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#### Contention 1 is Due Process

#### Scenario One: Rights Protections

#### Targeted killing policy under executive authority will collapse due process protections

Alford, 11 [Copyright (c) 2011 Utah Law Review Society Utah Law Review 2011 Utah Law Review 2011 Utah L. Rev. 1203 LENGTH: 41771 words ARTICLE: The Rule of Law at the Crossroads: Consequences of Targeted Killing of Citizens NAME: Ryan Patrick Alford\* BIO: \* © 2011 Ryan Patrick Alford, Assistant Professor, Ave Maria School of Law, p. lexis]

From 2001 to 2004, the constitutional order of the United States was severely tested. In Hamdi v. Rumsfeld, n408 the Supreme Court held that the writ of habeas corpus extended to a United States citizen held at Guantanamo Bay. n409 Eight of the nine Justices agreed that the executive branch did not have the power to hold a citizen indefinitely, without access to basic due process protections enforceable in open court. n410 This case was properly seen as a watershed, a rejection of theories of executive detention that were incompatible with the basic tenets of our common law tradition. n411 However, the clear right to habeas corpus is only slightly over three hundred years old - the right not to be killed without due process of law is twice as old and considerably more fundamental. As Blackstone made clear, habeas corpus was originally necessary because it was a prophylactic protection for Magna Carta's right not to be killed. n412 To turn a blind eye to executive death warrants would be to trample upon numerous principles the Framers believed so important as to put into a document that outlines the parameters of the state itself. It would also trample upon principles that predate the Bill of Rights: the balance of powers, the constraints on arbitrary executive action, and the specific requirements of additional due process for those accused of crimes amounting to treason. It would also make a mockery of their [\*1271] comprehensive view of due process, which precluded the use of military justice against civilians. It would allow a return to the very features of royalist justice that they and their forbearers detested, such as allowing the executive the power of judgment and denying the courts the power to intervene - this was the hallmark of the detested Star Chamber, which was abolished on these grounds in 1641. n413 What is perhaps most perplexing about this current crossroads is that there seems to be very little discussion of the importance of this case within the legal profession in general, and in particular among the scholars and lawyers who had opposed the legal framework for the indefinite detention of the detainees at Guantanamo Bay. It is difficult to understand why so much determined opposition should emerge to the withholding of the rights of habeas corpus from American citizens (which led to the decision in Hamdi), n414 while the administration's decision to issue executive death warrants has led to so little. Apart from the decision of the ACLU and the CCR to litigate the case on behalf of Nasser Al-Aulaqi, there has been very little action taken within the legal community to publicize the Obama Administration's decision to use the targeted killing program to assassinate an American citizen. n415 As the discussion of the targeted killing program after Al-Awlaki's extrajudicial execution reveals, American militants like Anwar al-Awlaki are placed on a kill or capture list by a secretive panel of senior government officials, which then informs the president of its decisions ... . There is no public record of the operations or decisions of the panel, which is a subset of the White House's National Security Council ... . Neither is there any law establishing its existence or setting out the rules by which it is supposed to operate. n416 [\*1272] Not only is there no law addressing the due process rights of Americans with respect to targeted killing, but no law on this subject can be made. The executive branch has prevented the judiciary from addressing the killing of citizens by asserting that the courts do not have jurisdiction over these cases because they present political questions. Since the judiciary may not adjudicate the claims of those about to be killed, the prevailing law of the land now comes in the form of secret memoranda created by the executive's Office of Legal Counsel ("OLC"). n417 The executive branch now has the final say on the constitutionality of its decision to kill an American citizen, since it asserts that no court has jurisdiction to review its opinion. This is executive privilege beyond James I's wildest dreams. While the administration insists that the OLC memorandum did not formulate general criteria for deciding whether Americans accused (impliedly, but not formally) of treason may be tortured or killed, n418 its version of events is actually worse than the alternative. The administration advances the position that a citizen suspected of treason may be killed after a singular determination within the executive branch that this would not violate the citizen's due process rights. "If that's true, then the Obama Administration is **playing legal Calvinball**, making decisions based on individual cases, rather than consistent legal criteria." n419 Unfortunately, this has been confirmed to be true: the recommendations for targeted killings are reportedly made on a case-by-case basis by "a grim debating society" of "more than 100 members of the government's sprawling national security apparatus," who provide no indication of using legal principles when determining such issues as which sort of "facilitators" of terrorism should be marked for death. n420 This sort of Star Chamber is precisely what the rule of law was designed to protect us against. After months of silence, Attorney General of the United States Eric Holder traced out the rationale for the targeted killing of an American citizen. n421 Rebutting this article's thesis, he argued: Some have argued that the president is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of Al Qaeda or associated forces... . [\*1273] This is simply not accurate. "Due process" and "judicial process" are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process. n422 Given the Obama Administration's decision not to release the OLC memorandum or even acknowledge that they did in fact kill Al-Awlaki, n423 this will likely be the most comprehensive description of the legal case for targeted killings the American people ever receive. Its arrogance is stunning. Attorney General Holder appears to rely implicitly on a Court decision holding that those having their social security benefits terminated are not entitled to a hearing in advance in support of another proposition. Namely, that some unspecified degree of procedural fairness apportioned in secret within the executive branch is all that is required before an American citizen can be killed. The Constitution, and a tradition of resistance to arbitrary executive power that it reaffirmed that extends back to the Magna Carta, is being held for naught - on the basis of a holding from an administrative law case wrenched forcibly out of context. With this flimsy justification, the administration rationalizes the creation of a new Star Chamber, newly empowered to administer capital punishment in secret and unchallengeable proceedings. Should this pass unchallenged, this may herald the end of the rule of law in America.

#### That spills over -- it’s the knockout blow for rights guarantees

Blum and Heymann 10 (Gabriella, Assistant Professor of Law – Harvard Law School, and Philip, Professor of Law – Harvard Law School, “Law and Policy of Targeted Killing,” Harvard National Security Journal, 1 Harv. Nat'l Sec. J. 145, Lexis)

As we have shown, targeted killings may be justified even without declaring an all-out "war" on terrorism. A war paradigm is overbroad in the sense that it allows the targeting of any member of a terrorist organization. For the United States, it has had no geographical limits. When any suspected member of a hostile terrorist organization--regardless of function, role, or degree of contribution to the terrorist effort--might be targeted anywhere around the world without any due process guarantees or monitoring procedures, targeted killings run grave risks of doing both short-term and lasting harm. In contrast, a peacetime paradigm that enumerates specific exceptions for the use of force in self-defense is more legitimate, more narrowly tailored to the situation, offers potentially greater guarantees for the rule of law. It is, however, harder to justify targeted killing operations under a law enforcement paradigm when the tactic is used as a continuous and systematic practice rather than as an exceptional measure. Justifying targeted killings under a law enforcement paradigm also threatens to erode the international rules that govern peacetime international relations as well as the human rights guarantees that governments owe their own citizens.

#### New legal framework key to effective norms – clear standards bridge the gap

Mutua 7 (Makau, SUNY Distinguished Professor, Professor of Law, Floyd H. & Hilda L. Hurst Faculty Scholar, and Director of the Human Rights Center – Buffalo Law School, “Standard Setting in Human Rights: Critique and Prognosis,” Human Rights Quarterly, Vol. 29, http://www.law.buffalo.edu/content/dam/law/restricted-assets/pdf/faculty/mutuaM/journals/hrq2907.pdf)

Even with historic conceptual and institutional breakthroughs, a lot remains to be done to secure human dignity. Although human rights standards have been set in virtually all areas that touch on human dignity, normative gaps and weaknesses still exist in many areas. New normative frameworks are needed in some areas, while in others they must be elaborated and strengthened. Standard setting is a dynamic process that must respond to a rapidly changing globe and challenges that come with the emergence of new problems and conditions. The argument that the era of standard setting is over is not only mistaken, but dangerous.

The setting of human rights standards is not a static process. The conditions of humanity that human rights standards seek to safeguard and promote are evolving concepts. New conditions of oppression and powerlessness are forever being discovered, and new challenges are constantly emerging. For example, the gay rights movement and the campaign for the rights of people with disabilities were unthinkable just a few decades ago. The current US war on terror has similarly thrown up new obstacles to established norms. There is no doubt that these and many other issues require a normative response. The struggle for and definition of human freedom and development is a continuous and evolutionary process. These issues require unceasing vigilance, revision, re-evaluation, deepening, and re-definition. Broad norms and standards must be unpacked, broken down, elucidated, revised, and may even need to be rejected and replaced by new and different standards. The scope, reach, and content of norms must be comprehensible to their beneficiaries, as well as to those who bear the responsibility for their implementation. Vacuous, rhetorical, and vague standards accomplish little.

To be effective, standards must have a clear path for their implementation and enforcement. This is an area of weakness. Institutions that are responsible for the promotion and protection of human rights standards—states and IGOs—are largely perceived by NGOs as reluctant, unwilling, unable, or ineffectual actors. They are seen as interested mostly in blunting the bite of human rights to safeguard state sovereignty. The effect of human rights must be translated at the national level, so municipal institutions that safeguard basic rights are critical to enforcement. Judiciaries, national human rights institutions, bar associations, NGOs, police and security apparatuses, and legislatures must be in the frontline to entrench, deepen, promote, and protect human rights. However, only human rights NGOs among these institutions can usually be relied on to advance the human rights agenda with vigor, honesty, and a healthy disinterest. Human rights norms must be internalized by states in their legal and political orders to be effective.

#### Executive clarity isn't enough – creates a double standard that impacts global perception

Zimmerman, 13 [Evan, Citing Zenko of CFR, Jane Dao of the NYT, Kristin Roberts of the Atlantic, etc. “Secrecy and the Obama Drone Program: a Violation of the Fifth Amendment”, April 22, 2013 http://uculr.com/articles/2013/4/22/secrecy-and-the-obama-drone-program-a-violation-of-the-fifth-amendment]

Notwithstanding the ease with which the Administration authorized the killing of al-Awlaki, the Administration has a clear understanding that the primary impediment to lawfully killing Americans is the due process clause of the Fifth Amendment of the US Constitution, which states that, “no person shall…be deprived of life, liberty, or property, without due process of law.”[19] DOJ “assumes that the rights afforded by the Fifth Amendment’s Due Process Clause…attach to a US citizen even while he is abroad.”[20] However, such a protection does not make a US citizen immune from a lethal operation if he is an enemy combatant.[21] Rather, the Administration believes it must weigh the “private interest that will be affected by the official action” against the government’s asserted interest,[22] including “the burdens the government would face in providing process.”[23] The person in question has, indeed, a very weighty, in fact “uniquely compelling,” private interest: his life.[24] However, the Administration says that its war and accordant duty to defend the lives of innocent US citizens is also compelling, maybe even more so in this context than the accused’s own life.[25] Perhaps to satisfy such Fifth Amendment concerns, the DOJ White Paper states that there are three conditions that a targeted killing of a US citizen must fulfill before death may be considered: (a) an “informed, high-level”[26] US official must believe that there is an “imminent threat of violent attack”[27] against the US; (b) capture, which is a “fact-specific, and potentially time-sensitive, question,”[28] must be infeasible, and (c) the operation to kill must be conducted in “a manner consistent with applicable law of war principles.”[29] To be killed, targets must present an “imminent threat,” the first condition.[30] Traditionally, an “imminent threat” means an attack of some sort is about to happen. However, the Administration maintains that al-Qaida “does not behave like a traditional military,”[31] meaning that this conflict is not a traditional war. Specifically, “the Constitution does not require the President to delay action until some theoretical end-stage of planning—when the precise time, place, and manner of an attack become clear,”[32] according to the Administration. So, in accordance with this unconventional war, there is a similarly unconventional definition of “imminent.” DOJ maintains that an “imminent threat” does not require the US “to have clear evidence that a specific attack on US persons and interests will take place in the immediate future,”[33] leading one to question what standard of evidence is required at all. To justify itself, the Administration agrees with the Supreme Court that there must be “the greatest respect and consideration of judgments of military authorities in matters relating to the actual prosecution of war, and…the scope of that discretion is necessarily wide.”[34] DOJ states that it is not required to refrain from action until “preparations for an attack are concluded” because that would not allow the US “sufficient time to defend itself.”[35] Furthermore, for the US to lawfully defend itself, it must demonstrate that the people it defends against are legitimate targets and that the modes of defense are legitimate, which DOJ attempts to root in the traditional laws of war. The US is in armed conflict with al-Qaida and associated forces,[36] making its members legitimate targets of the US military and conduct with them subject to national self-defense laws.[37] Congress designated as enemy combatants those who aid al-Qaida and its associated forces, prompting the Administration to cite the public authority justification[38] when targeting their members.[39] The Administration believes that, as it has the right to detain US citizens who are enemy combatants,[40] it may similarly use lethal force as an “important incident of war,”[41] against those citizens.[42] Although the Administration believes it may only unilaterally conduct a drone strike in a place where al-Qaida is believed to have a “significant and organized presence,”[43] it also believes that there is little geographical limitation of its scope to target al-Qaida militants.[44] Furthermore, although the DOJ White Paper only addresses US citizens in foreign countries, public statements of DOJ suggest that they believe there would also be lawful circumstances in which US citizens on American soil could be killed.[45] The Administration recognizes that its powers are not unlimited, and that even powers granted to it by Congress may not have unlimited scope.[46] However, it believes that these killings are within the bounds of proper executive authority. Even more, under the Administration’s position, there is no mode for the public to police the propriety and legality of targetedkillings by drones, as DOJ believes there is no proper forum for any case that would be brought against the government for its use of the drone program.[47] In effect, the only form of checks and balances here is to trust the US government not to overstep its authority. IV. Criticism of Official Policy The US has indicated that it believes that it may lawfully take out a citizen with a drone. What might a citizen do to trigger this? It is difficult to say, as the government’s asserted justifications are secret and, it claims, broad. If someone is wrongfully killed by a drone, how can his or her family[48] know that they have standing to sue the US government if the program is mostly secret?[49] There is **great confusion** surrounding the administration of US drone strikes, and the government has provided no adequate guidance. Since the US has kept its policies governing the drone program secret, the policy of targeted killings of US citizens is also secret. Such secrecy makes it so that no one can defend himself against the authorization of a drone strike or sue for restitution if accidentally killed. Secrecy is not the only impediment to the public’s understanding of the drone program; more obfuscation arises from the Administration’s own clear contradictions of its own policies. For example, Eric Holder’s letter to Rand Paul indicates that the Administration believes that it is possible legally to take out a US citizen with a drone on US soil, notwithstanding the DOJ White Paper’s requirement that US citizens only be targeted if they are, (a) on foreign soil, and are (b) senior leaders, (c) of al-Qaida. Why? We do not know, rendering the law impermissibly unclear. Furthermore, the Administration has already broken from its own standards. The only US citizen killed who was a senior leader of al-Qaida is Anwar al-Awlaki. An American subordinate of his—who was, in fact, dismissed as collateral damage, and never considered a senior leader publicly—was killed. A few weeks later, al-Awlaki’s son was also killed despite no indication that he was even involved in any terrorism group. The Administration has clearly conducted drone strikes that violate their own stated legal framework for proper and lawful targeted killings. Compounding the issue, the Administration’s rules are built on shaky ground. Hamdi v. Rumsfeld, a case that is crucial foundation for the legal positions taken within the DOJ White Paper, refers to the capture and detainment of a US citizen in combat, not assassination from a distance at a time potentially far removed from the time of attack. Hamdi admits that “while the full protections…may prove unworkable and inappropriate” in combat, “threats to military operations posed by a basic system of independent review are not so weighty as to trump a citizen’s core right to challenge meaningfully the Government’s case and to be heard by an impartial adjudicator.”[50] The right to an impartial adjudicator implies the right to a place and time to be heard, as well as the right to construct and present a case that has a “meaningful” possibility of success. In sum, Hamdi demands that due process of law be maintained outside of the combat setting, which by definition is where targeted killings occur. These rights have been violated with the way that targeted killings have been carried out so far. The Administration maintains that the killing of al-Awlaki’s son was collateral damage rather than the result of an authorized strike specifically against him. But this still means that, as a result, his family is now eligible to sue for restitution.[51] How would al-Awlaki’s son’s family be granted damages from the impartial adjudicator Hamdi calls for if the program that killed him is secret?[52] How could they prove that he was not a legitimate target if the criteria for targeted killings are unknown, or at least not clearly defined? They may not, perhaps most clearly because of DOJ’s position that there is no proper forum for such a trial.[53] Additionally, the secrecy of the program - and the fact that the government maintains that any decisions regarding targeted killing may only be reached through the its own “internal deliberations”[54] - ensures that, before they are killed, targets are impeded in their efforts to collect facts about their case and therefore wage a “meaningful” defense against the government’s accusations. Both of these situations directly violate the right to a robust defense before an impartial adjudicator called for in Hamdi, presenting serious constitutional issues relating to the Fifth Amendment. It is simply incorrect to compare the power to capture someone from the battlefield[55] with the right to be tried before one is killed, considering the right to an impartial adjudicator in a non- combat situation[56] and the highly compelling—in fact, paramount—interest a person has in saving his own life from imposition by the government.[57] The government may cite its own compelling interests and the power to strike secretly, but that is not mutually exclusive from a system with an acceptable level of disclosure. The exact manner and time at which they strike may remain secret, and may conform with the laws of war, but US citizens are entitled to know what they did to be targeted, to contest their targeting in some way, and for their families to pursue just compensation—and be awarded it—if they are wrongfully killed. This is only possible if the families know how and why their kin was killed, and what laws were broken. V. Conclusion and Summary A person has a clear right to due process. It would go too far to suggest that this implies that a person is absolutely free from being killed by the government. However, it is clear that a person has the right to defend himself in court, which requires that the charges against him be made known and the laws that he has broken publicized. The secrecy of the drone program does not allow Americans these protections that the Fifth Amendment requires. **There are alternatives to a fully public trial**—at the very least, a person is entitled to a military tribunal, if not a grand jury, for a capital offense. Being in a state of war does not allow the government to cease following the rule of law, but merely means some of its conduct becomes governed by the laws of war instead. Wartime perhaps permits targeted persons to be tried in absentia, for which there is some precedent,[58] represented by a public defender or his family and their private attorney.[59] If there truly is no “proper forum” in existence, Congress has the power to establish a court[60] with special jurisdiction over these matters. If the US government is concerned about speed,[61] it may establish special courts with a high, but not absolute, level of secrecy that try these cases with special speed.[62] If the government is worried that a publicized drone program will harm the United States’ image, secrecy is doing so already**,** causing speculation that the U.S. has secret agreements with other governments.[63] This further engenders suspicion of America, particularly in countries where citizens only have state-owned media and assume such information is vetted and condoned by the Administration.[64] If the government is concerned that such actions will slow down the U.S., it already has. Rand Paul recently stopped Senate business with a 13-hour filibuster of the architect of the drone program, John Brennan’s, nomination to Director of the CIA in order to force Eric Holder to say whether the Administration would target U.S. citizens on American soil. Holder was forced to respond, thereby delaying other DOJ business. There may be more such delays in the future as dissent, already present,[65] grows. The secrecy of the drone program is harming US citizens and their right to defend themselves and their families’ rights to just compensation if the accused are unjustly harmed. The issue is not that drones as a new technology are inherently problematic, but that they are used as a proxy targeted killing program, the secrecy of which is leveraged to sidestep the provision of Fifth Amendment rights. Americans do not know whether they are targeted, or what they can be targeted for. Due process of law requires these protections, especially when one’s life is at stake. Secrecy prevents these protections from being provided, a clear violation of the Fifth Amendment. There is a distinction between secrecy provided for the purpose of national security and an unacceptable lack of oversight. And it is clear that, with its drone policy, the Administration has not afforded the public the necessary information, rights, and protections it deserves.

#### Prior, judicial oversight fosters capable, procedural decisions – vital to due process

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

The relevance of these precedents to the targeting of citizens is clear: the constitutional right to due process is alive and well--regardless of geographic location. We now turn to what type of process is due.

III. BRING IN THE COURTS: BRINGING JUDICIAL LEGITIMACY TO TARGETED KILLINGS

The function of this Article is not to argue that targeted killing should be removed from the toolbox of American military options. Targeted killing as a military tactic is here to stay. n34 Targeting strikes have robust bipartisan political support and have become an increasingly relied upon weapon as the United States decreases its presence in Iraq and Afghanistan. n35 The argument being asserted here, therefore, is that in light of the protections the Constitution affords U.S. citizens, there must be a degree of inter-branch process when the government targets such individuals.

The current intra-executive process afforded to U.S. citizens is not only unlawful, but also dangerous. n36 Justice O'Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that an interrogator is not a neutral decision-maker as the "even purportedly fair adjudicators are disqualified by their interest in the controversy." n37 In rejecting the government's argument that a "separation of powers" analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O'Connor contended that, in times of conflict, the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake." n38 Similarly, Justice Kennedy was unequivocal in Boumediene about the right of courts to enforce the Constitution even in times of war. Quoting Chief Justice Marshall in Marbury v. Madison, n39 Kennedy argued that holding "that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this Court, say 'what the law is.'" n40 This sentiment is very relevant to our targeted killing analysis: in the realm of targeted killing, where the deprivation is of one's life, the absence of any "neutral decision-maker" outside the executive branch is a clear violation of due process guaranteed by the Constitution.

