates about the reconciliation of liberty and security, for example, are not, as Agamben argues, an ideological practice that hides the fundamental break down of the dialectic between law and anomie that has been central to modern politics (Agamben 2003:144–148). Rather these debates insert questions of and challenges to the role of law and generalized norm-setting in highly charged biopolitical governance of insecurities. Instead of collapsing the dialectic between law and anomie, contestation of the protection of civil liberties, demands for re-negotiating balances between liberties and security are neither simply to be taken at face value as a matter of the necessity of balancing and rebalancing nor to be seen as the endgame of the validity of legal mediations of politics and life. Rather they open up a need to revisit the particular kind of work that law does and does not do in specific sites (Neocleous 2006), such as camps, and what the practices possibly tell us about if and how the dialectic between law and anomie operates in biopolitical governance. Fleur Johns’s analysis of the camp in Guantanamo Bay is one such example (Johns 2005). She argues that the camp is penetrated by a form of norm setting, thus implying that a dialectic between norms and anomie, political transgression and law is not absent from the organization and governing practice in the camp. Unlike some other analyses that focus on constitutional transgressions and battles in the constitutional courts, Johns emphasizes the importance for biopolitical governance of the detailed and in a sense banal regulations that seek to structure the everyday practices of the guards, the administrators and the prisoners. The norm setting is thus not primarily constitutional but administrative. The important point for this essay is that analyses like Fleur John’s unpack the contemporary predicaments and political stakes in a site like Guantanamo Bay by taking the practices and governmental technologies at face value and interpret the specific work they do for making camps possible within democratic polities. The understanding of the camp transfigures from an absolute limit that defines the fundamental nature of modern politics to a phenomenon that is constituted and contested by various banal practices and governmental techniques. The question becomes how these practices and sites we call camps are rendered within and through modern democratic governance in a biopolitical age. Such an approach does not read the nature of politics off of its limits but through the multiple relations that are shaped by means of objectified mediations and the struggles over them.

#### War turns structural violence but not the other way around

Joshua Goldstein, Int’l Rel Prof @ American U, 2001, War and Gender, p. 412

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.9 So,”if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### State is inevitable, refusing sovereignty doesn’t matter. No impact to their exclusion args

Jarvis 2000 (Darryl, Senior Lecturer in International Relations – University of Sydney, International Relations and the Challenge of Postmodernism, p. 128-130)