Justices O'Connor and Kennedy are pointing to a dangerous institutional tension inherent in any intra-executive process regime. Targeting decisions are no different; indeed, the goal of those charged with targeting citizens like al-Awlaki is not to strike a delicate balance between security [\*444] and liberty but rather, quite single-mindedly, to prevent attacks on the United States. n41 In describing the precarious nature of covert actions, James Baker, a distinguished military judge, noted, "the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and informed accountable decision-making." n42 While Judge Baker concluded that these risks "magnify the importance of a meaningful process of ongoing executive appraisal," he overlooked the institutional tension, seized upon by Justices O'Connor and Kennedy, which would preclude the type of process that he was advocating. n43

Although there may be a role for Congress in such instances, a legislative warrant for specific cases would likely be cumbersome, carry significant security risks, and may violate the spirit of the Bill of Attainder Clause, which prohibits the legislature from performing judicial or executive functions. The current inter-branch process for covert actions, in which the President must make a finding and notify the leaders of Congress and the intelligence committees, is entirely ex post and also has not been proven to provide a meaningful check on executive power. n44 Moreover, most politicians are unqualified to make the necessary legal judgments that these situations require.

Solutions calling for the expatriation of citizens deemed to be terrorists are fraught with judicial complications and set very dangerous precedents for citizenship revocation. n45 Any post-deprivation process, such as a Bivens-style action, for a targeted attack would also be problematic. n46 Government officials charged with carrying out these attacks might be hesitant to do so if there were a threat of prosecution. Moreover, post-deprivation process for a target would be effectively meaningless in the wake of a successful attack.

 [\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens.

Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### That’s key to economic leadership and preventing democratic backsliding

Khodorkovsky, 11 [Mikhail, once Russia’s Richest Man, was arrested in 2003 after speaking out against the growing power of then-president Vladimir Putin. He was tried and sentenced to nine years for alleged tax evasion. A second trial last year on new charges, widely viewed as a sham, brought him an additional 14 years.Stop Coddling My Country’s Rulers, http://mag.newsweek.com/2011/09/25/khodorkovsky-america-is-weakening-on-human-rights.html]

If America can still be said to lead the world today, then its leadership is first and foremost a moral one. Millions of people around the world still look to the United States as a lighthouse of freedom. In large part, America’s economic might follows from that moral leadership. People believe in the dollar because they believe in America’s economic model. But they also believe in the values that the U.S. has created at home and promotes in the international arena: political competition, free elections, an independent media and judiciary. Of course, President Obama has to deal with hard realities—one of the hardest being that global economic growth has increased competition for resources, particularly energy resources. And it’s also clear that in times of economic crisis there is a huge temptation to make friends with countries rich in such resources, however obnoxious their regimes, rather than make war against them or antagonize them. But the moral hazard in this kind of appeasement is far greater than its short-term advantages. By ignoring its basic values to make friends with dictators, America risks losing its moral capital—capital that is by no means limitless. If the U.S. fails to live up to the values of its own democracy, faith in the American Dream—that everyone is entitled to a fair chance, a fair say, and a fair hearing—will crumble. Just as important, faith in the fact that democracy is the world’s most successful and effective system of government will crumble, too. There is another way. Return ideals to their rightful, central place in politics, and deal with economic questions in the way that smart, honorable men and women have decided them in times past—through the power of intellect. To take a simple, concrete example, if the U.S. spent as much on saving energy and developing alternative energies as, say, Israel or Germany do, then its dependence on imported oil would be a thing of the past. Politicians seem to shy away from those kinds of farsighted policies because they might lose elections. But is there any doubt that America would be the long-term winner for achieving energy independence? That wouldn’t be a good thing only for America. Regimes in, say, Russia, would have to actually get down to some serious political and economic modernization rather than just paying lip service to reform in nice-sounding but ultimately empty speeches. The time to make a decision is approaching: will America be moral, or merely pragmatic? It’s a crucial decision. For America to turn its back on defending human rights around the world is not just wrong. It’s dangerous. One might say as dangerous as its continued dependence on imported energy. America’s economic might is dependent on its moral leadership: to lose one is to lose the other. If that happens it will be America, not Russia, that will turn out to have been the real loser of the Cold War. And those of us who continue to believe in and fight for the ideals of freedom will find ourselves fighting an even lonelier battle.

#### Democracy prevents global war

Halperin 11 (Morton H., Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, “Unconventional Wisdom – Democracy is Still Worth Fighting For”, Foreign Policy, January / February, <http://www.foreignpolicy.com/articles/2011/01/02/unconventional_wisdom?page=0,11>)

As the United States struggles to wind down two wars and recover from a humbling financial

crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme-as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are more likely than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a threat to peace and security. Democratic states are more likely to develop and to avoid famines and economic collapse. They are also less likely to become failed states or suffer a civil war. Democratic states are also more likely to cooperate in dealing with security issues, such as terrorism and proliferation of weapons of mass destruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an enormous difference in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much in America's interest to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

#### Failure to shore up legal safeguards reverberates globally and causes backlash to rights protections

Ghitis, 12 [“On human rights, U.S. must lead — or no one will”, Frida,a world affairs columnist at the World Politics Review, author and consultant. She started her career at CNN, where she worked initially as a show producer, http://www.miamiherald.com/2012/08/06/2930361/on-human-rights-us-must-lead-or.html]

Now, in an unexpected turn of events, Washington’s harshest critics are asking the United States to take an even greater role in world affairs, but to do it for the sake of protecting human rights across the globe. Whoever wins the presidential elections, President Obama or Mitt Romney, human-rights activists, including Amnesty International and the ACLU, are imploring him to move decisively to the forefront of world affairs and take a firm stand in order to prevent genocide, human rights abuses and terrorism. The goal is morally defensible — what could be more important than preventing genocide — but it is also one with strategic benefits for the United States. It turns out the alternative to American leadership is no leadership at all, or not much of one. Often that means conflicts that spiral out of control with disastrous consequences, as we have seen time and time again. America’s relative power has declined significantly, especially in the last half-decade of economic weakness. The powers whose rise has paralleled the American decline, such as China, have shown no inclination to lift a finger in defense of human rights or for the prevention of conflicts that could devastate civilian populations. As far as China, and still Russia, are concerned, conflicts are a problem only in that they interfere with trade or with strategic alliances. But the greatest threat, in their view, is a world that gives itself the right to tell other countries to respect freedoms, because they might later come calling in places like Tibet. As the United States’ ability to shape events diminished, it sought to rely more on international organizations and multilateral partnerships. But time and time again it has become clear that, as Bill Clinton’s Secretary of State Madeleine Albright put it back in the days of the war in Bosnia, America is “the indispensable nation.” Back then, Albright was arguing that the United States should step in and stop the slaughter in the Balkans. The massacres ended rather quickly after U.S. fighter planes started slicing across the sky. In many quarters, American military power is viewed with suspicion. And that’s understandable. But even on the left, among those who care deeply about the suffering of human beings of all nationalities regardless of who their tormentors are, the view that the United States is indispensable is growing. They don’t want to see American soldiers marching across the globe, but they want to see America prevent and solve conflicts and lead the international community to a consensus that human-rights matter. Amnesty International and the ACLU joined in a group of 22 well-known organizations and individuals who recently released a detailed study of the human-rights challenges facing the world — and the American president. They listed the top 10, along with a plaintive appeal that whoever sits in the Oval Office next year should embrace America’s leadership position. They didn’t call for the United States to act alone and didn’t necessarily call for military intervention of any kind, but they noted that “U.S. leadership is critical to effectively address international human-rights issues.” They recommended 10 policies, beginning with the need to “Prioritize U.S. leadership on international norms and universality of human rights.” Not everyone will agree with their second policy recommendation, that America “Act to prevent genocide and mass atrocities,” or the next one, that Washington “Pursue policies that protect people from the threat of terrorism . . . ” Ideally, American actions to prevent genocide and human-rights abuses would not require military action. Making them a priority would enlist international support and help countries everywhere internalize rules of behavior, and send a message that violating them could have consequences. For that, however, there really must be consequences. That includes international condemnation, economic sanctions and, as a final resort, the use of force. The authors of the human-rights paper correctly argue that a policy with a strong focus on human rights makes sense strategically. It’s an argument others, including Albright, have made many times before. When the United States stands for the dignity of individuals against the worst abuses of tyrants, it strengthens its moral core and it becomes a magnet for international support. Doing this is not always easy. It can create enormous practical dilemmas. Still, both Romney and Obama would do well to listen to this group’s advice.

#### The impact is global war

William W. Burke-White 4, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University, Spring 2004, Harvard Human Rights Journal, 17 Harv. Hum. Rts. J. 249, p. 279-280

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

#### Leadership solves extinction

Zhang and Shi 11 Yuhan Zhang is a researcher at the Carnegie Endowment for International Peace, Washington, D.C.; Lin Shi is from Columbia University. She also serves as an independent consultant for the Eurasia Group and a consultant for the World Bank in Washington, D.C., 1/22, “America’s decline: A harbinger of conflict and rivalry”, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

#### Scenario Two: Legal Crises

#### Obama’s white paper defended due process for citizens, but executive implementation creates a legal disaster that wrecks due process – providing notice and opportunity is key

Feldman 13 (Noah, Professor of Constitutional and International Law – Harvard University, “Obama’s Drone Attack on Your Due Process,” Bloomberg, 2-8, <http://www.bloomberg.com/news/2013-02-08/obama-s-drone-attack-on-your-due-process.html>)

\*gender modified

The biggest problem with the recently disclosed Obama administration white paper defending the drone killing of radical clerk Anwar al-Awlaki isn’t its secrecy or its creative redefinition of the words “imminent threat.” It is the revolutionary and shocking transformation of the meaning of due process.

Fortunately, as seen during John Brennan’s confirmation hearing for Central Intelligence Agency director, Congress is starting to notice.

Due process is the oldest and most essential component of the rule of law. It goes back to the Magna Carta, when the barons insisted that King John agree not to kill anyone or take property without following legal procedures.

What they meant -- and what has been considered the essence of due process since -- is that the accused must be notified of the charges against him and have the opportunity to have his[\*/her\*] case heard by an impartial decision maker. If you get due process, you can’t complain about the punishment that follows. If you don’t get that opportunity, you’ve been the victim of arbitrary power.

Are U.S. enemies entitled to due process? Well, no -- not if they are arrayed against the country on the battlefield. In war, you don’t try the enemy. You kill him, preferably before he kills you. And if some of the Japanese troops at Guadalcanal had held U.S. citizenship, it wouldn’t have suddenly given them due process rights. If Awlaki was an enemy fighting on the battlefield, he wouldn’t have deserved due process while the fight was on. Off it, he should legally be like any other U.S. citizen, innocent until proven guilty.

Generous Idea

Yet, despite claiming that the Awlaki killing was justified because he was an operational leader of al-Qaeda, and thus in some sense an enemy on the battlefield, the white paper still assumes that due process applies to U.S. citizens abroad who adhere to the enemy. On the surface, this sounds plausible and even generous: Why not consider the possibility that a U.S. citizen abroad has some rights against being killed out of the blue?

In fact, though, applying due process analysis to Awlaki produces a legal disaster. The problem is, once you consider due process, you have to give it some meaning -- and the meaning you choose will cast a long shadow over what the term means everywhere else.

The white paper uses two Supreme Court cases to assess what process is due to an American about to be killed by a drone. The first, Mathews v. Eldridge, is a 1976 case in which the court held that the elaborate administrative processes necessary after a person lost his Social Security disability benefits were constitutionally acceptable even though there was no evidentiary hearing before the benefits were terminated. In that case, the court said that the process due could be determined by balancing the individual’s interest against the government’s.

The other case was 2004’s Hamdi v. Rumsfeld, where the court held that a detained enemy combatant -- in custody, not on the battlefield -- must receive “notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decision- maker.”

Astonishingly, the white paper follows its summary of these decisions with the bald assertion that a citizen outside U.S. territory can be killed if a high-level official determines that he poses an imminent threat, it would be unfeasible to capture him and the laws of war would otherwise permit the killing.

Never Explained

The non sequitur is breathtaking. Awlaki wouldn’t receive notice, the opportunity to be heard or a hearing before a decision maker. In other words, he would receive none of the components of traditional due process -- not even one. How the absence of due process could be magically transformed into its satisfaction is never stated or explained. All we get is the assertion that a target’s interest in life must be “balanced against” the government’s interest in protecting other Americans. On this theory, no due process would be due to those accused of murder, because their lives would have to be balanced against the government’s interest in protecting their potential victims.

#### Obama relies on internal review to legally say targeted killing meets due process – external review prevents manipulation of the law that weakens it in other areas

Powell 13 (Jeff, Professor of Law – Duke University School of Law, Former Member – Justice Department’s Office of Legal Counsel, Former Deputy Assistant Attorney, “Jeff Powell on Targeted Killing and Due Process,” Lawfare Blog, 6-21, <http://www.lawfareblog.com/2013/06/jeff-powell-on-targeted-killing-and-due-process/>)

There is much to admire in the speech President Barack Obama gave on May 23rd in which he gave us his views on “lethal, targeted action” against high ranking members of al-Qaeda and its allies, above all his acknowledgment that the “laws constrain the power of the President, even during wartime.” For all his speech’s virtues, however, Mr. Obama’s comments about one legal issue, due process, should disturb us deeply. In discussing his insistence “on strong oversight of all lethal action,” the President stated, “for the record,” that he “do[es] not believe it would be constitutional for the government to target and kill any U.S. citizen – with a drone, or a shotgun – without due process.” Mr. Obama had just referred to the killing of Anwar Awlaki, whose death was “the one instance when we targeted an American citizen,” and he plainly was not confessing constitutional error. There is no serious doubt, then, that the President thinks that the US government deprived Mr. Awlaki of his life with due process. Unfortunately, Mr. Obama’s discussion of that issue is fundamentally flawed in two ways: first, in his assumption that due process applies at all, and second, in his belief that the administration’s procedures satisfy due process.

The President’s blanket assertion that our government must always provide due process before killing a citizen may seem self-evident – after all, the Fifth Amendment demands that no person (not citizen!) shall be deprived of life, liberty or property without due process of law — but Mr. Obama was wrong nonetheless. Due process requires fairness in government’s dealings with those it governs; it simply does not apply to military decisions, in hostilities that Congress has authorized, about attacking members of enemy forces who are not under American control. Mr. Obama was not justifying the killing of Mr. Awlaki as an extrajudicial execution but as the elimination of a particular enemy officer in the field as an act of war. The Constitution imposes other constraints on presidential action in a time of war, but due process has no role in what the Supreme Court’s 2004 decision in Hamdi v. Rumsfeld termed “the Executive in its exchanges …with enemy organizations in times of conflict.”

If there is no constitutional due process requirement at all, why does it matter that Mr. Obama assumes that there is? Is there any real harm in putting forth a standard for meeting a burden that doesn’t exist? There is, because the President’s reasoning may undercut the meaning of due process in other circumstances where the constitutional requirement does apply.

From comments he and other officials have made, and from the Justice Department “White Paper” that was leaked earlier this year, what he had in mind seems clear: it is the “strong oversight” over targeting decisions that the President himself has mandated that he and his advisors believe satisfies the Constitution. The White Paper lays out the argument: the executive branch itself has provided a targeted US citizen due process because only high-level members of al-Qaeda and its allies are targeted, the decision to use lethal force is made by an “informed, high-level official of the U.S. government,” that official must determine that the potential target poses an “imminent threat of violent attack,” and it must not be feasible to capture the individual without excessive risk to the lives of American personnel or vital American interests. As the President put it, Mr. Awlaki “was continuously trying to kill people” as part of his role in al-Qaeda, and although Mr. Obama “would have detained and prosecuted Awlaki if we captured him before he carried out a plot … we couldn’t.”

I have no objection to the procedures that the White Paper outlines: indeed they are roughly the sort of careful decisionmaking that I would hope my government would employ in such a grave matter. (Whether our current practices of targeted killing are a wise or even moral policy overall is another question.) Nor am I criticizing the determination that Mr. Awlaki met the White Paper’s targeting criteria: I have no reason or inclination to doubt the President’s view of the facts. But the White Paper’s claim that these laudable procedures amount to due process is quite indefensible.

The White Paper (correctly) invoked the Hamdi v. Rumsfeld decision for the due process analysis that applies in the war against al-Qaeda, but its understanding of the Constitution’s requirements could hardly be more at odds with the discussion of “the central meaning of procedural due process” in Justice Sandra Day O’Connor’s lead opinion: “Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner,” and they must be heard by a “neutral and detached judge.” “These essential constitutional promises may not be eroded,” Justice O’Connor concluded, but the White Paper – and I think we can assume the President as well – apparently find these promises inapplicable in the context of targeted killings.

It takes only a moment’s reflection to see that the President’s laudable procedures for imposing “strong oversight” over targeting decisions are worlds apart from Hamdi’s “essential constitutional promises” – indeed, it is hard to imagine how a military decision about attacking an enemy combatant could be otherwise. Of course the White Paper does not propose that potential targets be given notice of the government’s possible interest in killing them. Of course it does not contemplate, much less require, that a targeted individual be heard at any time or in any manner as to why the government is mistaken about his identity or activities. Of course it does not provide for a neutral and detached decisionmaker to resolve any factual uncertainty: the ultimate decisionmaker here is the President in his capacity as commander in chief, who (we should hope) is not in the least neutral or detached in carrying out his responsibility for national security. Calling the executive’s own procedures the due process that is meant to check arbitrary executive decisions isn’t merely an erosion of the “essential constitutional promises” but their wholesale repudiation. If Mr. Awlaki was entitled to due process, then his killing violated the Constitution.

Since due process doesn’t apply to a US military decision, in a situation of actual and authorized hostilities, to attack a member of the enemy’s forces who is a legitimate target under the law of war, the Constitution was not in fact violated. But my concern here is to identify the patent error in the White Paper’s and the President’s thinking about due process, because that error is likely to confuse our thinking about the wisdom and morality of targeted killing. The decision to kill a known, identified human being is a brutal one, the action of doing so is ugly to think about, even apart from the fact that sometimes other people die (as Mr. Obama acknowledged with sorrow). This brutality and ugliness are part of the grim reality of war. When we pretend to ourselves that our procedures for making such decisions satisfies the constitutional requirements of due process, we cast a veil of civility and even humanity over something that is inherently violent and dehumanizing.

I am not a pacifist, and I accept that the brutality of war is sometimes unavoidable. But the law’s antiseptic language about the weighing and balancing of interests according to “the traditional due process analysis” that supplies the legal “framework for assessing the process due a U.S. citizen” (I quote from the White Paper) masks, in a deeply misleading fashion, the brutality, the terror and the violence of war – even if we are right to conclude that we should take lethal action against our enemies. It serves no good purpose for the President and his advisors, or for any of us as citizens, to pretend that targeted killing is or can be anything other than the brutality it is.

The problem with the President’s constitutional error is not limited to its power to confuse our thinking about the reality of targeted killing. Once a legal argument gains legitimacy in the courts, or among executive officials, or in public discussion, it tends to expand beyond its original boundaries – the intellectual habits of lawyers and the traditional legalism of American public debate make this almost inevitable. By dint of repetition if nothing else, the claim that the executive’s own internal cogitations can amount to constitutional due process threatens to acquire the sort of legitimacy that will tempt future lawyers, and future Presidents, to apply it in other contexts. During World War Two, Justice Robert Jackson rejected the government’s argument that it was constitutional to intern US citizens purely on the basis of their Japanese ancestry because the decision rested on the executive’s claim of military necessity. Jackson didn’t propose that the courts interfere with the military’s actions, but he vigorously objected to anyone rationalizing the decision as constitutional. Accept that conclusion, Jackson wrote, and “[t]he principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” The same worry applies to the President’s rewriting of what due process requires. Neither Mr. Obama nor anyone else can foresee or prevent future claims that we must turn the idea of due process on its head because of some perceived need to do so. The President and his advisors should rethink the White Paper’s faulty reasoning, and we should all keep in view the difference between “the essential constitutional promises” due process embodies, and the modes of military decision that our government employs in waging war.

#### Independently – culminates in misuse of drones in Mexico

Sager and Schneider 13 (Josh and Dan, Writers – The Boston Occupier, “America’s Dangerous Drone Precedent: A Secret and Unaccountable Program of Targeted Killings,” Progressive Cynic, 1-29, <http://theprogressivecynic.com/2013/01/29/americas-dangerous-drone-precedent-a-secret-and-unaccountable-program-of-targeted-killings/>)

In addition to their use as a tool in extrajudicial assassination, drones are quickly becoming a hot-ticket item for government agencies that want to conduct surveillance. U.S. Customs and Border Protection currently operates nine drones, using them for border and drug trafficking surveillance; Homeland Security has used them to support FEMA during disaster relief operations; and the Seattle Police Department recently caused a stir when the Mayor and City Council found out that they were operating a pair of surveillance drones.

Support for laissez-faire regulation of this new industry is likely to find a home in the new Congress. Changes between the 112th and 113th sessions haven’t done much to alter the makeup of the House Unmanned Systems Caucus, a bipartisan group of Representatives that collectively received over $8 million in campaign donations from drone manufacturers during the 2012 elections. In early 2012, the “drone caucus” was instrumental in shaping the Federal Aviation Administration Authorization Act (FAAAA), a law passed annually to approve funding for the FAA. This year’s FAAAA contained a special section addressing unmanned aerial vehicles, and specifically requests that both representatives of the aviation and drone industries have a say in crafting how drones are deployed within the country.

This kind of private-public partnership strengthens as the use of drones for surveillance and war around the world increases, and will surely have a strong influence over which countries will have access to this technology, and will set the terms for how it is used. A September study released by NYU and Stanford pointed out the dangers in allowing drone use to spread without a legal framework for their sale and use.

When it comes to them being as a tool of war, researchers ominously noted that:

“US practices may also facilitate recourse to lethal force around the globe by establishing dangerous precedents for other governments. As drone manufacturers and officials successfully reduce export control barriers, and as more countries develop lethal drone technologies, these risks increase.”

Three months into the Afghanistan War, Ali Qaed Sinan al-Harithi and five others (including a U.S. citizen) became the first six fatalities of the U.S. drone program. Not in Afghanistan, however, but in Yemen. In 2001, the U.S. justified the strikes similarly to how Israel, during the First Intifada, justified its own “targeted killing” program. The U.S. said that because Harithi could not possibly be arrested, and was alleged to be a member of al-Qaeda, it was legal to kill him because the U.S. was “at war” with terrorism and this conflict justified ignoring the sovereignty of another state.

Without the constraint of an enforceable international law, there may be too few barriers in place to stop other nations from exploiting the same loopholes that the U.S. has to kill members of groups they deem ‘terrorists’—say, Mexican drug cartels or the Free Syrian Army—but their own citizens, as well. Seen in this light, the assassinations of Harithi, Awlaki, and thousands of others are not mere casualties of short-term war; they are the first dead in new breed of globalized warfare, bound only by feasibility and the size of one’s defense budget.

#### That will destroy relations

News 7-24 (Mexico’s News Service, “US, Mexico talk bilateral security,” 7-24, <http://www.thenews.com.mx/index.php?option=com_content&view=article&id=12173&Itemid=276>)

Delegates from Mexico and the U.S. met near the countries’ border on Tuesday to discuss security and immigration issues. Mexican Interior Secretary Miguel Ángel Osorio Chong held talks with counterpart Janet Napolitano at the U.S.-Mexico Binational Meeting in Tamaulipas.

 The meeting took place behind closed doors, and delegates did not share details on any outcomes. Osorio Chong said in his twitter account prior to the meeting that the Mexico and the U.S. “share a vision of a dynamic and secure border, implicating a shared responsibility.” Border security has been hotly discussed in both countries since the U.S. Senate passed an immigration reform bill that would see border security tightened and the estimated 11 million undocumented immigrants living in the U.S. given a path to citizenship.

 Mexico’s relationship with the U.S. has been under the spotlight after former President Felipe Calderón was accused of allowing U.S. agencies conduct surveillance operations in Mexico, causing uproar among the Mexican public. President Enrique Peña Nieto said that if found to be true, the operations would have been “totally unacceptable.” The U.S. is also known to have flown surveillance drones over Mexico in the fight against organized crime.

#### The impact is extinction

Selee and Wilson, 12- Andrew Selee is Vice President for Programs and Senior Advisor to the Mexico Institute and Christopher Wilson is an associate with the Mexico Institute, (Andrew and Christopher, Wilson Center, November 2012, [http://www.wilsoncenter.org/sites/default/files/a\_new\_agenda\_with\_mexico.pdf)](http://www.wilsoncenter.org/sites/default/files/a_new_agenda_with_mexico.pdf%29//sawyer)

The depth of economic ties with Mexico, together with declines in illegal immigration and organized crime violence in Mexico, Open up an opportunity for U.S. policymakers to deepen the economic relationship with Mexico and to engage Mexico more on major global issues. Security cooperation, especially strengthening institutions for rule of law and disrupting money laundering, will remain important to the relationship, and there are clear opportunities to reform the U.S. legal immigration system over the next few years, which would have important implications for the relationship with Mexico. The strongest engagement, going forward, is likely to be on the economic issues that can help create jobs for people on both sides of the border, and on the shared global challenges that both countries face. Few countries will shape America’s future as much as Mexico. The two countries share a 2,000 mile border, and Mexico is the second largest destination for U.S. exports and third source of oil for the U.S. market. A quarter of all U.S. immigrants are from Mexico, and one in ten Americans are of Mexican descent. Joint security challenges, including both terrorist threats and the violent operations of drug cartels, have forced the two governments to work more closely than ever. What’s more, cooperation has now extended to a range of other global issues, from climate change to economic stability. Nonetheless, the landscape of U.S.-Mexico relations is changing. and organized crime violence, which has driven much of the recent cooperation, is finally declining. Violence will remain a critical issue, but economic issues—bilateral and global—have risen to the fore as both countries struggle to emerge from the global slowdown. Trade has increased dramatically, connecting the manufacturing base of the two countries as never before, so that gains in one country benefit the other. To keep pace with these changes, U.S. policymakers will need to deepen the agenda with Mexico to give greater emphasis to economic issues, including ways to spur job creation, and they will have opportunities to strengthen cooperation on global issues. Security cooperation will remain critical, and determined but nuanced followthrough to dismantle the operations of criminal groups on both sides of the border will be needed to continue the drop in violence. With less illegal immigration, it will be easier to address legal migration in new ways. However, economic issues are likely to dominate the bilateral agenda for the first time in over a decade. Strengthening economic ties and creating Jobs In most trading relationships, the U.S. simply buys or sells finished goods to another country. However, with its neighbors, Mexico and Canada, the U.S. actually co-manufactures products. Indeed, roughly 40 percent of all content in Mexican exports to the United States originates in the United States. The comparable figures with China, Brazil, and India are four, three, and two percent respectively. Only Canada, at 25 percent, is similar. With the economies of North America deeply linked, growth in one country benefits the others, and lowering the transaction costs of goods crossing the common borders among these three countries helps put money in the pockets of both workers and consumers. Improving border ports of entry is critical to achieving this and will require moderate investments in infrastructure and staffing, as well as the use of new risk management techniques and the expansion of pre-inspection and trusted shipper programs to speed up border crossing times. Transportation costs could be further lowered — and competitiveness further strengthened — by pursuing an Open Skies agreement and making permanent the cross-border trucking pilot program. While these are generally seen as border issues, the benefits accrue to all U.S. states that depend on exports and joint manufacturing with Mexico, including Michigan, Ohio, Nebraska, Iowa, South Dakota, New Hampshire, and Georgia, to name just a few. Mexico also has both abundant oil reserves and one of the largest stocks of shale gas in the world. The country will probably pursue a major energy reform over the next couple years that could spur oil and gas production, which has been declining over the past decade. If that happens, it is certain to detonate a cycle of investment in the Mexican economy, could significantly contribute to North American energy security, and may open a space for North American discussions about deepened energy cooperation Reinforcing Security cooperation Organized crime groups based in Mexico supply most of the cocaine, heroin, and methamphetamines, and some of the marijuana, to U.S. consumers, who, in return, send six to nine billion dollars to Mexico each year that fuels the violence associated with this trade. The U.S. and Mexican governments have significantly improved intelligence sharing, which has helped weaken many of these criminal networks and disrupt some of their financial flows. At the same time, the congressionally funded Merida Initiative, which has provided $1.6 billion to Mexico for national and public security since 2008, has been successfully strengthening the Mexican government’s capacity and rule of law institutions. These efforts appear to be yielding some success as violence has dropped noticeably since mid-2011. Going forward, the two countries will need to do more to disrupt the southbound flows of illegal money and weapons that supply the criminal groups, strengthen communities under the stress of violence, and improve the performance of police, prosecutors, and courts in Mexico. In many ways, Mexico has been successful at turning a national security threat into a public security threat, but the country now requires significant investment to create an effective and accountable criminal justice system and to slow the flow of illegal funds from the U.S. that undermine these efforts. As Mexico’s security crisis begins to recede, the two countries will also have to do far more to strengthen the governments of Central America, which now face a rising tide of violence as organized crime groups move southward. Mexico is also a U.S. ally in deterring terrorist threats and promoting robust democracy in the Western Hemisphere, and there will be numerous opportunities to strengthen the already active collaboration as growing economic opportunities reshape the region’s political and social landscape managing Legal migration flows Since 2007, the number of Mexican migrants illegally entering the United States has dropped to historically low levels, with a net outflow of unauthorized immigrants from the U.S. over the past three years. The drop is partially because of the weak U.S. economy, but it also has to do with more effective U.S. border enforcement and better economic opportunities in Mexico. This shift offers the potential for both countries to explore new approaches to migration for the first time in a decade In the United States, policymakers have an opportunity to look specifically at how to reform the legal immigration system. Almost all sides agree that the current immigration system, originally developed in the 1960s, fails to address the realities of a twenty-first century economy. A renewed discussion on this issue could focus on how to restructure the U.S. visa system to bring in the kinds of workers and entrepreneurs the United States needs to compete globally in the future. This includes both high-skilled and lowerskilled workers, who fill important gaps in the U.S. economy. Policymakers should consider whether those already in the United States, who have set down roots and are contributing effectively to the economy and their communities, might also be able to apply through a restructured visa system. Mexican policymakers, on the other hand, have huge opportunities to consolidate Mexico’s burgeoning middle class in those communities where out-migration has been a feature of life so as to make sure that people no longer need to leave the country to get ahead. There are a number of ambitious efforts, including some led by Mexican migrants that can serve as models for this. Mexican policymakers could also facilitate U.S. reform efforts by indicating how they could help cooperate with a new U.S. visa system if the U.S. Congress moves forward on a legal immigration reform. Addressing Major Global Issues With Mexico Over the past few years, the U.S. and Mexican governments have expanded beyond the bilateral agenda to work closely together on global issues, from climate change to international trade and the economic crisis. The U.S. government should continue to take advantage of the opportunities this creates for joint problem-solving. Mexico’s active participation in the G-20, which it hosted in 2012, and in the U.N. Framework on Climate Change, which it hosted in 2010, have helped spur this collaboration, and the recent accession of Mexico into the Trans-Pacific Partnership negotiations provides one obvious avenue to continue it. The two countries also coordinate more extensively than ever before on diplomatic issues, ranging from the breakdown of democratic order in Honduras to Iran’s nuclear ambitions. Mexico is likely to play an increasingly active role on global economic and environmental issues, areas where the country has significant experience, and through cooperative efforts the U.S. can take advantage of Mexico’s role as a bridge between the developed and developing worlds, and between North America and Latin America. The bilateral agenda will remain critically important —and the increasingly deep integration of the two economies and societies means that efforts on trade, security, and migration will remain vital for the future of both countries. In addition, the maturation of the bilateral relationship means that it may one day resemble that between the United States and Canada, in which global issues can be as important as the strictly bilateral issues. A balanced and wide-ranging U.S.-Mexico agenda—one that seeks creative and collaborative approaches on topics ranging from local gangs to global terrorist networks and from regional supply chains to international finance—promises significant mutually beneficial results in the coming years. Key Recommendations Work together with Mexico and Canada to strengthen regional competitiveness and to grow North American exports to the world. Economic issues can drive the next phase in deepening U.S.-Mexico cooperation. Investments in trusted shipper programs, pre-inspection programs, and enhanced border infrastructure will be crucial. Deepen support for Mexico’s criminal justice institutions, and strengthen U.S. antimoney laundering efforts in order to combat organized crime and violence. Reform the legal immigration system to ensure U.S. labor needs are met for both high-skilled and low-skilled workers, and incorporate those who are already contributing to the U.S. economy and their communities. Engage Mexico more actively on hemispheric and extra-hemispheric foreign policy issues, ranging from terrorism to international trade and finance, as Mexico’s role as a global power grows.

#### India models US due process reforms

Mate, ‘10

[Manoj, “The Origins of Due Process in India: The Role of

Borrowing in Personal Liberty and Preventive

Detention Cases,” Berkeley Journal of International Law, v. 28, no. 1, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1381&context=bjil>]

How did the Indian Supreme Court overcome the lack of a due process clause, a prolix Constitution designed to limit the power of the Court and a legacy of positivism and parliamentary sovereignty inherited from British rule to develop a doctrine of due process? As previous scholars have noted, the Constituent Assembly designed the Indian Court to be a relatively weak institution in a system in which the parliament and the executive were supreme,3 and most justices of the Court in its early years operated in the British traditions of legal positivism and deference to Parliament.4 Leading scholarship on Indian law highlights the significant shift from a more formal, positivist interpretive approach to the Indian Constitution, exemplified by the Court's decision in Gopalan v. State of Madras (1950), to the more expansive approach adopted by the Indian Court in Maneka Gandhi v. Union of India (1978) in which the court adopted an activist approach to interpreting the fundamental rights and effectively created new doctrines of due process and nonarbitrariness. 5 What the literature highlighted as groundbreaking in Maneka Gandhi was the court's recognition of "an implied substantive component to the term "liberty" in Article 21 that provides broad protection of individual freedom against unreasonable or arbitrary curtailment."6 However, this Article analyzes how the Court's use of foreign precedent underwent a fundamental transformation in a line of cases preceding Maneka, which helps to account for the development of substantive due process in the specific area of preventive detention and personal liberty. Thus, the Maneka Gandhi decision cannot be understood as a sudden, synoptic change. Rather, I contend that the move toward substantive due process was a gradual one, in which universalist approaches gradually overcame particularist ones, through close analysis of a series of key decisions involving personal liberty: Gopalan v. State of Madras (1950), Kharak Singh v. State of Punjab (1964), Govind v. State of Madhya Pradesh (1975), and Maneka Gandhi v. Union of India (1978). This Article specifically examines how the Indian Supreme Court used U.S. and foreign precedent in its interpretation of the right to life and liberty contained in Article 21 of the Indian Constitution, examining the role of judicial borrowing in the Court's move toward more expansive, substantive interpretive approaches. 7 It then considers several explanatory factors that help shed light on this shift in the Court, including: an emphasis on "borrowing" of American and other foreign legal precedents and norms, institutional changes in the Court, and direct American influence in the development of Indian law, changes in the education, training and background of judges, and finally the changed political environment and context of the post-Emergency period (1977-1979) in India.

#### That's key to their Constitutional model—they have a strong judiciary, but this determines their democratic credentials

Mehta, 7

[Pratap Bhanu, president -- the Centre for Policy Research, New Delhi, “India’s Unlikely Democracy: The Rise of Judicial Sovereignty,” Journal of Democracy, v. 18, no. 2, http://www.journalofdemocracy.org/articles/gratis/Mehta-18-2.pdf]

The Indian Supreme Court’s chief duty is to interpret and enforce the Constitution of 1950. Running to more than a hundred-thousand words in its English-language version, this document is the longest basic law of any of the world’s independent countries. It contains, at latest count, 444 articles and a dozen schedules. Since its original adoption, it has been amended more than a hundred times, and now fills about 250 printed pages. It is fair to say that the Supreme Court, operating under the aegis of this book-sized liberal constitution, has by and large played a significant and even pivotal role in sustaining India’s liberal-democratic institutions and upholding the rule of law.1 The Court’s justices, who by law now number twenty-six, have over the years carved out an independent role for the Court in the matter of judicial appointments and transfers, upheld extensive judicial review of executive action, and even declared several constitutional amendments unconstitutional. The Court upon which they sit is one of the world’s most powerful judicial bodies, and yet precisely because of this its career has been and remains shadowed by irony and controversy, with implications for democracy that are both positive and problematic. A simple issue-wise scorecard of the Court’s contribution to maintaining liberty and the rule of law might begin by noting that the Court has generally upheld basic freedoms associated with liberal democracy, albeit with some glaring exceptions. The Court has a relatively weak record when it comes to questioning executive action in cases of preventive detention. While the Court has generally upheld the right to free expression, it has given the state more leeway in banning books—particularly those held to offend religious sensibilties—that officials fear may threaten public order. During the period of emergency rule declared at the instigation of Prime Minister Indira Gandhi from June 1975 to March 1977, the Supreme Court shrank from its duty and—in a now universally condemned decision— chose supinely to concur with the executive’s suspension of the writ of habeas corpus. Besides protecting the basic liberties that put the “liberal” in India’s liberal democracy, the Court has helped to ensure the polity’s democratic character by safeguarding the integrity of the electoral process. The Court has acted to curb the central government’s tendency to misuse Article 356 as a pretext to sack elected state governments and install “president’s rule” instead. Supreme Court interventions have also promoted democratic transparency by making political candidates meet fuller norms of disclosure. The Supreme Court’s record in promoting decentralized governance is mixed. On the one hand, the Court has ensured the integrity of Indian federalism by pronouncing that the central government cannot dismiss a state government without a high threshold of public justification. On the other hand, courts across the country have been less receptive to the claims of lower tiers of government against state governments. The Supreme Court has so far proven unable to clarify the law in this area. While the social and economic rights that the Constitution lists were not at first deemed justiciable, the Supreme Court has managed over the years to apply a more substantive conception of equality that justices have used to uphold rights to health, education, and shelter, among others. To one degree or another, the executive branch has responded by at least trying to make provisions for the guarantee of these rights. The Court’s greatest judicial innovation—and the most important vehicle for the expansion of its powers—has been its institution of Public-Interest Litigation (PIL). In PIL cases, the Court relaxes the normal legal requirements of “standing” and “pleading,” which require that litigation be pressed by a directly affected party or parties, and instead allows anyone to approach it seeking correction of an alleged evil or injustice. Such cases also typically involve the abandonment of adversarial fact-finding in favor of Court-appointed investigative and monitoring commissions. Finally, in PIL matters the Court has expanded its own powers to the point that it sometimes takes control over the operations of executive agencies. The PIL movement has allowed all kinds of public-interest matters to be heard, and given hundreds of poor people a route by which to approach the Court. While PIL cases to date have had mixed success at shrinking poverty or correcting injustices, the provision of a forum to which citizens marginalized by the corruptions of routine politics can turn has arguably given serious moral and psychological reinforcement to the legitimacy of the democratic system. In the Shadow of Irony The Indian Supreme Court’s undeniable contributions to democracy and the rule of law, to say nothing of its reachings for power in service of these aims, are shadowed by three profound ironies. First, even as the nation’s most senior judicial panel engages in high-profile PIL interventions, routine access to justice remains extremely difficult. India’s federal judicial system has a backlog of almost twenty million cases, thousands of prisoners are awaiting trial, and the average time it takes to get a judgment has been steadily increasing. There is a saying in India that you do not get punishment after due process—due process is the punishment.