Inculpating modernity, positivism, technical rationality, or realism with violence, racism, war, and countless other crimes not only smacks of anthropomorphism but, as demonstrated by Ashley's torturous prose and reasoning, requires a dubious logic to make such connections in the first place. Are we really to believe that ethereal entities like positivism, mod­ernism, or realism emanate a "violence" that marginalizes dissidents? Indeed, where is this violence, repression, and marginalization? As self- professed dissidents supposedly exiled from the discipline, Ashley and Walker appear remarkably well integrated into the academy—vocal, pub­lished, and at the center of the Third Debate and the forefront of theo­retical research. Likewise, is Ashley seriously suggesting that, on the basis of this largely imagined violence, global transformation (perhaps even rev­olutionary violence) is a necessary, let alone desirable, response? Has the rationale for emancipation or the fight for justice been reduced to such vacuous revolutionary slogans as "Down with positivism and rationality"? The point is surely trite. Apart from members of the academy, who has heard of positivism and who for a moment imagines that they need to be emancipated from it, or from modernity, rationality, or realism for that matter? In an era of unprecedented change and turmoil, of new political and military configurations, of war in the Balkans and ethnic cleansing, is Ashley really suggesting that some of the greatest threats facing humankind or some of the great moments of history rest on such innocu­ous and largely unknown nonrealities like positivism and realism? These are imagined and fictitious enemies, theoretical fabrications that represent arcane, self-serving debates superfluous to the lives of most people and, arguably, to most issues of importance in international relations. More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil. That it does and continues to do so reflects our lack of judicious criteria for evaluating the­ory and, more importantly, the lack of attachment theorists have to the real world. Certainly it is right and proper that we ponder the depths of our theoretical imaginations, engage in epistemological and ontological debate, and analyze the sociology of our knowledge." But to suppose that this is the only task of international theory, let alone the most important one, smacks of intellectual elitism and displays a certain contempt for those who search for guidance in their daily struggles as actors in international politics. What does Ashley's project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and des­titute? How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the emigres of death squads? Does it in any way speak to those whose actions and thoughts comprise the policy and practice of international relations? On all these questions one must answer no. This is not to say, of course, that all theory should be judged by its technical rationality and problem-solving capacity as Ashley forcefully argues. But to suppose that problem-solving technical theory is not necessary—or is in some way bad—is a contemptuous position that abrogates any hope of solving some of the nightmarish realities that millions confront daily. As Holsti argues, we need ask of these theorists and their theories the ultimate question, "So what?" To what purpose do they deconstruct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches? Does this get us any further, make the world any better, or enhance the human condition? In what sense can this "debate toward [a] bottomless pit of epistemology and metaphysics" be judged pertinent, relevant, help­ful, or cogent to anyone other than those foolish enough to be scholasti­cally excited by abstract and recondite debate." Contrary to Ashley's assertions, then, a poststructural approach fails to empower the marginalized and, in fact, abandons them. Rather than ana­lyze the political economy of power, wealth, oppression, production, or international relations and render an intelligible understanding of these processes, Ashley succeeds in ostracizing those he portends to represent by delivering an obscure and highly convoluted discourse. If Ashley wishes to chastise structural realism for its abstractness and detachment, he must be prepared also to face similar criticism, especially when he so adamantly intends his work to address the real life plight of those who struggle at marginal places. If the relevance of Ashley's project is questionable, so too is its logic and cogency. First, we might ask to what extent the postmodern "empha­sis on the textual, constructed nature of the world" represents "an unwar­ranted extension of approaches appropriate for literature to other areas of human practice that are more constrained by an objective reality."" All theory is socially constructed and realities like the nation-state, domestic and international politics, regimes, or transnational agencies are obviously social fabrications. But to what extent is this observation of any real use? Just because we acknowledge that the state is a socially fabricated entity, or that the division between domestic and international society is arbitrar­ily inscribed does not make the reality of the state disappear or render invisible international politics. Whether socially constructed or objectively given, the argument over the ontological status of the state is of no par­ticular moment. Does this change our experience of the state or somehow diminish the political-economic-juridical-military functions of the state? To recognize that states are not naturally inscribed but dynamic entities continually in the process of being made and reimposed and are therefore culturally dissimilar, economically different, and politically atypical, while perspicacious to our historical and theoretical understanding of the state, in no way detracts from its reality, practices, and consequences. Similarly, few would object to Ashley's hermeneutic interpretivist understanding of the international sphere as an artificially inscribed demarcation. But, to paraphrase Holsti again, so what? This does not make its effects any less real, diminish its importance in our lives, or excuse us from paying serious attention to it. That international politics and states would not exist with­out subjectivities is a banal tautology. The point, surely, is to move beyond this and study these processes. Thus, while intellectually interesting, con­structivist theory is not an end point as Ashley seems to think, where we all throw up our hands and announce there are no foundations and all real­ity is an arbitrary social construction. Rather, it should be a means of rec­ognizing the structurated nature of our being and the reciprocity between subjects and structures through history. Ashley, however, seems not to want to do this, but only to deconstruct the state, international politics, and international theory on the basis that none of these is objectively given but fictitious entities that arise out of modernist practices of representa­tion. While an interesting theoretical enterprise, it is of no great conse­quence to the study of international politics. Indeed, structuration theory has long taken care of these ontological dilemmas that otherwise seem to preoccupy Ashley."

###  Terror studies

#### Their argument essentializes terror scholarship – it’s not a monolithic entity – defer to specific research

Michael J. Boyle '8, School of International Relations, University of St. Andrews, and John Horgan, International Center for the Study of Terrorism, Department of Psychology, Pennsylvania State University, April 2008, “A Case Against Critical Terrorism Studies,” Critical Studies On Terrorism, Vol. 1, No. 1, p. 51-64

Some CTS advocates have positioned the CTS project against something usually called ‘terrorism studies’, ‘Orthodox terrorism studies’ or, alternatively, ‘terrorology’. Whatever these bodies of literature are (or at least are imagined by those who have created them as such), they are recent intellectual constructions, the product of an over-generalization that has emerged from the identification of (1) the limitations associated with terrorism research to date, coupled with (2) a less than complete understanding of the nature of research on terrorism. **A cursory review of the terrorism literature reveals that attempts to generalize about something called Orthodox Terrorism Studies are deeply problematic. Among terrorism scholars, there are wide disagreements about, among others, the definition of terrorism, the causes of terrorism, the role and value of the concept of ‘radicalization’ and ‘extremism’, the role of state terror, the role that foreign policy plays in motivating or facilitating terrorism, the ethics of terrorism, and the proper way to conduct ‘counter-terrorism’**. A cursory examination of the contents of the two most well-known terrorism journals Terrorism and Political Violence and Studies in Conflict and Terrorism quickly reveals this. **These differences, and the concomitant disagreements that result in the literature, cut across disciplines** – principally political science and psychology, but also others, such as anthropology, sociology, theology, and philosophy – **and even within disciplines wide disagreements about methods** (for example, discourse analysis, rational choice, among others) **persist. To suggest that they can be lumped together as something called ‘terrorology’ or ‘Orthodox Terrorism Studies’ belies a narrow reading of the literature. This is, in short, a ‘straw man’ which helps position CTS in the field but is not based on a well-grounded critique of the current research on terrorism.**