#### Key to Asian political and economic stability

Chadda, ‘8

[Maya, professor of political science -- William Patterson University, research fellow, Southern Asia Institute -- Columbia University, Winter, “Human Rights and Democracy in India's Emerging Role in Asia,” <http://csis.org/files/media/csis/pubs/090201_bsa_chadda.pdf>]

The “Look East” policy suggests that New Delhi is actively globalizing its diplomatic leverage and deploying military power to buttress diplomacy. India is Asia’s third largest economy after Japan and China and has entered into numerous free trade agreements with East Asian economies, including a comprehensive economic cooperation agreement with Singapore and an early harvest scheme with Thailand. It is also negotiating similar agreements with Japan, South Korea, and ASEAN. In turn, Japan, South Korea, and Singapore have invested large amounts of funds into India's infrastructure development.28 **What role can India’s democratic credentials play in Asia’s emerging security environment?** While India is reluctant to promote democratic forces in Myanmar (for fear of losing advantage to China), it is willing to participate in constructing a grand narrative that will secure its forward thrust in Southeast Asia. In his speech before a joint session of India's parliament in August 2007,Japanese Prime Minister Shinzo Abe talked about common interests among of democratic states such as India, Japan and the United States. He included India in a "broader Asia" that would span "the entirety of the Pacific Ocean, incorporating the United States and Australia." This was undoubtedly an invitation to India to participate in building a normative and security architecture for Asia but in its subtext it is also a subtle warning to Beijing that a China-centered Asia would not be countenanced by the “democratic” states in Asia. Abe noted that these states comprise as "Arc of Freedom and Prosperity" of "like-minded countries" that "share fundamental values such as freedom, democracy and respect for basic human rights as well as strategic interests." Shinzo Abe is the third successive Japanese prime minister to visit India after Yoshiro Mori in 2000 and Koizumi in 2005. Manmohan Singh's 2006 visit culminated in signing of the "joint statement Towards Japan-India strategic and Global Partnership."29 India can make significant security contributions to the alliance of “democratic” states envisaged in Premier Abe’s speech. This has been steadily demonstrated in the joint naval exercises with Singapore since 1993, with Vietnam in 2000, and with Indonesia in the Andaman Sea. The Malabar CY 07-2 naval exercises in the Bay of Bengal held in September 2007 brought the navies of Japan, United States, Australia, and India together in a well advertised, large-scale exercise. The joint statement by the Japan, United States, and Australian governments spoke of "a partnership with India to advance areas of common interests and increase cooperation, recognizing that India's continued growth is inextricably tied to the prosperity, freedom and security of the region." Not coincidentally the first four power talks occurred at the same time that the ASEAN Regional Forum (ARF) meeting was held in Manila. Similar discussions about promoting India in regional forums were conducted when President Bush, Japanese Prime Minister Abe, and Australian Prime Minster Howard met at the 2007APEC meeting in Sydney. Conclusion Asia’s political alignments are in flux, but at least three broad security futures can be envisaged. Democratic India can play an important part in each future although each will engage India differently and to a different degree. The first is a region divided along an opposite axis, a kind of Asian bipolar order in which the United States and China constitute the opposing poles. This future assumes hardened Westphalian inter-state relations and a more blatant game of “real politick” in forging alignments. The second hypothetical future revolves around an entente of great powers, a group of leading states that strive to keep order and preserve peace by rewarding those who toe the line and punish those who deviate from it. Although the Concert of Europe (following the Congress in Vienna) comes to mind as a historic analogy, its applicability to contemporary Asia remains limited. The concert of Europe presumed an external state – England – could throw in its weight to restore balance and deter potential aggressors. No such power is on the horizon in Asia at least in the foreseeable future. Only the United States can balance a powerful China; and only China can challenge the United States in Asia. But both these states would also be the leaders of their respective clusters in the second scenario. The third future is akin to the order founded on the38 1975 Helsinki agreement in Europe that established a normative consensus(claimed by 35 States in Europe as a universal guide to international relations). The Helsinki consensus does not legitimize an uneven distribution of power or at least it is not meant to do so. Nor is it a front to secure hegemony of any single state. It is meant to be an open-ended order admitting revisions, inclusion, amendment, and extension based on democratic consensus. The steady incorporation of Eastern European states to the European Union underscores the flexibility of the otherwise “value-based” Helsinki consensus. India benefits least from the first scenario of a bipolar, divided Asia although it will be regarded an attractive prize by those competing for influence and markets in Asia. The objective of “strategic autonomy” will by definition confine India to the margins of a bipolar Asia. India’s current dilemma in dealing with China can only worsen in a divided Asia. Joining an anti-China alliance is sure to provoke Beijing; not joining an alliance will mean isolation. As in the days of Cold War, India’s democratic credentials will have a limited role to play in the first future. But the first future does not seem likely because neither Japan nor the United States wish to push China into a corner. In the second future, democracy and human rights do not become a means to exclude and punish recalcitrant regimes. Rather, it instead becomes instead an invitation to peacefully integrate into the new normative order and its rules of conduct. The Japanese proposal to build an “arc of freedom” or a “value based alliance” is an attempt to construct a grand narrative for such a collective order. It has39 the immediate purpose of preempting the moral high ground and inviting China to join in the common platform, which automatically rules out expansionist or destabilizing policies. Supported by a strategic alliance, the “arc of freedom” would enable powerful democratic states – the United States, Japan, India, Australia – to define a common set of interests such as freedom of international seas, protection of the environment, the war against terrorism, and open access to Asian markets, but it would also seek to prevent domination of Asia by China. The fact that no country has yet acted on it forcefully is testimony to the power of China and the uncertainty it has sown about the goals it is meant to serve. But a multi-polar Asia best serves India’s interests as long as it does not become blatantly anti-Chinese or a front for promoting exclusive U.S. interests. The possibility of creating an Asian Helsinki is remote given the force of nationalism and spread of ethnic conflicts across Asia’s borders. There is no regional consensus on how to deal with separatist nationalities nor is there a possibility of arriving at one in the near future. India would find it extremely difficult to accept external guidelines while it deals with its own ethnic separatism in its Northwest and Northeast. Should such an order ever become a reality, **India’s democratic voice would assume immense importance**. Among the three futures outlined above, the second future best fits India’s current and midterm security concerns. During his recent visit to Japan, Prime Minister Manmohan Singh suggested that the time has come for Japan and India, "our two ancient civilizations to build a40 strong contemporary relationship involving strategic and global partnership" and the "most important area in which we can build this partnership isin the field of knowledge economy." He was less reticent in stressing India’s exceptional achievement as a developing democracy. "If there is an “idea of India” by which India should be defined,” he said, "it is the idea of an inclusive, open, multi-cultural, multi-ethnic, multi-lingual society...(we) have an obligation to history and mankind to show that pluralism worked. Liberal democracy is the natural order of political organization in today's world. All alternate systems, authoritarian and majoritarian in varying degree, are an aberration."30 Prime Minister Singh explicitly linked for the first time the Indian model of democracy to an alliance of democratic states in Asia; he saw it as India’s obligation to reject authoritarian alternatives to prosperity. In diplomatic parlance, this was a pointed reference to India as the alternative to China. As an authoritarian state, China could not become a core country in the proposed order For Asia. India’s preferred grand narrative is then distinctly different from the one China might construct. Indian leaders remain anxious not to get ahead of the current developments in this regard; they are keenly aware nevertheless of the advantages in establishing a loose alliance of democracies. What is more, their ability to back it up has expanded substantially with the rapid growth in India’s economic and military power.

#### Nuclear war

Christopher P. **Twomey**, January 20**11**; Assistant Professor of National Security Affairs at the Naval Postgraduate School in Monterey, California, and a Research Fellow of the National Asia Research Program; Asia's Complex Strategic Environment: Nuclear Multipolarity and Other Dangers, Asia Policy Number 11, January 2011, Mirlyn

Ongoing changes in traditional state-to-state nuclear dynamics are reshaping international security in Asia. Today, Asia is a multipolar nuclear environment in which long-range nuclear weapons are joined by other systems with strategic effect, and in which countries hold different views about the role and utility of nuclear weapons. This article discusses the implications of these shifts from the Cold War to the present for several guises of stability, on the one hand, and for competition and conflict, on the other. Though each of these considerations leads to dangerous outcomes in isolation, their combined effect is even more deleterious. The implications of this analysis are deeply pessimistic, both for peace in general and for U.S. national security interests in particular. Policy Implications • Asia is likely to see vigorous competition in the strategic arena, ranging from increased offensive nuclear weapons to the development of advanced conventional offensive munitions and missile defenses. These technologies will likely continue to spread. • Competition between Asian states is likely to lead to increased reliance on nuclear threats, bluster, and statecraft. **This will erode any "nuclear taboo" and will increase the chance of nuclear weapons detonation**. • Arms control is unlikely to substantially mitigate any of these concerns in the current environment. • Given the pessimistic factors outlined above, **increased understanding across states** of how each sees the utility of nuclear weapons **will be extremely beneficial**. • Missile defenses systems make, on balance, a positive contribution to regional security; nevertheless, their negative implications should be addressed through judicious use of transparency about nontechnical aspects of the systems. • Expansive national security goals such as regime change should be abandoned, given the potential for catastrophic nuclear escalation. [End Page 52] The Cold War continues to constrain thinking about nuclear issues. In the first 20 years of the Cold War, a dynamic nuclear environment posed great risks of truly catastrophic war. Yet by the end of the 50 years of bipolar rivalry, many argued that nuclear weapons had stabilized Soviet-U.S. relations. Traditional deterrence theory, with its emphasis on calculating rationality, seemed to contribute to Americans' understanding of world events. Certainly the latter years of the rivalry saw the rise of arms control efforts within and beyond the nuclear arena that facilitated the end of the Cold War. Throughout that period, the two primary nuclear powers developed sophisticated national security apparatuses with an increasingly deep understanding of the efficacies and dangers of nuclear weapons. Few of these factors speak to the nuclear environment in Asia today. It is increasingly clear that the second nuclear age is upon us.1 Much work on this epochal shift focuses both on the role of asymmetry in nuclear balances and on the role of nonstate actors.2 Indeed, some analysts characterize this situation in pejorative terms: an advanced set of nuclear "haves" declaring less developed latecomers to be the primary source of danger in the nuclear order smacks of hypocrisy and Orientalism.3

### Plan

#### The United States Federal Government should grant limited jurisdiction to a federal court that prohibits targeted killings of individual United States citizens when, after being afforded notice and opportunity as well as defense from an independent public advocate, it is determined that the target is not a senior member of Al Qaeda or associated force.

### Solvency

#### SOLVENCY!

#### Unchecked targeted killing is the largest violation of due process --- external review key

McKelvey, 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

IV. CHALLENGING THE CONSTITUTIONALITY OF TARGETED KILLING: A CLEAR VIOLATION OF DUE PROCESS The President’s supposed authority to conduct targeted killings of Americans is highly questionable.119 Moreover, the DOJ’s argument that targeted killing is a political question within executive discretion inaccurately portrays the judiciary’s power to review broader questions of law.120 Yet in addition to these compelling objections to the legal underpinnings of targeted killing authority, targeted killing likely violates existing law as well.121 Targeted killing is a unilateral government execution that completely circumvents traditional notions of law enforcement and violates even minimum notions of established due process.122 A. How Due Process Rights Are Determined Despite the fact that Aulaqi was hiding in Yemen, the Fifth Amendment still protected him. The Supreme Court has held that Americans enjoy the same constitutional protections abroad as in American territory, unless the application of the Bill of Rights would prove “impracticable and anomalous.”123 The rationale for this principle is that although Americans are not completely without constitutional protections abroad, it may not always be feasible to ensure all of these protections.124 The application of the Bill of Rights abroad must take into account “the particular circumstances, the practical necessities, and the possible alternatives” of the situation at hand.125 Analyzing Aulaqi’s Fifth Amendment rights is especially complex given the many political, economic, and security problems in Yemen at the time of his killing.126 The Fifth Amendment provides, in part, that no American may be “deprived of life, liberty, or property, without due process of law.”127 The case of Anwar al-Aulaqi implicates procedural due process because the plaintiff’s complaint alleges that the government is attempting to deprive Aulaqi of life without any formal presentation of the charges against him or an opportunity to protest these charges at a hearing before an impartial judge.128 The Supreme Court uses a balancing test for determining the level of due process in different contexts.129 This balancing test has three factors: the private interest that will be affected by a deprivation, the risk of an erroneous deprivation by the procedural method in question, and the government interests involved.130 Aulaqi’s case represents a collision of the first and third factors.131 The deprivation in question was Aulaqi’s life, the most serious deprivation in law.132 In the case of judicial error or procedural shortfall, property can be returned and liberty can be restored, but the deprivation of life is permanent. However, the government’s interest in protecting American citizens from the unrelenting threat of terrorism is also compelling.133 The exigencies involved in combating terrorism require decisive action and safeguards for intelligence sources that help identify threats.134 Under such extraordinary circumstances, the time and resources involved in satisfying procedural due process rights might also serve to inadvertently amplify specific threats of terrorism.135 The purpose of the Fifth Amendment, however, is to provide protections for citizens, not to increase the power of government or to ease the burden of government agencies under exigent circumstances.136 Given this constitutional purpose and the unique importance of life as a civil liberty, it is clear that Aulaqi is owed at least the minimum form of due process protection. B. A Comparative Perspective: The Due Process Rights of Detainees The position that minimum due process protections are required in Aulaqi is a natural extension of the holding in Hamdi v. Rumsfeld. In Hamdi, the Supreme Court held that the government may not indefinitely detain a citizen without providing some form of procedural due process.137 Yaser Hamdi was an American captured in Afghanistan in 2001 and turned over to U.S. authorities during the invasion of Afghanistan.138 He was initially held at the detention facility in Guantanamo Bay, but was transferred to military holding brigs in Virginia and South Carolina after the military learned that he was an American.139 Originally, President George W. Bush claimed the authority to hold Hamdi as an enemy combatant caught within a theatre of war.140 As an enemy combatant, Hamdi was not entitled to any procedural rights such as the right to an attorney or access to a federal court.141 However, the Eastern District of Virginia granted next-friend standing to his father, and that court subsequently found the evidence against Hamdi insufficient to support his detention.142 The Fourth Circuit reversed, citing the broad wartime powers designated to the president under Article II of the Constitution and the infringement on executive power that would occur if judicial review proceeded in this case.143 Hamdi’s father appealed the reversal of the Fourth Circuit and the Supreme Court granted certiori.144 Although the Court did not reach a majority opinion in its decision, a plurality of Justices agreed that the Executive Branch does not have the power to detain an American citizen indefinitely without providing some basic due process protections.145 A majority of Justices agreed that Hamdi had the right to challenge his detention.146 Because it is a plurality opinion, the extent of the due process protections required in a federal detention scenario is unclear.147 But the basic principle of Hamdi is that the Executive does not have the authority to detain an American citizen without some form of due process.148 If elements of due process are required when the government deprives an American of liberty, is it not logical to conclude that the government must also satisfy due process when depriving an American of life? This is a natural extension of the Hamdi holding, especially because a deprivation of life must be treated more seriously and carefully than a deprivation of liberty.149 Not only is the Hamdi holding a natural theoretical cousin of Aulaqi, but the legal analysis is also similar. In its brief in response to the Aulaqi complaint, the DOJ made several arguments that echo the overturned Fourth Circuit’s arguments in Hamdi: judicial review represents an infringement on textually committed executive authority and litigating this issue would involve the disclosure of sensitive intelligence that would threaten national security.150 Hamdi was an American citizen, and the government detained him due to allegations that he was fighting for the Taliban in Afghanistan.151 Similarly, Aulaqi was an American citizen accused of providing leadership and spiritual counsel to al-Qaeda terrorists.152 He was therefore considered a high-risk threat to national security, and the DOJ claims that the authority to kill Aulaqi is a nonjusticiable political question protected by the state secrets privilege.153 Because the Supreme Court held that Hamdi’s deprivation of liberty merited due process, it is a natural extension of this holding to find that the government also owes Aulaqi basic due process.However, there are important factual distinctions between Hamdi and Aulaqi to balance against the similarities. Although both cases fit the general category of due process rights in the context of national security concerns, the circumstances of the Hamdi holding limit its application to Aulaqi.154 Hamdi was captured in a theatre of war and originally accused of aiding the Taliban in hostilities against the United States.155 But once he was moved to holding brigs within the United States, Hamdi was fully secured under government control.156 Therefore, at the time of the Supreme Court’s decision, Hamdi was not an imminent threat to national security and was completely subject to government authority.157 The same cannot be said of Aulaqi. As an alleged high-value terrorist target hiding in Yemen, a known staging ground for al-Qaeda operations, Aulaqi was not under government control.158 Assuming that the government’s allegations against him were true, Aulaqi posed an imminent threat to national security.159 These are important factual distinctions that may render the Hamdi opinion inapplicable to the Aulaqi case. The lack of government control over Aulaqi and the potential for an imminent threat to national security may serve as government interests that trump Aulaqi’s due process rights. The exigencies of the Aulaqi situation are important distinctions that may render the Hamdi analysis inapplicable. However, even if the Hamdi holding is not directly controlling in the Aulaqi context, it is still highly relevant to the analysis. After Hamdi, it is clear that very serious constitutional rights are implicated, and perhaps violated, when the president authorizes the targeted killing of an American without any independent judicial review of that decision or of the criteria involved.160 As demonstrated in Aulaqi, it is equally clear that litigating this issue in federal court is an ineffective ex post mechanism for ensuring basic due process protections.161 Yet the result in Aulaqi is unsatisfactory and potentially very dangerous. Given the constitutional protections guaranteed by the Supreme Court in Hamdi, it is important to clarify the law of targeted killing and ensure basic safeguards against the abuse of this power.

#### Clarifications don’t ensure guaranteed protections --- executive error rate collapses due process

McKelvey, 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

V. CHALLENGING THE EXECUTIVE BRANCH DEFENSE OF TARGETED KILLING A. The Obama Administration’s Reassurances Are Circular and Unsatisfactory The Obama Administration has addressed the controversy over targeted killing in an effort to assuage concerns over the program’s constitutionality, including concerns over due process protections.162 However, the Administration’s explanations do little but reiterate the gaping hole in guaranteed due process protections if Americans are justify the current response emphasize the desperate need for a clear articulation of the law and a mechanism for constitutional safeguards.164 Harold Koh, the Legal Adviser to the Department of State, addressed the criticisms of targeted killing in a speech at the Annual Meeting of the American Society of International Law in March 2010.165 Koh addressed the concern that “the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing.”166 First, he asserted that a state engaged in armed conflict is not required to provide legal process to military targets.167 Koh then attempted to reassure the critics of targeted killing that the program was conducted responsibly and with precision.168 He said that the procedures for identifying targets for the use of lethal force are “extremely robust,” without providing any explanation or details to substantiate this claim.169 He then argued that “[i]n my experience, the principles of proportionality and distinction . . . are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with international law.”170 Koh dismissed constitutional claims over targeted killing by simply suggesting that the program is legal and responsible.171 But this response only begs the question over targeted killing: what mechanisms are in place to prevent the unsafe and irresponsible use of this extraordinary power? Asserting that theprogram is legal and responsible without substantiating this assertion rests on notions of blind faith in executive prudence and responsibility, and provides no grounds for reassurance.172 The Obama Administration’s assurances regarding the targeted killing program are unsatisfactory because they fail to address the primary concern at issue: the possibility that an unchecked targeted killing power within the Executive Branch is an invitation for abuse.173 Without some form of independent oversight, there is no mechanism for ensuring the accurate and legitimate use of targeted killings in narrowly tailored circumstances.174 B. A Record of Error and Abuse of Authority Currently, there is no specific evidence that the targeted killing program has been used for illegitimate purposes other than national defense and security. However, the Executive’s exercise of authority in identifying and pursuing threats of terror has produced a worrisome error rate.175 According to an analysis of Predator drone strikes in Pakistan conducted by the New America Foundation, since 2004, the non-militant fatality rate has been roughly 20 percent.176 In other words, about one-fifth of those killed by Predator drone strikes have been non-military targets, including innocent civilians.177 In June of 2010, it was reported that the government lost nearly 75 percent of the cases involving habeas petitions filed by detainees at Guantanamo Bay.178 This suggests that for the majority of detained enemy combatants, the government has had insufficient evidence for the assertion that the detained individuals were involved in hostilities against the United States.179 The rate of error in these instances only adds to the concern over the procedural guarantees of the targeted killing process and the need for a more standardized process with a robust system of screening and oversight. There is also historical precedent for cautiously evaluating the legitimacy and constitutionality of unreviewable executive authority in matters of espionage and national security. In 1976, President Ford issued an executive order outlawing political assassination.180 The order was a response to revelations after the Watergate scandal that the CIA had attempted to assassinate Cuban President Fidel Castro multiple times.181 Every U.S. president since Ford has upheld the ban on political assassinations in subsequent executive orders.182 This is an example of classified CIA activity that, once publicly known, was deemed unacceptable as a matter of law and policy.183 The current targeted killing program conducted in executive secrecy raises concerns similar to those of political assassination.

#### The plans model is empirically proven to create an effective balance

McKelvey, 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

C. The Need for a Resolution Concerns over targeted killing error rates and historical abuses of executive power cast extraordinary doubt over the adequacy of the Obama Administration’s legal justification of targeted killing, as articulated by the Department of State.194 The government’s argument is that it should be taken at its word when it assures the public that the process for identifying and targeting suspected terrorists with lethal force is careful, rigorous, and legal.195 This is not an adequate explanation of targeted killing law for two reasons. First, this explanation leaves unanswered the question of how the targeted killing program is careful, rigorous, and legal.196 Second, there is **ample historical evidence** that suggests that executive guarantees of authority and privilege ought to be met with skepticism.197 Without some form of independent oversight or review, taking the Executive Branch at its word is not an adequate form of due process and provides no minimum constitutional guarantee.198 VI. THE RESPONSIBLE WAY FORWARD: CONGRESS SHOULD EITHER PROHIBIT THE TARGETED KILLING OF AMERICANS OR ESTABLISH OVERSIGHT The targeted killing of Americans, as demonstrated by the Aulaqi case, presents complex questions of constitutional law that are not easily answered or resolved.199 This is more than an academic debate; the stakes are high, as targeted killing in its current form provides the Executive Branch with a power over American lives that is chillingly broad in scope.200 It is concerning that the President’s grounds for claiming this extraordinary authority are tenuous and subject to compelling challenges.201 Furthermore, the absence of basic due process protection in Aulaqi appears unconstitutional after Hamdi.202 But the Aulaqi case shows that the constitutional objections to targeted killing cannot be resolved in federal court.203 For these reasons, Congress should intervene by passing legislation with the goal of establishing clear principles that safeguard fundamental due process liberties from potential executive overreach. A. Option One: Congress Could Pass Legislation to Establish Screening and Oversight of Targeted Killing As the Aulaqi case demonstrates, any resolution to the problem of targeted killing would require a delicate balance between due process protections and executive power.204 In order to accomplish this delicate balance, Congress can pass legislation modeled on the Foreign Intelligence Surveillance Act (FISA) that establishes a federal court with jurisdiction over targeted killing orders, similar to the wiretapping court established by FISA.205 There are several advantages to a legislative solution. First, FISA provides a working model for the judicial oversight of real-time intelligence and national security decisions that have the potential to violate civil liberties.206 FISA also effectively balances the legitimate but competing claims at issue in Aulaqi: the sensitive nature of classified intelligence and national security decisions versus the civil liberties protections of the Constitution.207 A legislative solution can provide judicial enforcement of due process while also respecting the seriousness and sensitivity of executive counterterrorism duties.208 In this way, congress can alleviate fears over the abuse of targeted killing without interfering with executive duties and authority. Perhaps most importantly, a legislative solution would provide the branches of government and the American public with a clear articulation of the law of targeted killing.209 The court in Aulaqi began its opinion by explaining that the existence of a targeted killing program is no more than media speculation, as the government has neither confirmed nor denied the existence of the program.210 Congress can acknowledge targeted killing in the light of day while ensuring that it is only used against Americans out of absolute necessity.211 Independent oversight would promote the use of all peaceful measures before lethal force is pursued.212 i. FISA as an Applicable Model FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, FISA works. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi, the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219 The motivation for passing FISA makes this an obvious choice for a legislative model to address targeted killing. With FISA, Congress established independent safeguards and a form of oversight in response to President Nixon’s abusive wiretapping practices.220 The constitutional concern in FISA involved the violation of Fourth Amendment privacy protections by excessive, unregulated executive power.221 Similarly, the current state of targeted killing law allows for executive infringement on Fifth Amendment due process rights. Although there is no evidence of abusive or negligent practices of targeted killing, the main purpose of congressional intervention is to ensure that targeted killing is conducted only in lawful circumstances after a demonstration of sufficient evidence.

#### Special court for targeting eligibility is key to check executive backsliding—due process will collapse without it

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

On September 30, 2011, an American drone fired on and destroyed a convoy of members of al Qaeda in the Arabian Peninsula (AQAP). The target of the strike was Anwar al-Awlaki, a U.S. citizen born in New Mexico in 1971, accused of being a propagandist and operational leader for AQAP. The targeted killing of an American citizen raises a simple yet extremely discomfiting problem: Should the President of the United States be able to order an American citizen to be killed without trial, without any external review process, and without appeal?

In June 2010, John Brennan, then Deputy National Security Adviser for Homeland Security and Counterterrorism and current CIA director, stated that “there are dozens of U.S. persons [who have joined international terrorist organizations] who are in different parts of the world and they are very concerning to us.”[1] The issue was made even more salient on February 4, 2013, when an unclassified U.S. Justice Department (DOJ) white paper was released which laid out the legal justification for the targeted killing of “a U.S. citizen who is a senior operational leader of al Qaeda or an associated force.”[2]

The release of the targeted killing white paper unleashed a barrage of criticism of the policy. One author called the brief “a disaster” and asserted that “the Obama administration…wants to justify…assassinating citizens without specific and credible evidence of imminent violence.”[3] Another warned that “what’s so terrifying about this white paper is that it’s unconstitutional, not in the sense that it violates any particular tenet of the American Constitution, but in that it doesn’t respect the premise of there being a Constitution in the first place.”[4] Yet another claims that “[the white paper] is every bit as chilling as the Bush Office of Legal Counsel (OLC) torture memos in how its clinical, legalistic tone completely sanitizes the radical and dangerous power it purports to authorize.”[5] A few voices defended the policy, arguing, for example, that “once you take up arms against the United States, you become an enemy combatant, thereby forfeiting the privileges of citizens and the protections of the Constitution,”[6] and that “American presidents…have lawfully deployed military force against citizens in insurrection, rebellion, or war against the United States from the beginning of the nation.”[7]

However, focusing on the question of whether and when the president can order the targeted killing of an American citizen who has joined al Qaeda – as did almost all of the analyses of the DOJ white paper – not only misses the more important question involved but also obscures the best avenue to a potential solution. Instead of asking whether the president ought to be able to order the killing of American members of al Qaeda, we should instead be asking whether the president should be allowed to determine when an American citizen can be considered to be a senior operational member of al Qaeda, and if so, by what process?

Why is the question of determining who is a member of al Qaeda more important than the question of whether the president can kill American senior operational members of al Qaeda? As made clear by the World War II-era case Ex Parte Quirin, American citizens who join the armed forces of an enemy of the United States during wartime forfeit many of their basic constitutional protections and can be, as was the American citizen involved in the case, tried by military tribunal and executed under the laws of war.[8] The 2004 case of Hamdi v. Rumsfeld built on the Quirin case, finding that not only were at least some of the president’s war powers activated by congressional passage of the Authorization for the Use of Military Force (AUMF) in 2001, but that, as is normal under the laws of war, American citizens seized on the battlefield can be detained until the end of the conflict.[9]

However, the Hamdi decision also illustrates why the question of who is and is not a member of al Qaeda is the more critical question. The U.S. Supreme Court’s decision in Hamdi contained language vital for understanding the issue. The Court acknowledged that while enemy soldiers seized on the battlefield during a “normal” war do not receive an opportunity to challenge their detention, the exigencies of the war in Afghanistan against the Taliban dictate that “the circumstances surrounding Hamdi’s seizure cannot in any way be characterized as ‘undisputed’.”[10] Furthermore, because “‘the risk of erroneous deprivation’ of [Hamdi’s] liberty is unacceptably high” and as the case dealt with “the most elemental of liberty interests – the interest in being free from physical detention by one’s own government,” the Court decided that the traditional rules of war needed adjusting for the armed conflict against the Taliban.[11] Thus, the Court ruled that “a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification and a fair opportunity to rebut the Government’s factual assertions before a neutral decision maker.”[12] In essence, the Court ruled that the armed conflict with the Taliban sufficiently resembled traditional conflict as to allow for the indefinite military detention of enemy combatants, but that the difficulties involved in determining who is and is not an enemy combatant (for example, fighters in the Taliban neither wore uniforms nor carried identification) warranted an alteration in the normal application of the president’s war powers where American citizens are concerned.

The laws of war were designed to govern ‘traditional’ wars, in which the armies of states met on the battlefield and in which soldiers wore uniforms clearly identifying themselves as combatants. The lack of clarity that prompted the ruling in Hamdi comes from the inherent ambiguities in a low-intensity war against a non-state actor that is not limited to a specific battlefield. These ambiguities are magnified in the conflict against al Qaeda. Not only do al Qaeda’s members not wear uniforms or carry identification cards, but, given the decentralized nature of the organization, it is not even clear what exactly constitutes membership. It might be possible that one can become a “member” of al Qaeda simply by declaring or even believing oneself to be a member. In short, we should be much less confident in our judgments about who is and who is not a member of al Qaeda.

Several examples illustrate the problems caused by this ambiguity over membership in al Qaeda. First, consider Major Nidal Hassan, who stands accused of 13 counts of murder and 32 counts of attempted murder in the shootings at Ft. Hood, Texas. While Hasan had been in communication with Anwar al-Awlaki, he was ultimately court martialed rather than tried as a terrorist. This decision troubled terrorism scholar Bruce Hoffman, who argued that while he “used to argue it was only terrorism if it were part of some identifiable, organized conspiracy… this new strategy of al-Qaeda is to empower and motivate individuals to commit acts of violence completely outside any terrorist chain of command.”[13]

Next is the case of al Shabaab, an Islamist insurgent movement dedicated to bringing Sharia to Somalia. In February 2012, leaders of al Shabaab officially pledged allegiance to al Qaeda, a pledge that was enthusiastically accepted by Ayman al-Zawahiri, who succeeded Osama bin Laden as the formal head of al Qaeda.[14] Since the 2012 National Defense Authorization Act (NDAA) expanded the scope of the 2001 AUMF to include “associated groups,” al Shabaab is now a legitimate target for American forces. This poses several problems. First, a number of Somali-American citizens have joined al Shabaab, mostly for religious and nationalistic reasons related to the domestic political situation in Somalia.[15] Second, al Shabaab has largely confined its activities to inside Somalia, with the exceptions of a bombing in Uganda and a grenade attack in Kenya, attacks almost certainly intended to convince Uganda and Kenya to withdraw their respective troops from Somalia.[16] Third, many members have splintered-off from the main body of al Shabaab in the wake of the union with al Qaeda, apparently to keep their struggle focused on Somalia rather than the global jihad.[17] There seems to be little evidence, other than the formal affiliation, that al Shabaab has taken any actions against American citizens or interests or that al Shabaab is in any way other than name a part of the global terrorist movement.

And yet, under the 2012 NDAA, a Somali-American who becomes a senior operational leader of al Shabaab in order to liberate and Islamize Somalia is the legal equivalent of Anwar al-Awlaki and is therefore eligible for being targeted for death. Is this the enemy as envisioned by Congress and defined in the 2001 AUMF?

These examples call attention to several vital questions surrounding the Obama Administration’s use of targeted killing against American citizens. Is every group that is somehow connected to al Qaeda the “enemy” in this conflict, regardless of the threat it poses to American national interests or its involvement in global jihad? What kind of connection – formal, operational, or ideological – is sufficient justification for including an affiliated group under the scope of the 2001 AUMF and 2012 NDAA? Exactly what actions make an individual a member of al Qaeda? Given these serious questions about what constitutes involvement with al Qaeda, it is dangerous for decisions about the eligibility of American citizens for targeted killing to be made without legislative definition or judicial process or review.

The Obama Administration would likely claim that such decisions are a fundamental incident of war and therefore part of the president’s war powers that were activated by the 2001 AUMF. And under the current legal regime, the President’s use of drones to eliminate American senior operational members of al Qaeda is indeed legal.

But legal is not the same thing as prudent. Simply because a course of action is permitted does not mean it should be taken. For a number of reasons, perhaps most importantly because it is increasingly unclear what constitutes being a senior operational member of al Qaeda, we should be skeptical of allowing the Executive Branch to judge these decisions on its own. Without effective checks or definition, there can be little doubt that the bar for defining membership in al Qaeda and eligibility for targeting will move downwards, allowing more Americans to be targeted without due process. And in the absence of additional congressional actions to limit the president’s ability to make such determinations, that is exactly the situation that exists.

But how could such checks or definitions be imposed? The President’s likely defense – that under the 2001 AUMF, only the Executive Branch can determine questions of al Qaeda membership – is a strong one. Here we must return to the Hamdi decision. By focusing attention and criticism on the power to target American members of al Qaeda rather than on the power to determine eligibility for being targeted, most analysts and pundits have missed the importance of the Hamdi decision for suggesting a solution to the problem of targeted killings.

By giving Yasir Hamdi a status hearing to determine his eligibility for indefinite military detention without trial, the Supreme Court interfered with the traditional war powers of the president and altered the standard applications of the rules of war. The Court argued, as mentioned earlier, that as the prospect of indefinite detention involves the “most elemental of liberty interests,” “striking the proper constitutional balance…is of great importance to the Nation during this period of ongoing combat.”[18] What is true for an American citizen detained on the battlefield and assigned for indefinite detention is undoubtedly true for an American citizen who has been targeted for death by a U.S. drone strike. Surely, the right not to be killed by a Hellfire missile ordered by one’s own government without due process must be as elemental of a liberty interest, if not more so, as “the interest in being free from physical detention.”[19]

Furthermore, while the Court did add a hearing into the process for military detention, it still permitted the U.S. government to assign an American citizen to indefinite detention. It did so even while acknowledging that, given the undefined nature of the conflict against the Taliban, which the U.S. government might not consider won for two generations or more, “Hamdi’s detention could last for the rest of his life.”[20] The justification given for leaving the basic structure of military detention in place was the determination that conflict between the U.S. and the Taliban resembles the traditional conflicts for which the laws of war were created. However, the Court warned that “if the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, [the long-standing law of war principles] unravel.”[21] It seems reasonable that a conflict like the one with al Qaeda –in which drones are used to target American citizens who have been identified as senior operational leaders of decentralized affiliates of an already decentralized non-state terrorist organization – presents circumstances unlike traditional wars in which enemies were readily identifiable by their uniforms, identification cards, and adherence to a clearly visible military and political chain of command.

From the logic of the Hamdi decision, it follows that adjustments or adaptations to the traditional war powers of the president to target American citizens believed to be members of the armed forces of the enemy might be both justifiable and allowable. What options or procedures could be put into place? Two options stand out. First, Congress could attempt to identify the positive criteria for membership in al Qaeda, the nature of the relationships between al Qaeda and its various affiliates, and, more specifically, the definition of a senior operational leader. While this would undoubtedly be a difficult task, there is precedent for such efforts by the Legislative Branch. The laws surrounding conspiracy must define at what point constitutionally-protected free speech switches to the illegal preparation for criminal activity.

But once again, what is possible is not always the best course of action. Given the diffuse nature of global terrorist networks and the flexible nature of the battlefield, trusting an a priori assessment to accurately account for all possibilities and to do so in a timely manner is likely a bad idea. A better option would be the creation of a special national security court, along the lines of the courts that hear federal requests for warrantless wiretapping in accordance with the Foreign Intelligence Surveillance Act (FISA). Such a court could be created and empowered by Congress to hear presidential requests to designate an American citizen as a senior operational leader of either al Qaeda or of an affiliated group as defined under the 2001 AUMF and the 2012 NDAA.

#### None of their drone court answers apply – the aff is a uniquely limited court

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

Several people have voiced objections to the creation of a FISA-style “drone court.” One worries that a court of “generalist federal judges” will lack “national security expertise,” “are not accustomed to ruling on lightning-fast timetables,” and should not be able to involve themselves in “questions about whether to target an individual for assassination by a drone strike.” [22] Another writes that, “the determination of whether a person is a combatant to judicial review would seem to rather clearly violate the separation of powers requirements in the Constitution,” as in Ex Parte Milligan, the Supreme Court ruled that the congressional war power “extends to all legislation essential to the prosecution of the war…except such as interferes with the command of the forces and the conduct of campaigns,” which includes, the author argues, the “sole authority to determine who the specific combatants are when conducting a campaign.”[23] While in a traditional war such objections are almost certainly correct, in the context of the Hamdi decision and with the unconventional nature of the armed conflict against al Qaeda, they become less compelling.

First, if properly defined, the new court could be limited solely to questions of eligibility, not the decision of whether and when to conduct a drone strike. The court would carry out a function quite similar to the FISA courts, judging whether the Executive Branch has sufficient evidence to support its claim that a citizen has become a senior operational member of a group covered under the AUMF and 2012 NDAA. This would differ little from the FISA courts’ assessments of Executive Branch requests to wiretap individuals believed to be agents of a foreign power without a warrant.

Second, given the definition of imminent threat in the Department of Justice’s white paper – a definition that incorporates “considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”[24] – such eligibility decisions are not likely to be made in the moments immediately prior to a drone strike. Rather, eligibility decisions are likely made in the process of long investigations and in light of much intelligence.

Finally, while Anthony Arend is almost certainly correct that in nearly every other incidence of armed conflict, Congress would not be permitted to involve itself in determinations of who is and who is not an eligible target for the American military, as Hamdi makes clear, the armed conflict against al Qaeda is not like every other armed conflict. The Supreme Court has already inserted a judicial proceeding into the determination of whether an American citizen seized on the battlefield is actually an enemy combatant and therefore eligible for indefinite detention, a determination that traditionally has been solely within the purview of executive power. It would be counterintuitive – to say the least – if an American citizen could be killed, but not detained, without judicial involvement.

#### Limited and external review is key – allows for processes that can’t be circumvented

Somin 13 (Ilya, Professor of Law – George Mason University School of Law, Hearing on “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing,” United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, 4-23, <http://www.judiciary.senate.gov/pdf/04-23-13SominTestimony.pdf>)

One partial solution to the problem of target selection would be to require officials to get advance authorization for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could act faster than ordinary courts do and without warning the potential target, yet still serve as a check on unilateral executive power. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA.

Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23

We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans.

Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

#### Back to India—democratic model key to resolve every global threat

**Chandra 11** (Naresh, Chair – India's National Security Advisory Board and Former Indian Ambassador to the United States, et al., “The United States and India: A Shared Strategic Future”, September, p. 3-6)

India is an indispensable partner for the United States. Geographically, it sits between the two most immediate problematic regions for U.S. national interests. The arc of instability that begins in North Africa, goes through the Middle East, and proceeds to Pakistan and Afghanistan ends at India’s western border. To its east, India shares a contested land border with the other rising Asian power of the twenty-first century, China. India—despite continuing challenges with internal violence— is a force for stability, prosperity, **democracy, and the rule of law** in a very dangerous neighborhood.

The Indian landmass juts into the ocean that bears its name. With the rise of Asian economies, the Indian Ocean is home to critical global lines of communication, with perhaps 50 percent of world container products and up to 70 percent of ship-borne oil and petroleum traffic transiting through its waters. For the United States, India’s location alone makes it a more consequential partner than other nations more distant from these U.S. zones of concern. Unlike many U.S. treaty allies, India does not need to be convinced that a distant problem requires the projection of U.S. power to be successfully managed. Many of America’s global challenges are India’s regional challenges, and therefore India is uniquely positioned to exert influence and offer resources to help deal with them.

India’s growing national capabilities give it ever greater tools to pursue its national interests to the benefit of the United States. India has the world’s third-largest army, fourth-largest air force, and fifth-largest navy. All three of these services are modernizing, and the Indian air force and Indian navy have world-class technical resources, and its army is seeking more of them. Moreover, unlike some longtime U.S. partners, India has demonstrated that it possesses not only a professional military force, but also a willingness to suffer substantial military hardship and loss in order to defend Indian national interests.

India is an important U.S. partner in international efforts to prevent the further spread of weapons of mass destruction. Despite India’s principled refusal to sign the Nuclear Nonproliferation Treaty (NPT), India has shown itself to be a responsible steward of nuclear technology. Similarly, despite decades of work on missile and space launch vehicle technology, India has not been a proliferator of these technologies. India’s assistance on nonproliferation will also be critical regarding chemical and biological weapons, given its substantial chemical and biotechnology industries, which could unwittingly be the source of precursor materials to dangerous actors. In all of these areas where India has considerable technological expertise, India has exhibited restraint and responsibility in its international behavior.

During President Barack Obama’s visit to India in 2010, the United States announced its intent to support India’s phased induction into the four multilateral export control regimes (the Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group, and Wassenaar Arrangement), continuing efforts begun in the Bush administration to bring India fully into the nonproliferation mainstream. In addition to its role as a potential technology provider, India will play an important and growing political role on international nonproliferation issues. India’s **broad diplomatic ties** globally (most importantly in the Middle East), its aspirations for United Nations (UN) Security Council permanent membership, and its role in international organizations such as the International Atomic Energy Agency make New Delhi an especially effective voice in calls to halt proliferation.

India’s **position against radicalism and terrorism corresponds** with that of the United States. India has suffered terribly from terrorism over the last three decades and like the United States is determined to prevent, deter, and disrupt the terrorist groups that most threaten it. There was no hesitation to India’s offer of assistance to the United States following the attacks of September 11, 2001, because India viewed its national interests as congruent with those of the United States’ in uprooting transnational terrorist groups. Similarly, the United States quickly offered law enforcement and intelligence cooperation after the terrorist attacks on Mumbai that began on November 26, 2008.

Economically, India has grown at an average of 7.6 percent in real terms over the last decade, according to International Monetary Fund statistics, with only a modest decline due to the global economic crisis in 2008 and 2009. After charting 10.4 percent growth in 2010, the government of India believes that it can sustain rates of 8 to 9 percent economic expansion for the foreseeable future. Goldman Sachs agrees, estimating that the Indian economy will expand at an average rate of 8.4 percent through 2020. In short, over the next two decades India is on a path to become a global economic powerhouse, with all that implies for the U.S. and world economies.

With respect to economic enterprise and science and technology cooperation, the United States is India’s collaborator of choice. India’s English-speaking and Western-oriented elite and middle classes comfortably partner with their counterparts in U.S. firms and institutions, including more than 2.8 million Indian Americans. The U.S. higher educational system is an incubator of future collaboration, with more than 100,000 Indian students in American universities, more than from any other country except China. Trade between the United States and India has doubled twice in the last ten years. Bilateral trade has been balanced in terms of its content and is beneficial to both countries. In many sectors, the role of governments is simply to encourage what the private sector already desires by removing remaining barriers that prevent cooperative outcomes. As India modernizes and grows it will spend trillions of dollars on infrastructure, transportation, energy production and distribution, and defense hardware. U.S. firms can benefit immensely by providing expertise and technology that India will need to carry out this sweeping transformation.

India-U.S. cooperation is critical to global action against climate change. According to the International Energy Agency, India is already the fourth-largest aggregate producer of carbon dioxide from energy use, behind China, the United States, and Russia. India’s high ranking as a greenhouse gas producer has mostly to do with its sheer size; India produces dramatically fewer greenhouse gases than industrialized or other developing nations on a per capita basis and is below the global average in terms of greenhouse gas emissions per unit of gross domestic product. Even so, because of India’s aggressive economic growth profile combined with higher than average population growth, its share of global greenhouse gas production will rise substantially between now and 2050. India has shown itself to be keenly interested in cooperation on renewable energy technology and efficiency standards that would allow it to retain its growth and still reduce its emissions intensity over time. India’s role, both as a fast-growing large economy and as a leader of the developing world, makes Indian agreement a necessary condition for the success of any prospective international climate change accord.

On issues of global governance, India will remain the most important swing state in the international system. Importantly, India is genuinely committed to a world order based on multilateral institutions and cooperation and the evolution of accepted international norms leading to accepted international law. Despite being a rising power with some complaints regarding the existing global governance structure, India seeks to reform the present system and not to overturn it. U.S. and Indian national interests naturally overlap on many of these issues, given India’s commitment to a stable Asia, democracy, market-driven growth, the rule of law, and opposition to violent extremism.

India’s capability extends well beyond the realm of military, economic, and global diplomatic power. Indian culture and diplomacy has generated goodwill in its extended neighborhood. New Delhi has positive relations with critical states in the Middle East, in Central Asia, in Southeast Asia, and with important middle powers such as Brazil, South Africa, and Japan—all of strategic value to the United States. India’s soft power is manifest in wide swaths of the world where its civil society has made a growing and positive impression. This includes the global spread of its private corporate sector, the market for its popular culture, its historical religious footprint, and the example of its democracy and nongovernmental institutions.

In addition, India has demonstrated an enduring **commitment to democratic values**. Indian democracy has prospered despite endemic poverty; extraordinary ethnic, religious, and linguistic diversity; and foreign and internal conflicts. It **has provided** Indian society **the resilience and adaptability necessary to overcome and respond to the myriad challenges** the nation has faced since independence. India and the United States share the objective to strengthen pluralist and secular democracies worldwide, and India’s rise as a democratic great power promotes that profound global objective.

For many of the reasons indicated, a stronger India inevitably makes managing a stable balance of power in Asia significantly easier for the United States. Although other friendly countries in the region writ large will also play a critical role, over the next two decades India may well become the most important Asian partner for the United States in ensuring that the broad balance of power that serves Asia so well is preserved.

## Counterplan

### AT: Counterplan

#### Congressional creation key to shape international norms and constrain the executive

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of selfdefense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, **making this option a formal part of American foreign policy incurs risks that,** unless adroitly controlled and defined in concert with Congress, could drive **our practices in the use of force in a direction that is not wise for the long-term health of the rule of law**. This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. **The gatekeeper of these Presidential powers and the prevention of their overreach is** Congress. The Constitution demands nothing less, but thus far, **Congress’s silence is deafening**. History of Targeted Killing During the Cold War, the United States used covert operations to target certain political leaders with deadly force.8 These covert operations, such as assassination plots against Fidel Castro of Cuba and Ngo Dinh Diem of South Vietnam, came to light in the waning days of the Richard Nixon administration in 1974. In response to the public outrage at this tactic, the Senate created a select committee in 1975, chaired by Senator Frank Church of Idaho, to “Study Government Operations with Respect to Intelligence Activities.”9 This committee, which took the name of its chairman, harshly condemned such targeting, which is referred to in the report as assassination: “We condemn assassination and reject it as an instrument of American policy.”10 In response to the Church Committee’s findings, President Gerald R. Ford issued an Executive order in 1976 prohibiting assassinations: “No employee of the United States Government shall engage in, or conspire to engage in political assassination.”11 The order, which is still in force today as Executive Order 12333, “was issued primarily to preempt pending congressional legislation banning political assassination.”12 President Ford did not want legislation that would impinge upon his unilateral ability as Commander in Chief to decide on the measures that were necessary for national security. 13 In the end, no legislation on assassinations was passed; national security remained under the President’s purview. Congress did mandate, however, that the President submit findings to select Members of Congress before a covert operation commences or in a timely fashion afterward.14 This requirement remains to this day. Targeted killings have again come to center stage with the Barack Obama administration’s extraordinary step of acknowledging the targeting of the radical Muslim cleric Anwar al-Awlaki, a U.S. citizen who lived in Yemen and was a member of an Islamic terrorist organization, al Qaeda in the Arabian Peninsula.15 Al-Awlaki played a significant role in an attack conducted by Umar Farouk Abdulmutallab, the Nigerian Muslim who attempted to blow up a Northwest Airlines flight bound for Detroit on Christmas Day 2009.16 According to U.S. officials, al-Awlaki was no longer merely encouraging terrorist activities against the United States; he was “acting for or on behalf of al-Qaeda in the Arabian Peninsula . . . and providing financial, material or technological support for . . . acts of terrorism.”17 Al-Awlaki’s involvement in these activities, according to the United States, made him a belligerent and therefore a legitimate target. The context of the fierce debates in the 1970s is different from the al-Awlaki debate. The targeted killing of an individual for a political purpose, as investigated by the Church Committee, was the use of lethal force during peacetime, not during an armed conflict. During armed conflict, the use of targeted killing is quite expansive.18 But in peacetime, the use of any lethal force is highly governed and limited by both domestic law and international legal norms. The presumption is that, in peacetime, all use of force by the state, especially lethal force, must be necessary. The Law Enforcement Paradigm Before 9/11, the United States treated terrorists under the law enforcement paradigm—that is, as suspected criminals.19 This meant that a terrorist was protected from lethal force so long as his or her conduct did not require the state to respond to a threat or the indication of one. The law enforcement paradigm assumes that the preference is not to use lethal force but rather to arrest the terrorist and then to investigate and try him before a court of law.20 The presumption during peacetime is that the use of lethal force by a state is not justified unless necessary. Necessity assumes that “only the amount of force required to meet the threat and restore the status quo ante may be employed against [the] source of the threat, thereby limiting the force that may be lawfully applied by the state actor.”21 The taking of life in peacetime is only justified “when lesser means for reducing the threat were ineffective.”22 Under both domestic and international law, the civilian population has the right to be free from arbitrary deprivation of life. Geoff Corn makes this point by highlighting that a law enforcement officer could not use deadly force “against suspected criminals based solely on a determination an individual was a member of a criminal group.”23 Under the law enforcement paradigm, “a country cannot target any individual in its own territory unless there is no other way to avert a great danger.”24 It is the individual’s conduct at the time of the threat that gives the state the right to respond with lethal force. The state’s responding force must be reasonable given the situation known at the time. This reasonableness standard is a “commonsense evaluation of what an objectively reasonable officer might have done in the same circumstances.”25 The U.S. Supreme Court has opined that this reasonableness is subjective: “[t]he calculus of reasonableness must embody allowances for the fact that police officers often are forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation.”26 The law enforcement paradigm attempts to “minimize the use of lethal force to the extent feasible in the circumstances.”27 This approach is the starting point for many commentators when discussing targeted killing: “It may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.”28 The presumption is that intentional killing by the state is unlawful unless it is necessary for self-defense or defense of others.29 Like the soldier who acts under the authority of self-defense, if one acts reasonably based on the nature of the threat, the action is justified and legal. What the law enforcement paradigm never contemplates is a terrorist who works outside the state and cannot be arrested. These terrorists hide in areas of the world where law enforcement is weak or nonexistent. The terrorists behind 9/11 were lethal and lived in ungovernable areas; these factors compelled the United States to rethink its law enforcement paradigm. The Law of War Paradigm The damage wrought by the 9/11 terrorists gave President George W. Bush the political capital to ask Congress for authorization to go to war with these architects of terror, namely al Qaeda. Seven days later, Congress gave the President the Authorization for the Use of Military Force (AUMF) against those “nations, organizations, or persons [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.”30 For the first time in modern U.S. history, the country was engaged in an armed conflict with members of an organization, al Qaeda, versus a state. The legal justification to use force, which includes targeted killings, against al Qaeda, the Taliban, and associated forces is twofold: self-defense and the law of war.31 In armed conflict, the rules governing when an individual can be killed are starkly different than in peacetime. The law enforcement paradigm does not apply in armed conflict. Rather, designated terrorists may be targeted and killed because of their status as enemy belligerents. That status is determined solely by the President under the AUMF. Unlike the law enforcement paradigm, the law of war requires neither a certain conduct nor an analysis of the reasonable amount of force to engage belligerents. In armed conflict, it is wholly permissible to inflict “death on enemy personnel irrespective of the actual risk they present.”32 Killing enemy belligerents is legal unless specifically prohibited—for example, enemy personnel out of combat like the wounded, the sick, or the shipwrecked.33 Armed conflict also negates the law enforcement presumption that lethal force against an individual is justified only when necessary. If an individual is an enemy, then “soldiers are not constrained by the law of war from applying the full range of lawful weapons.”34 Now the soldier is told by the state that an enemy is hostile and he may engage that individual without any consideration of the threat currently posed. The enemy is declared hostile; the enemy is now targetable. Anticipatory Self-defense This paradigm shift is novel for the United States. The President’s authority to order targeted killings is clear under domestic law; it stems from the AUMF. Legal ambiguity of the U.S. authority to order targeted killings emerges, however, when it is required to interpret international legal norms like self-defense and the law of war. The United States has been a historic champion of these international norms, but now they are hampering its desires to target and kill terrorists. Skeptics of targeted killing admit that “[t]he decision to target specific individuals with lethal force after September 11 was neither unprecedented nor surprising.”35 Mary Ellen O’Connell has conceded, for example, that targeted killing against enemy combatants in Afghanistan is not an issue because “[t]he United States is currently engaged in an armed conflict” there.36 But when the United States targets individuals outside a zone of conflict, as it did with alAwlaki in Yemen,37 it runs into turbulence because a state of war does not exist between the United States and Yemen.38 A formidable fault line that is emerging between the Obama administration’s position and many academics, international organizations,39 and even some foreign governments40 is where these targeted killings can be conducted.41 According to the U.S. critics, if armed conflict between the states is not present at a location, then the law of war is never triggered, and the state reverts to a peacetime paradigm. In other words, the targeted individual cannot be killed merely because of his or her status as an enemy, since there is no armed conflict. Instead, the United States, as in peacetime, must look to the threat the individual possesses at the time of the targeting. There is a profound shift of the burden upon the state: the presumption now is that the targeted killing must be necessary. When, for example, the United States targeted and killed six al Qaeda members in Yemen in 2002, the international reaction was extremely negative: the strike constituted “a clear case of extrajudicial killing.”42 The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44 A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer. The administration is blurring the contours of the right of the state to act in Yemen under self-defense and the law of war protections afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya? If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder. In order to alleviate both of these quandaries, Congress must step in with **legislative guidance**. Congress has the constitutional obligation to fund and oversee military operations.46 The goal of congressional action must not be to thwart the President from protecting the United States from the dangers of a very hostile world. As the debates of the Church Committee demonstrated, however,the President’s unfettered authority **in the realm of national security is a cause for concern**. Clarification is required **because** the AUMF gave the President a blank check **to use targeted killing** under domestic law, **but it never set parameters on the President’s authority** when international **legal** norms intersect and potentially conflict with **measures stemming from** domestic law.

#### Only congress solves international humans rights leadership

Wainstein 9/18/13

Kenneth L. Wainstein is the Sheila and Milton Fine distinguished visiting fellow at The Washington Institute, focusing on counterterrorism issues, a partner with the law firm of Cadwalader, Wickersham, and Taft, LLP, The Heritage Foundation, September 18, 2013, "The Changing Nature of Terror: Law and Policies to Protect America", http://www.heritage.org/research/reports/2013/09/the-changing-nature-of-terror-law-and-policies-to-protect-america

Call for Congressional Action

While it is important that the Administration undergo this strategic reorientation, it is also important that Congress participate in that process. Over the past 12 years, Congress has made significant contributions to the post-9/11 reforms of our counterterrorism program. First, it has been instrumental in strengthening our counterterrorism capabilities. From the Authorization for Use of Military Force to the PATRIOT Act and its reauthorization to the critical 2008 amendments to the Foreign Intelligence Surveillance Act, Congress has repeatedly answered the government’s call for strong but measured authorities to fight the terrorist adversary. Second, congressional action has gone a long way toward institutionalizing measures that were hastily adopted after 9/11, and is creating a lasting framework for what will be a “long war” against international terrorism. Some argue against such legislative permanence, citing the hope that today’s terrorists will go the way of the radical terrorists of the 1970s and largely fade from the scene over time. That, I’m afraid, is a pipe dream. The reality is that international terrorism will remain a potent force for years and possibly generations to come. Recognizing this reality, both Presidents Bush and Obama have made a concerted effort to look beyond the threats of the day and focus on regularizing and institutionalizing our counterterrorism measures for the future—as most recently evidenced by the Obama Administration’s effort to develop lasting procedures and rules of engagement for the use of drone strikes. Finally, congressional action has provided one other very important element to our counterterrorism initiatives—a measure of political legitimacy that could never be achieved through unilateral executive action. At several important junctures since 9/11, Congress has considered and passed legislation in sensitive areas of executive action, such as the authorization of the Military Commissions and the amendments to our Foreign Intelligence Surveillance Act. On each such occasion, Congress’s action had the effect of calming public concerns and providing a level of political legitimacy to the executive branch’s counterterrorism efforts. That legitimizing effect—and its continuation through meaningful oversight—is critical to maintaining the public’s confidence in the counterterrorism means and methods that our government uses. It also provides assurance to our foreign partners and thereby encourages them to engage in the operational cooperation that is so critical to the success of our combined efforts against international terrorism. These post-9/11 examples speak to the value that congressional involvement can bring to the national dialogue and to the current reassessment of our counterterrorism strategies and policies. It is heartening to see Members of Congress starting to ratchet up their engagement in this area. For example, certain Members are expressing views about our existing targeting and detention authorities and whether they should be revised in light of the new threat picture. Some have asked whether Congress should pass legislation governing the executive branch’s selection of targets for its drone program, with some suggesting that Congress establish a judicial process by which a court reviews and approves any plan for a lethal strike against a U.S. citizen. Others have proposed legislation more clearly directing the executive branch to hold terrorist suspects in military custody, as opposed to in the criminal justice system. While these ideas have varying strengths and weaknesses, they are a welcome sign that Congress is poised to become substantially engaged in counterterrorism matters once again.

#### If the threshold is staying on message a high profile case obviously triggers that because the threshold is low

**Smith, 2007**

[Joseph L., University of Alabama “Presidents, Justices, and Deference to Administrative Action”, The Journal of Law, Economics, & Organization 5/9, (23)2]

The consequences of the institutional choice are more complex and potentially far-reaching. A decision endorsing the disputed agency action not only allows the agency decision to stand (with whatever policy consequences that entails) but also signals to the lower courts that agencies should be given latitude to take the disputed action. Every decision upholding a disputed agency action expands, ever so slightly perhaps, the ability of agencies to implement their agendas. Because lower courts are supposed to implement the legal doctrines articulated by the Supreme Court, the effects of this institutional choice, whether or not to defer to the agency decision, will ripple throughout the lower courts and should affect the decisions in many disputes. This article continues a line of research begun by Linda Cohen and Matt Spitzer in the 1990s. Cohen and Spitzer began with the insight that Supreme Court decisions evaluating agency actions do more than merely uphold or overturn the action being litigated. These decisions also communicate legal doctrine to the lower courts, sending signals regarding the level of deference they should show to agency decisions. Given the small number of administrative law cases the Supreme Court hears each term, they assert that the signal- sending or doctrinal element of these decisions will have a larger impact on policy than the direct effects on the litigants. Cohen and Spitzer argue that Supreme Court Justices can best achieve their policy-related goals if they consider their ideological relationship with the executive branch and then factor this relationship into their decisions evaluating administrative actions. Their model generally suggests that as the median member of the Court gets ideologically closer to the president, the Court should become more deferential to the administrative action.

## DA

### 1ar not key

#### Not key – just forces prioritization

Dorfman 10/3—professor of economics at The University of Georgia and consultant on economic issues to a variety of corporations and local governments (Jeffrey, 10/3/13, “Don't Believe The Debt Ceiling Hype: The Federal Government Can Survive Without An Increase,” <http://www.forbes.com/sites/jeffreydorfman/2013/10/03/dont-believe-the-debt-ceiling-hype-the-federal-government-can-survive-without-an-increase/>)

Ignore what you hear and read in the news. **The federal government actually reached the legal debt ceiling about four months ago**. Since then, the government has been financing its monthly budget deficit by stealing/borrowing money from other government funds, like the federal government employees’ pension fund. In about two weeks, the government will run out of tricks to keep operating as if nothing has happened. If the debt ceiling is not raised by then, the government has to balance its budget.¶ That’s right. As much as the politicians and news media have tried to convince you that the world will end without a debt ceiling increase, it is simply not true. The federal debt ceiling sets a legal limit for how much money the federal government can borrow. In other words, it places an upper limit on the national debt. It is like the credit limit on the government’s gold card.¶ Reaching the debt ceiling does not mean that the government will default on the outstanding government debt. In fact, the U.S. Constitution forbids defaulting on the debt (14th Amendment, Section 4), so the government is not allowed to default even if it wanted to.¶ In reality, if the debt ceiling is not raised in the next two weeks, the government will actually have to prioritize its expenses and keep its monthly, weekly, and daily spending under the revenue the government collects. In simple terms, the government would have to spend an amount less than or equal to what it earns. Just like ordinary Americans have to do in their everyday lives.¶ Once the reality of what hitting the debt ceiling means is understood, the important question is: can the government actually live with a balanced budget? How much money could it spend? Could enough spending be cut to live within a balanced budget? The answer is **yes**, the federal government could live with a balanced budget. Below I will show you precisely how.¶

#### No markets impact

Peter Lefkin 13, Senior Vice President of Government and External Affairs for Allianz of North America, “Round 2 of the Debt-Ceiling Debate,” Allianz Global, 5/21, <http://us.allianzgi.com/Commentary/MarketInsights/Pages/5QuestionswithPeterLefkin.aspx>

Expect more brinkmanship from Democrats and Republicans. Both parties will go through the rhetoric and the charade of partisan politics. After several years of political uncertainty, markets generally discount dysfunction in Washington. But the political leverage has shifted: The fiscal cliff was a strategic loss for Republicans but it set the stage for them to stand pat on the sequester. The cards are now in their favor. And they’re going to play them. Earlier this year, everyone expected Republicans to demand sweeping changes to entitlement spending as a condition of agreeing to raise the debt limit. With the budget numbers improving, and the public already lulled into complacency about the deficit by low interest rates, many Republicans realize that they may have to shift gears. They could tie the debt-ceiling increase to something else. The Republican wish list includes comprehensive tax reform, entitlement reform and construction of the Keystone oil pipeline.

### 1ar PC

#### Conservatives think they’re winning – closed information loops means they won’t cave

**Sargent, 10/4/13** (Greg, Washington Post’s Plum Line blog, “The Morning Plum: Conservatives have no endgame in shutdown fight” <http://www.washingtonpost.com/blogs/plum-line/wp/2013/10/04/the-morning-plum-conservatives-have-no-endgame-in-shutdown-fight/>)

\* BUT CONSERVATIVES THINK THEY’RE WINNING, ANYWAY: A crucial point from MSNBC’s First Read crew (no link yet):

One of the major differences between the last shutdown (in 1995-1996) and now is the rise of FOX News, Drudge, and Breitbart News. As the New York Times recently wrote, “a fervent group of conservatives — bloggers, pundits, activists and even members of Congress — is harnessing the power of the Internet, determined to tell the story of the current budget showdown on its terms.” It explains why conservatives aren’t as convinced as many others are that this will do significant damage to the party.

Yep. The perils of the closed conservative information feedback loop at work.

#### The GOP won’t take general election heat – primary challengers are the only risk, so they won’t cave

**Isenstadt, 10/3/13** (Alex, Politico, “Government shutdown: Why many Republicans have no reason to deal” <http://www.politico.com/story/2013/10/government-shutdown-republicans-deal-97768.html?hp=l23>

The congressional map is far more gerrymandered today than it was 17 years ago during the last shutdown, when House Speaker Newt Gingrich was negotiating with President Bill Clinton. According to David Wasserman, who analyzes House races for the Cook Political Report, 79 of the 236 House Republicans serving during the last shutdown resided in districts that Clinton won in 1992. Today, just 17 of the 232 House Republicans are in districts that Obama won in 2012.

“Is redistricting a big deal in the sense that there is a greater threat from a primary than a general election? The answer to that is yes,” said David Winston, a Republican pollster and adviser to Boehner. “It’s clearly an element.”

The post-2010 redistricting process combined with recent demographic shifts helped solidify the Republican majority; few GOP seats are seen as seriously endangered in the midterm elections. But those factors have also put House Speaker John Boehner in a straitjacket, forced to answer to a Republican conference that has little appetite for resolving the standoff on anything resembling Democratic terms.

In an interview with POLITICO on Tuesday, Iowa Rep. Steve King, a tea party hero, predicted that the shutdown “won’t be a day or two. It will be a little longer than that, at least.”

Boehner has seen this movie play out in nearly every major legislative battle over the past year. During the “fiscal cliff” fight late last year, the speaker was forced to pull a bill from the floor after conservatives rallied against it. A similar dynamic sank a farm bill in June.

Republican strategists hope that by the time voters head to the polls 13 months from now they will have forgotten about the shutdown. It’s possible, they say, that anger about Obamacare will crowd out bad memories of the current mess.

But GOP operatives are also aware that the longer the shutdown lasts, the more likely it is to sway races next year. And they know that there’s little they can do to persuade conservative members to move on from the fight. As much as they want members like Graves, Massieand Labrador to get on board with their view that the shutdown could hurt the party in moderate districts, they realize it’s just not going to happen.

The conservative wing of the party has been bucked up by a constellation of right-leaning organizations like the Club for Growth and the Madison Project, which are sure to reward the lawmakers for their anti-Obamacare efforts come election season.

“We’re telling Republicans to hold the line,” Jenny Beth Martin of Tea Party Patriots told POLITICO.

It’s hard to overstate just how small the 2014 general election playing field is. Last month, University of Virginia political scientist Larry Sabato published an analysis finding that 375 of 435 seats — 86 percent — are safe. That means much of the action will be in primaries. Already, a few House Republicans are facing serious threats from within their own party.

Idaho Rep. Mike Simpson, a Boehner ally, faces a challenge from a candidate endorsed by the Club for Growth. Pennsylvania Rep. Bill Shuster, the House Transportation and Infrastructure Committee chairman, is trying to fend off an opponent who has the backing of RedState founder Erick Erickson. House Rules Committee Chairman Pete Sessions (R-Texas), who helped House Republicans capture the majority in 2010 as the National Republican Congressional Committee head, is being challenged by a Dallas tea party leader.

In each of these races, Republican incumbents will have to answer criticism that they’re insufficiently conservative and haven’t done enough to combat the Obama agenda.

## Case

### AT: Rubber Stamp (2ac)

#### Not a rubber stamp

Daskal, 13 [The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone Jennifer Daskal American University Washington College of Law, April]

That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC’s high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive’s targeting decisions.180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action.181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.

### AT: Unconsititutional

#### Not unconstitutional

Epstein, 11 [Michael, Michigan State University College of Law “Targeted Killing Court: Why The United States Needs To Adopt International Legal Standards For Targeted Killings And How To Do So In A Domestic Court”, SSRN]

Although the FISA Court and the NSA’s use of surveillance techniques under FISA have been recently challenged by the ACLU375, FISA has generally been upheld as being constitutional.376 FISA has been upheld not to violate Article III of the Constitution, the political question doctrine, or the separation of powers doctrine377; the disparate treatment of domestic and foreign targets under FISA has been upheld as rationally related to the purposes of acquiring information necessary to national defense and the conduct of foreign affairs.378 Specifically, FISA has been held to meet the warrant requirements under the Fourth Amendment by providing a neutral and detached judicial officer;379 and comport with due process when applications are properly made in accordance with the FISA procedures.380 While the National Security Agency (“NSA”)’s claim that the AUMF pre-empted the need to follow FISA procedures was held to violate the Constitution381

## offcase

### AT: Cal CP

#### The first plank of the counterplan doesn’t establish transparency – media spin

Goldsmith 13 (Jack, Henry L. Shattuck Professor – Harvard Law School, “The Intersection of Vague Disclosure and Reduced Drone Strikes,” Lawfare, 5-27, <http://www.lawfareblog.com/2013/05/the-intersection-of-vague-disclosure-and-reduced-drone-strikes/>)

The major challenge to legitimating the shadow war against terrorists is that the Executive branch is hand-tied by its own secrecy rules, and cannot disclose what it is doing to permit Congress and the American people to judge whether it approves. Even Executive branch officials who want to be open about what is going on (as I believe the President and many of his national security officials want to be) are prevented by secrecy rules from being entirely candid. Officials convey information in what I recently described as “limited, abstract, and often awkward terms” that “usually raise more questions than they answer,” a problem exacerbated by the fact that “secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges.” Disclosures designed to enhance trust can end (up) deepening mistrust, especially when journalists start reporting on events that don’t fit the administration’s narrative, and the administration cannot (perhaps because of secrecy rules, perhaps because the truth is uncomfortable) respond fully. This dynamic is made worse by the fact that partial disclosures are greeted for demands for more disclosures that the government simply cannot abide.

This is starting to happen with the abstractions that the President used to describe his ostensible curtailment of the war. Ryan Goodman and Sarah Knuckey have a careful analysis of the speech that note its ambiguities and uncertainties on the geographical scope of the war, the continued use of signature strikes, the meaning of non-feasible captures as prerequisite for strikes, whether Americans “not specifically targeted” (in the President’s words) were targeted as part of a signature strike or some other reason that prevented the president from describing their deaths as accidental, whether any member of a terrorist organization or only its leaders are targetable, and the crucial meaning of phrases like “near certainly,” “imminence,” and “associated forces.” Goodman and Knuckey conclude that these ambiguities and uncertainties make it “impossible for the public to, in the President’s words: “make informed decisions and hold the Executive Branch accountable,” and note that “until the White House releases the legal memos that explain its understanding of such terms and its legal justification for the drone program more broadly[,] there is reason to remain deeply skeptical.” Along similar lines, Lesley Clark and Jonathan S. Landay at McClatchy compare the President’s speech with past administration speeches and conclude that the speech might imply an expansion of drone killings.

Pushing in the other direction, however, is the reality that drone strikes (and their consequences) are in some senses verifiable, and the rate of strikes in both Pakistan and Yemen have dropped this year (and having been dropping for a few years in Pakistan). In the end, the credibility of the government’s new standards might turn less on the President’s words, which by themselves cannot establish credibility, but rather on how he is perceived to use drones (and other forms of fire) in fact. It does not follow, of course, that reduced drone strikes mean that the new standards have bite, or are constraining. As David Cole notes in a good if perhaps-too-hopeful NYRB essay:

[The reduction in drone strikes] may reflect a diminishing number of appropriate targets. It may suggest that the administration has for some time been employing more restrictive standards. Or it may reflect increasing acceptance of the view that drone strikes have become counterproductive—a point made publically by former counterterrorism intelligence chief Dennis Blair and retired General Stanley McChrystal, who headed the US forces in Afghanistan.

#### The new internal review process the CP creates doesn’t apply to the citizens version of the aff

Cole 12 (David, Professor of Constitutional Law and Criminal Justice – Georgetown University Law Center, “Obama and Terror: The Hovering Questions,” New York Review of Books, 7-12, 59(12), p. 2)

Policy considerations also strongly favored a civilian criminal trial. The federal courts have successfully prosecuted more than two hundred defendants on “terrorism” charges since September 11. While many of those prosecutions involve dubious practices of entrapment and trumped-up charges of “material support,” federal courts have undoubtedly shown that they can handle terrorism cases. Their judges are seasoned, their rules are clear, and their process has the legitimacy earned through years of application to millions of Americans.

The military commissions, by contrast, are subject to continuing change, with few or no precedents to rely upon. Their military lawyers and judges have no experience with serious terrorist trials. And the proceedings lack legitimacy, both because they remain tainted by the lawless form they initially took under President Bush, and because by design they apply only to noncitizens, and not to Americans. Their track record to date has been dominated by false starts, Keystone Cops procedures, and surprisingly light sentences.

So any rational actor would choose to try KSM in civilian criminal court. That’s precisely what Attorney General Holder did. He’s been widely criticized ever since for failing to prepare the way for the announcement by informing New York officials sufficiently ahead of time, and for failing to defend the announcement forcefully. But Klaidman reveals that the decision to delay informing New York officials was driven by a concern about leaks, and that all relevant officials, including Mayor Michael Bloomberg, supported the decision when it was announced. It was only later, when the New York officials were inundated by the complaints of their constituents, that they reversed course.

#### Congressional involvement is key – internal executive review sets a precedent for future administrations to destroy due process

Feldman 13 (Noah, Professor of Constitutional and International Law – Harvard University, “Obama’s Drone Attack on Your Due Process,” Bloomberg, 2-8, <http://www.bloomberg.com/news/2013-02-08/obama-s-drone-attack-on-your-due-process.html>)

The cases cited by the white paper provide no precedent for the idea that due process could be satisfied by some secret, internal process within the executive branch -- not that any such process is even mentioned. The reason they don’t is obvious: There is no such precedent. Never, to my knowledge, in the history of due process jurisprudence, has a court said that a neutral decision maker wasn’t necessary. And as Justice Felix Frankfurter wrote in language cited in the Mathews case, “the essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.” Although the white paper doesn’t say so, Awlaki even tried to get a hearing before he was killed. His father asked a federal court to find that he wasn’t a terrorist. But the court never heard his claim, because the Obama administration persuaded it not to consider the case. When Paul Clement, solicitor general under George W. Bush, told the Supreme Court in the Hamdi oral argument that Hamdi had been given the opportunity to be heard during his interrogation, a notable gasp went through the courtroom. Justice Sandra Day O’Connor later singled out this outrageous claim for special criticism. The Obama administration’s apparent belief that due process can be satisfied in secret inside the executive branch is arguably a greater departure from precedent. It is a travesty of the very notion of due process. And to borrow a phrase from Justice Robert Jackson, it will now lie about like a loaded weapon ready for the hand of any administration that needs it. The white paper should have said that due process doesn’t apply on the battlefield. By instead making due process into a rubber stamp, the administration is ignoring precedent and subverting the idea of the rule of law. When is some law worse than none? When that law is so watered down that it loses the meaning it has had for 800 years.

### AT: CP (2)

#### Congressional acquiescence key

Goldmsith, 13 [Jack Goldsmith is the Henry L. Shattuck Professor at Harvard Law School, where he teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and conflict of laws. Before coming to Harvard, Professor Goldsmith served as Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003. Professor Goldsmith is a member of the Hoover Institution Task Force on National Security and Law, “ Why the Administration Needs to Get Congress on Board for Its Stealth War” <http://www.lawfareblog.com/2013/03/why-the-administration-needs-to-get-congress-on-board-for-its-stealth-war/>]

I disagree with Steve’s claim that we don’t know how the government conceives of its authority or the limits on it. The administration has told us a lot about that – in speeches, papers, leaks, and more, though of course it could give us much more detail. Steve correctly says we needn’t trust the government’s words. But note that Steve’s proposed remedy is “a more comprehensive public defense by the Executive Branch.” To which one can ask: Why should we trust the words of a more comprehensive public defense? Public skepticism about the administration’s drone program has grown in step with its public defenses. I think the administration made a big mistake in thinking that unilateral disclosures alone — in speeches, white papers, controlled leaks to authors and journalists, and other “public defenses” – would legitimate its policies. The reason is precisely what Steve puts his finger on: Outsiders needn’t trust Executive branch representations, and over time they won’t trust its representations if that is all the information they have on a matter they care about, especially on an issue as fraught as executive authority to kill an American citizen. This is where separations of powers can help. One way to make the president’s secret actions and decisions and authorities legitimate and credible is to have an adversarial institution look at and pass on them. GTMO detentions became more legitimate and less controversial after another branch of government, the judiciary, looked at them and largely agreed with the executive’s assessment. I don’t think judicial review is even conceivably available for most of our stealth war. But congressional review is. As I once wrote: [A] different adversarial branch of government — Congress — can play an analogous role. The congressional intelligence and arms services committees know a lot about the president’s targeting policies, and have gone along with the president’s actions. These committees could (without revealing sensitive information) do more to enhance the president’s credibility by stating publicly — and preferably in a bipartisan fashion — that they have monitored the president’s high-value targeting decisions and find them, and the facts and processes on which they are based, to be sound. Having the intelligence committees publicly on board helps, but what the administration really needs now is to have Congress on board. The only way to legitimate the administration’s stealth war tactics, and to stop the growing bipartisan sniping at and distrust of them (which will only grow and grow if not addressed), is to make Congress vote on them and get behind them. The administration should ask for a comprehensive authorization for the tactics it is now deploying in the “war on terrorism.” I know, this approach is risky; secrets can spill out; Congress might give too much or too little authority; and the administration will be tagged with the legacy of making war permanent. There are plenty of excuses for not forging congressional approval, all of them premised on short-term thinking and a remarkable paucity of executive branch leadership. At some point soon the pain of not engaging Congress will be greater than the pain of engaging Congress, and at that point the administration will wish it had gone to Congress sooner.

#### Perm do both – solves the politics link

Perine, 6/12/2008 (Katherine – staff at CQ politics, Congress unlikely to try to counter Supreme Court detainee ruling, CQ Politics, p. http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers University political science professor. “You can simply point to a Supreme Court decision and say, ‘**The devil made me do it**.’ ”

#### Perm do the plan and the first plank

#### Links to politics

Harrison 2005 (Lindsay Harrison, Lecturer in Law at the University of Miami School of Law, November 8, 2005, "Does the Court Act As ‘Political Cover’ for the Other Branches?," <http://legaldebate.blogspot.com/2005/11/does-court-act-as-political-cover-for.html>)

Does the Court Act as "Political Cover" for the Other Branches? While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

#### Specialized court key – the CP collapses ALL targeted killing

Somin, 13 [April 23rd, HEARING ON “DRONE WARS: THE CONSTITUTIONAL AND COUNTERTERRORISM IMPLICATIONS OF TARGETED KILLING” TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS April 23, 2013, Illya, Professor of Law]

#### B. **Possible Institutional Safeguards**. One partial solution to the problem of target selection would be to require officials to get **advance authorization** for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could **act faster than ordinary courts do and without warning the potential target,** **yet still serve as a check on** unilateral **executive power**. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA. Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23 We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid **compromising operations**, while simultaneously acting as a **check** on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans.

#### Some drone use is key to legitimacy – counter terror is a public good

Knowles, 09 [Robert, Assistant Professor, NYU Law, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, p. lexis]

The United States qualifies as a global hegemon. In many ways, the U.S. acts as a world government. n341 It provides public goods for the world, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, the United States provides a public good through its efforts to combat terrorism and confront - even through regime change - rogue states. n345 The United States also provides a public good through its promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale. n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347 Moreover, controlling international norms are [\*143] sometimes embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law. For example, whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants." n348 These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it. The transnational political and economic institutions created by the United States provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon" with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government. The American constitutional separation of powers is an international public good. The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively in foreign affairs is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 The courts, too, are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an [\*144] important vehicle for adjudicating tort claims among non-citizens in U.S. courts. n355

#### The plan reverses court deference and rules on a political question

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, **involving** for example interrogation techniques, **the scope of detention authority**, habeas review, military commissions, **targeted killings, and the use of force more broadly**. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, **political questions**, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action.

We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### This makes war powers a justiciable issue – this case-specific exception causes a slippery slope that breaks the entire doctrine

Miller 10 (Mathew Edwin, JD – University of Michigan Law School, Associate – Latham & Watkins LLP, “The Right Issue, the Wrong Branch: Arguments against Adjudicating Climate Change Nuisance Claims,” Michigan Law Review, November, 109 Mich. L. Rev. 257, Lexis)

However, to say that cases like American Electric Power are justiciable just because plaintiffs allege a public nuisance begs the question: Why should such claims **automatically be justiciable?** It contravenes the **purpose and articulation of the political question doctrine** to suggest that nuisances are categorically justiciable because political questions have historically excluded torts between private parties and have focused instead on governmental issues like gerrymandering, foreign policy, and federal employment. n70 Again, Baker demanded "discriminating" case-by-case inquiries, rejecting "resolution by any semantic cataloguing." n71 Similarly, the fact that other public nuisance claims have not presented political questions in the past should not preclude such a finding in the climate context. n72 Indeed, the argument for nonjusticiability rests on the notion that climate suits are unique and therefore defy classification among tort precedent. n73

 [\*271] Extending the political question doctrine to a public nuisance allegation would surpass precedent in terms of claim-category application. Yet with respect to the theory behind the doctrine, **such an extension is proper** because cases like American Electric Power would push existing nuisance law to embrace a complex, qualitatively unique phenomenon **that cannot be prudentially adjudicated**. n74 The Supreme Court has never held that torts cannot present political questions, so prudential constitutional principles should similarly apply to them. This Note simply argues that the facts, claims, parties, and relief demanded in this particular mode of litigation should fall under the nonjusticiability umbrella, wherever its limits may lie. n75 The following analysis of Baker invokes the American Electric Power situation specifically for the sake of convenience, but the arguments therein should be read to apply to injunctive climate nuisance claims generally.

[Continues to Footnore]

n75. This Note does not purport to suggest exactly where the line ought to be drawn in applying the political question doctrine to tort claims. A consideration of the potential doctrinal "slippery slope" - where courts might improperly refuse to adjudicate claims solely on the basis of complexity - is beyond the scope of the present discussion.

#### Nuclear war

**Knowles 9** – Acting Assistant Professor, New York University School of Law (Robert, Spring, “American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis Law)

Nonetheless, foreign relations remain special, and courts must treat them differently in one important respect. In the twenty-first century, speed matters, and the executive branch alone possesses the ability to articulate and implement foreign policy quickly. Even non-realists will acknowledge that the international realm is much more susceptible to crisis and emergency than the domestic realm. But speed remains more important even to non-crisis foreign affairs cases. n391 It is true that **the stable nature of American hegemony will prevent truly destabilizing events** from happening without great changes in the geopolitical situation - the sort that occur over decades. The United States will not, for some time, face the same sorts of existential threats as in the past. n392 Nonetheless, in foreign affairs matters, it is only the executive branch that has the capacity successfully to conduct [\*150] treaty negotiations, for example, which depend on adjusting positions quickly. The need for speed is particularly acute in crises. Threats from transnational terrorist groups and loose **nuclear weapons are among the most serious problems** facing the United States today. The United States maintains a "quasi-monopoly on the international use of force," n393 but the rapid pace of change and improvements in weapons technology mean that the executive branch must respond to emergencies long before the courts have an opportunity to weigh in. Even if a court was able to respond quickly enough, it is not clear that we would want courts to adjudicate foreign affairs crises without the deliberation and opportunities for review that are essential aspects of their institutional competence. Therefore, courts should grant a higher level of deference to executive branch determinations in deciding whether to grant a temporary restraining order or a preliminary injunction in foreign affairs matters. Under the super-strong Curtiss-Wright deference scheme, the court should accept the executive branch interpretation unless Congress has specifically addressed the matter and the issue does not fall within the President's textually-specified Article I powers.

#### Human rights credibility is key to leverage democracy in Russia

Hart 9 (Gary, Former U.S. Senator and Scholar in Residence – University of Colorado, et al., “The Century Foundation Working Group on United States Policy Toward Russia”, 4-1, http://www.tcf.org/publications/ internationalaffairs/grouprec.pdf)

The United States can and should encourage Russia’s strengthened adherence to human rights norms, both in competent international fora and on a bilateral basis, as principled advocacy for human rights does not constitute inappropriate interference in the internal competition for political power in Russia. Respect for human rights and the promotion of democratic values have emerged as core tenets of U.S. foreign policy, and no U.S. administration should abandon these principles. They are an integral part of American national identity and Americans rightly insist that their government act in the world accordingly. While the human rights situation in Russia has improved in the past quarter-century relative to longstanding Soviet practice, many Russians—as well as Europe’s human rights institutions—document continuing and growing problems in the authorities’ respect for human rights guaranteed in international law. The Obama administration’s intention to focus on repairing America’s own tarnished international reputation is an essential first step to rebuilding the credibility needed to press a democratic, human rights agenda at a time when Russians increasingly doubt democracy’s ability to address their needs and desires.

#### Global nuclear war

Goodby 2 (James E., Former Fellow – US Institute of Peace, and Piet Buwalda and Dmitriĭ Trenin, A Strategy for Stable Peace: Toward a Euroatlantic Security Community, p. 27-29)

A decade after the Cold War was solemnly buried, there is still no stable peace between Russia and the Western countries. Moreover, from the late 1990s the dynamic of the relationship has taken a negative direc­tion. NATO's expansion to the east, the Kosovo crisis, and the second Chechen war stand out as milestones of the gradual slide toward something alternately described as a "cold peace" and a "new cold war." Frustration is steadily building on both sides. Mutual expecta­tions have been drastically lowered. In the Western world, and in North America in particular, public expectations for Russia and its affairs have plummeted. "Russia fatigue" is widespread in Europe as well. In Russia itself, Western, especially U.S., policies are often described as being aimed at keeping Russia weak and fragmented, with a purpose of subjugating it. It would appear, then, that today is anything but a pro­pitious starting point for an effort to chart the road toward a security community centered on Europe that would include Russia. But such an effort is necessary and should not be delayed. At worst, a Russia that is not properly anchored in a common institu­tional framework with the West can turn into a loose nuclear cannon. If conflicts arise between Russia and its smaller neighbors, the West will not be able to sit them out. And a progressive alienation between Russia and the Western world would have a very negative impact on domestic developments in Russia. Now that the German problem has been solved, the Russian problem looms as potentially Europe's largest. The United States will not be able to ignore Russia's strategic nuclear arsenal, and the European Union can hardly envisage a modi­cum of stability along its eastern periphery unless it finds a formula to co-opt Russia as Europe's reliable associate. RUSSIAN DEMOCRATIZATION In the decade since the demise of the Soviet Union and the commu­nist system, Russia has evolved into a genuinely pluralist society, al­though it is still a very incomplete democracy. To its credit, Russia has a constitution that proclaims separation of powers; it has a work­ing parliament, an executive president, and a nominally independent judiciary. Between 1993 and 2000, three parliamentary and two presi­dential elections were held; for the first time in Russia's long history, transfer of power at the very top occurred peacefully and in accor­dance with a democratic constitution. This is already becoming a pat­tern. Power has been decentralized vertically as well as horizontally. Power monopoly is a thing of the past. Russia's regions have started to form distinct identities. The regional governors, or presidents of re­publics, within Russia are popularly elected, as are city mayors and regional legislatures. The national economy has been largely priva­tized. The media, though not genuinely independent either of the au­thorities or of the various vested interests, are free in principle. There is a large degree of religious freedom, and ideological oppression is nonexistent. Finally, Russians are free to travel abroad. These achievements are significant, and most of them are irre­versible. Yet, Russia's development is handicapped by major hurdles to speedier societal transformation, as is occurring in Poland or Es­tonia. One hurdle is poor governance, stemming from the irresponsi­bility of the elites as much as from sheer incompetence. Toward the end of the Yeltsin era, the state itself appeared privatized, with parts of it serving the interests of various groups or strongmen. Corruption and crime are pervasive. Accustomed to living in an authoritarian state, many Russians began to associate democracy with chaos and thug­gery. Another major problem is widespread poverty and the collapse of the social infrastructure, including health care. Too many Russians believe they have gained little or nothing from the economic and social changes of the past decade. Taken together, these factors work toward the restoration of some form of authoritarian and paternalistic rule.

### DA

#### ( ) No impact

Col. Dr. Frans Osinga, 2007; Royal Netherlands Air Force; “On Boyd, Bin Laden, and Fourth Generation Warfare as String Theory”, From John Olson, ed., On New Wars (Oslo, 2007, forthcoming). Reprinted with permission, 26 June 2007

Conceptually flawed Fourth, and related to the previous observation, conceptually the threat is addressed in a flawed manner. 4GW is guilty of trying to create too much coherence among disparate events, incidents, localized developments and factions. Most criminal, terrorist and insurgent groups actually are very local in their greed, grievances and activities and only use the ‘global insurgency’ as a veneer to gain local traction, wider attraction and legitimacy. Their strategic mobility and aspirations, and the expectation that such groups may all cohere against western states, may well be exaggerated. In addition, 4GW seems to lean heavily on case studies such as Vietnam, Iraq and the IDF-Palestian conflict and extrapolate from that to western states that are in fact not nearly so proximate to areas of instability and are also in contrast quite resilient. There is an obvious danger in that. What applies in Iraq – hardly a modern established stable state – may not apply in the US or Europe, nor is it immediately apparent what the equivalent actors – the terroristcriminal symbiosis of John Robb - are to the various Sunni and Shiite rogues perpetrating the daily atrocities in the streets of Baghdad or the to gangs in Columbia and Nigeria.

####  ( ) They also read no uniqueness ev – probably because their ev is about the status quo

Li 9 – Their Author [Zheyoa Li Winter, 2009 The Georgetown Journal of Law Public Policy 7 Geo. J.L. & Pub. Pol'y 373 “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare” lexis]

D. The Need for Rapid Reaction and Expanded Presidential War Power

By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, **necessitates an evolution** of America's traditional constitutional warmaking scheme.

As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act.44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries."145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."146 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision-making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourth- generational opponents.

#### Syria triggers the DA

**Rothkopf, 9/1/13** – editor of Foreign Policy (David, “Rothkopf: 5 consequences of President Obama's Syria decision” <http://www.newsday.com/opinion/oped/rothkopf-5-consequences-of-president-obama-s-syria-decision-1.5993890>)

3. He's now boxed in for the rest of his term. Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to begin military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider House Speaker John Boehner's statement that Congress will not reconvene before its scheduled Sept. 9 return to Washington. Perhaps more important, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to dial back the imperial presidency than anything his predecessors or Congress have done for decades. 5. America's international standing will likely suffer. As a consequence of all of the above, even if the president "wins" and persuades Congress to support his extremely limited action in Syria, the perception of America as a nimble, forceful actor on the world stage and that its president is a man whose word carries great weight is likely to be diminished. Again, like the shift or hate it, foreign leaders can do the math. Not only is post-Iraq, post-Afghanistan America less inclined to get involved anywhere, but when it comes to the use of U.S. military force (our one indisputable source of superpower strength) we just became a whole lot less likely to act or, in any event, act quickly. Again, good or bad, that is a stance that is likely to figure into the calculus of those who once feared provoking the United States.

#### Limited review doesn’t hurt prez powers, but Congress is key to solve due process

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

America’s war against terrorism has produced myriad challenges to the civil liberties of American citizens: from the warrantless wiretapping program under President Bush to the military detention without trial of Yasir Hamdi to the targeted killing of Anwar al-Awlaki, the rights of American citizens have been tested as never before. If an opportunity exists to clarify and define that balance without unduly interfering with the president’s war powers, it should be taken. But that requires Congress to put aside its traditional reluctance to interfere with the conduct of military campaigns and exercise its own war powers. Unfortunately, Congress does not possess a stellar track record on this issue. Perhaps by using the Hamdi decision to point the way, Congress can be encouraged to step up to define and protect the most elemental right of all – the right not to be killed by one’s government without judicial involvement.

#### The authority is used rarely – under once a year – that’s Somin

#### Plan only alters one case a year

Johnson 13 (Jeh Charles, General Counsel – Pentagon, “A ‘Drone Court’: Some Pros and Cons,” Keynote Address, 3-18, <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>)

Second, a court to review and approve targeted lethal force by the U.S. government away from the “hot battlefield,” but only against a terrorist who is also U.S. citizen, again including in the course of a congressionally-authorized armed conflict conducted by the US military; and

Three, a court to review and approve targeted lethal force by the U.S. government away from any “hot battlefield,” against a terrorist who is a U.S. citizen, but only in instances not part of a congressional-authorized armed conflict conducted by the U.S. military.

Logistically, if this proposed court’s jurisdiction is limited to U.S. citizens, then applications should be very rare, hopefully not even one a year. It is also the case that, as a result of FISA and other things, Article III judges can receive highly sensitive classified information ex parte; in Washington, DC, the infrastructure for doing this already exists.

### AT: Debt Ceiling (Kentucky)

#### 1ac Khodorvsky says the plan bolsters economic leadership – solves the DA impact

Mandelbaum, 5 (Michael, Christian A. Herter professor of American foreign policy at The Johns Hopkins University’s School of Advanced International Studies, The Case For Goliath, p.192-195)

Although the spread of nuclear weapons, with the corresponding increase in the likelihood that a nuclear shot would be fired in anger somewhere in the world, counted as the most serious potential consequence of the abandonment by the United States of its role as the world's government, it was not the only one. In the previous period of American international reticence, the 1920s and 1930s, the global economy suffered serious damage that a more active American role might have mitigated. A twenty-first-century American retreat could have similarly adverse international economic consequences. The economic collapse of the 1930s caused extensive hardship throughout the world and led indirectly to World War II by paving the way for the people who started it to gain power in Germany and Japan. In retrospect, the Great Depression is widely believed to have been caused by a series of errors in public policy that made an economic downturn far worse than it would have been had governments responded to it in appropriate fashion. Since the 1930s, acting on the lessons drawn from that experience by professional economists, governments have taken steps that have helped to prevent a recurrence of the disasters of that decade.5 In the face of reduced demand, for example, governments have increased rather than cut spending. Fiscal and monetary crises have evoked rescue efforts rather than a studied indifference based on the assumption that market forces will readily reestablish a desirable economic equilibrium. In contrast to the widespread practice of the 1930s, political authorities now understand that putting up barriers to imports in an attempt to revive domestic production will in fact worsen economic conditions everywhere. Still, a serious, prolonged failure of the international economy, inflicting the kind of hardship the world experienced in the 1930s (which some Asian countries also suffered as a result of their fiscal crises in the 1990s) does not lie beyond the realm of possibility. Market economies remain subject to cyclical downturns, which public policy can limit but has not found a way to eliminate entirely. Markets also have an inherent tendency to form bubbles, excessive values for particular assets, whether seventeenth century Dutch tulips or twentieth century Japanese real estate and Thai currency, that cause economic harm when the bubble bursts and prices plunge. In responding to these events, governments can make errors. They can act too slowly, or fail to implement the proper policies, or implement improper ones. Moreover, the global economy and the national economies that comprise it, like a living organism, change constantly and sometimes rapidly: Capital flows across sovereign borders, for instance, far more rapidly and in much greater volume in the early twenty-first century than ever before. This means that measures that successfully address economic malfunctions at one time may have less effect at another, just as medical science must cope with the appearance of new strains of influenza against which existing vaccines are not effective. Most importantly, since the Great Depression, an active American international economic role has been crucial both in fortifying the conditions for global economic well-being and in coping with the problems that have occurred, especially periodic recessions and currency crises, by applying the lessons of the past. The absence of such a role could weaken those conditions and aggravate those problems. The overall American role in the world since World War II therefore has something in common with the theme of the Frank Capra film It's a Wonderful Life, in which the angel Clarence, played by Henry Travers, shows James Stewart, playing the bank clerk George Bailey, who believes his existence to have been worthless, how life in his small town of Bedford Falls would have unfolded had he never been born. George Bailey learns that people he knows and loves turn out to be far worse off without him. So it is with the United States and its role as the world's government. Without that role, the world very likely would have been in the past, and would become a less secure and less prosperous place. The abdication by the United States of some or all of the responsibilities for international security that it had come to bear in the first decade of the twenty-first century would deprive the international system of one of its principal safety features, which keeps countries from smashing into each other, as they are historically prone to do. In this sense, a world without America would be the equivalent of a freeway full of cars without brakes. Similarly, should the American government abandon some or all of the ways in which it had, at the dawn of the new century, come to support global economic activity, the world economy would function less effectively and might even suffer a severe and costly breakdown. A world without the United States would in this way resemble a fleet of cars without gasoline.

#### Obama will unilaterally lift it

**Reich, 10/4/13** – professor of econ at UC Berkeley (Robert, “Robert Reich predicts Obama will unilaterally lift debt ceiling rather than allow a U.S. default”

<http://www.straight.com/news/498861/robert-reich-predicts-obama-will-unilaterally-lift-debt-ceiling-rather-allow-us-default>

Georgia Straight: How close do you think the United States is to an Argentina-style default?

Robert Reich: I don’t think the United States is close to that because it’s simply unthinkable. Argentina is one thing. The United States, though, is a central pillar of the global economy. And a default would have cataclysmic consequences for the global economy. Before we got to that point, even if the Republican Party or the Republicans in Congress refused to raise the debt limit, the president, I’m sure, would go along and raise the debt limit, notwithstanding. There is arguable constitutional authority for him to do so. Even if he has to withstand the slings and arrows of angry Republicans, the stakes are simply too high. And the fallout from not raising the debt ceiling would be too onerous.

Georgia Straight: So you don’t anticipate a default happening anytime soon?

Robert Reich: Well, I anticipate us getting up to the brink. I don’t think the president would lightly decide to unilaterally raise the debt ceiling. That means that he will literally be breaking the law. Again, arguably the constitution allows him to do so, if not requires him to do so, under these circumstances. It’s going to be—it could be—a constitutional crisis of sorts. But I don’t think at the end of the day that the president would allow the United States to default on its financial obligations.

#### Econ decline doesn’t cause – best data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. ¶ The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict;

the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40¶ None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### No GOP cave – redistricting and primary challenger fears

**Isenstadt, 10/3/13** (Alex, Politico, “Government shutdown: Why many Republicans have no reason to deal” <http://www.politico.com/story/2013/10/government-shutdown-republicans-deal-97768.html?hp=l23>

The prevailing wisdom ahead of the government shutdown was that tea party lawmakers who agitated for it would fold within a few days, once they got an earful from angry constituents and felt the sting of bad headlines. House GOP leaders called it a “touch the stove” moment for the band of Republican rebels, when ideology would finally meet reality.

But there’s another reality that explains why that thinking may well be wrong, and the country could be in for a protracted standoff: Most of the Republicans digging in have no reason to fear voters will ever punish them for it.

The vast majority of GOP lawmakers are safely ensconced in districts that, based on the voter rolls, would never think of electing a Democrat. Their bigger worry is that someone even more conservative than they are — bankrolled by a cadre of uncompromising conservative groups — might challenge them in a primary.

So from the standpoint of pure political survival, there’s every incentive to keep the government closed in what looks like a futile protest over Obamacare. The latest theory gaining currency in Congress is that it will take a potential default on the nation’s debt in a few weeks to bring the crisis to a head.

#### Capital isn’t key – Obama is staying away

**Hennessey, 10/2/13** (Kathleen, “Obama keeps Congress at arm's-length in government shutdown” Los Angeles Times, [http://www.latimes.com/nation/la-na-government-shutdown-20131003,0,7863294.story](http://www.latimes.com/nation/la-na-government-shutdown-20131003%2C0%2C7863294.story)

As he deals with a standoff that could scramble the politics of his second term, Obama has adopted a new approach to Congress: He is keeping his distance. The shift from hands-on to arm's-length is at the core of the White House strategy, a deliberate change made easier by the nature of the budget stalemate. Republicans are divided over the tactics that led to the first government shutdown in 17 years. Boehner is driving, but tea party conservatives are the GPS. That has allowed White House officials to argue that they have no one with whom to negotiate. Wading into the fracas without an empowered negotiating partner would just leave the president muddied, said a senior administration official, who asked not to be identified to discuss White House strategy. Keeping the president out of the fray comes with risks. Republicans have cast Obama as a leader who has shirked his role. "Though a prolific speechmaker, POTUS has failed his most basic obligation to participate in the process of governing our nation," Rep. Darrell Issa (R-Vista) said in a Twitter statement Wednesday.

#### Obama’s strategy is backfiring – no deal

**Schlapp, 10/4/13** (Mercedes, “Obama’s Dysfunctional Shutdown Strategy” US News,

<http://www.usnews.com/opinion/blogs/mercedes-schlapp/2013/10/04/obamas-shutdown-strategy-ignore-republicans-and-dont-negotiate>

President Barack Obama is acting like the head of the Democratic National Committee rather than the president of all Americans. He seems to forget that the American people voted for a divided government and want Congress and the president to negotiate. The president is taking a huge political risk by choosing to ignore the Republicans in hopes that he can gain political capital in the long run and attempt to diminish the other side. However, his strategy is starting to backfire. President Obama's and the liberal Democrats' refusal to negotiate with the other side is a destructive path. The Democrats believed that by painting the tea party as anarchists and Republicans as hostage takers they could win the fight. However, the Democrats are looking more like the obstructionist party, while the Republicans appear to take on the role of fighting for the people. A White House senior administration official even stated that "we are winning … it doesn't really matter to us" how long the shutdown lasts. With those types of comments, the perception is that the White House does not care, but it does matter to those federal employees who rely on their paychecks and those individuals who depend on government services. With presidential leadership and bipartisan support, we could reach a resolution and a compromise. We are already seeing one-third of the Democrats in the U.S. House of Representatives voting with Republicans to pass the piece-meal spending bills that would reopen the National Parks, the Veterans Administration and fully fund the National Guard, among other measures. The House is voting on back pay for furloughed government workers. So it seems that the House is working while the Senate Democrats and the president cross their arms and do nothing; they are sending the message that it does not matter to them how long the government shutdown lasts. The House Democrats are also being discredited by the Senate Democrats who refuse to support the piecemeal approach. It is all or nothing for the liberals. In the meantime, Washington is lacking the parent in the room to help keep the process moving and resolve the gridlock. Obama needs to rise to the occasion, move beyond party politics and work with Republicans. President Obama's delayed response in meeting with the congressional leaders on the spending bill only exasperated the problem. He took a backseat and relinquished all authority to Congress, knowing that he would refuse to deal with the Republicans. His lack of engagement and unwillingness to move an inch is frustrating and further creates division in an already radioactive and dynamic environment.

#### Obama likes the plan – he won’t fight it

Rosen 13 (Jeffrey, Legal Affairs Editor – New Republic, “A New Idea to Limit Drone Strikes Could Actually Legitimize Them,” New Republic, 2-11, <http://www.newrepublic.com/article/112392/drone-courts-congress-should-exercise-oversight-instead>)

On Sunday, Robert Gates, the former Pentagon chief for Presidents Obama and Bush, endorsed an idea that has been floated by Democratic lawmakers in the wake of John O. Brennan's confirmation hearings to be CIA Director: a drone court that would review the White House’s targeted killings of American citizens linked to al Qaida. The administration has signaled its openness to the idea of a congressionally created drone court, which would be modeled on the secret Foreign Intelligence Surveillance Court that reviews requests for warrants authorizing the surveillance of suspected spies or terrorists. But although senators at the Brennan hearings were rightly concerned about targeted killings operating without any judicial or congressional oversight, the proposed drone court would raise as many constitutional and legal questions as it resolved. And it would give a congressional and judicial stamp of approval to a program whose effectiveness, morality, and constitutionality are open to serious questions. Rather than rushing to create a drone court, Congress would do better to hold hearings about whether targeted drone killings are, in fact, morally, constitutionally, and pragmatically defensible in the first place. From the administration’s perspective, the appeal of a drone court is obvious: Despite the suggestion in the recently released Department of Justice White Paper white paper that the president’s unilateral decisions about targeted killings can’t be reviewed by judges, the administration cites Supreme Court cases that suggest the opposite: namely, that the president’s decision to designate Americans as enemy combatants can only be justified when authorized by Congress, with the possibility of independent judicial review.

#### Obama’s PC is low and decreasing

**Steinhauser, 9/26/13 –** CNN Political Editor (Paul, “Obama's support slips; controversies, sluggish economy cited” <http://www.cnn.com/2013/09/26/politics/cnn-poll-of-polls-obama/?hpt=po_c2>)

As he battles with congressional Republicans over the budget and the debt ceiling, and as a key component of his health care law kicks in, new polling suggests that President Barack Obama's standing among Americans continues to deteriorate. The president's approval rating stands at 45%, according to a CNN average of four national polls conducted over the past week and a half. And a CNN Poll of Polls compiled and released Thursday also indicates that Obama's disapproval rating at 49%. In the afterglow of his re-election and second inauguration, the percentage of those approving of Obama's job performance hovered in the low 50s as the year began, according to CNN Poll of Poll averages. But his numbers slipped to the upper 40s by spring and now have edged down to the mid 40s. At the same time, his disapproval numbers have edged up from the low 40s to right around the 50% mark. Anxiety and skepticism over the Affordable Care Act, better known as Obamacare, continuing concerns over the sluggish economy, and a drop in the president's approval on foreign policy -- once his ace in the hole -- all appear to be contributing to the slide of Obama's general approval rating. "Not a precipitous drop, but more like a continued erosion in the president's numbers," says CNN Chief Political Correspondent Candy Crowley. "The Boston Marathon bombings, Edward Snowden's 'big brother' revelations, the 'non-coup' in Egypt, the 'now we bomb, now we don't' policy in Syria, an economic recovery that remains disappointing, the uncertainty of how/what will change under the new health care system, shall I go on?" "It all adds up to an awful lot of uncertainty and unfairly or not, uncertainty tends to breed lower poll numbers for the guy in charge," added Crowley, anchor of CNN's "State of the Union." Besides being the main indicator of a president's standing with the public, a presidential approval rating is a good gauge of his clout in dealing with Congress. The drop in his numbers comes as the president pushes back against attempts by congressional Republicans to use deadlines to keep the federal government funded and to extend the nation's debt ceiling to try and defund the health care law. A slew of national polls conducted this month indicate that a majority doesn't support shutting down the government in order to defund Obamacare. But if the fight shifts to the debt ceiling, public opinion appears to turn against the president, who reiterated on Thursday that he will not negotiate with the GOP in Congress over extending the debt ceiling.