# 1AC

#### Same as round 3.

# 2AC

## 2AC Topicality

#### We meet---we prohibit TKs without judicial review

#### Ex post is a restriction

ECHR 91,European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

#### Counter-interp---restrictions means limit---we meet

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").¶ P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### We meet---we restrict the war power to assert sovereign immunity AND cause of action is a restriction

Edward Keynes 10, Professor of Political Science at The Pennsylvania State University and has been visiting professor at the universities of Cologne, Kiel, and Marburg. A University of Wisconsin Ph.D., he has been a Fulbright and an Alexander von Humboldt fellow, “Undeclared War: Twilight Zone of Constitutional Power”, Google Books, p. 119-120

Despite numerous cases challenging the President’s authority to initiate and conduct the Vietnam War, the Federal courts exhibited extreme caution in entering this twilight zone of constitutional power. The federal judiciary’s reluctance to decide war-powers controversies reveals a respect for the constitutional separation of powers, an appreciation of the respective constitutional functions of Congress and the President in external affairs, and a sense of judicial self-restraint. Although most Federal courts exercised self-restraint, several courts scaled such procedural barriers as jurisdiction, standing to sue, sovereign immunity, and the political question to address the scope of congressional and presidential power to initiate war and military hostilities without a declaration of war. The latter decisions reveal an appreciation of the constitutional equilibrium upon which the separation of powers and the rule of law rest. Despite judicial caution, several Federal courts entered the political thicket in order to restore the constitutional balance between Congress and the President. Toward the end of the war in Indochina, judicial concern for the rule of law recommended intervention rather than self-restraint.

#### Their authority interp is aff---We meet---cause of action clarifies permissible scope---that’s 1AC Vladeck

#### Counter-interp---war powers authority is OVERALL power over war-making---we meet

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

#### Prefer it

#### Ground---legality is key to advantages against the exec counterplan---total ban affs lose to agent counterplans and reform counterplans

#### Topic education---most nuanced and discussed mechs involve reforms, not bans---reading them on the aff is key to most in-depth debate

#### Precision---key to understanding operation of the law

Sheila Hyatt No Date, Professor of Legal Language @ University of Denver, “Legal Glossary,” http://www.law.du.edu/index.php/law-school-learning-aids/legal-language

Words are the essential tools of the law. In the study of law, language has great importance; cases turn on the meaning that judges ascribe to words, and lawyers must use the right words to effectuate the wishes of their clients. It has been said that you will be learning a new language when you study law, but it’s actually a bit more complicated. There are at least four ways in which you encounter the vocabulary of law.¶ First, and most obvious, you will be learning new words that you probably have not encountered before. These words and phrases have meaning only as legal terms. Words or phrases such as res judicata, impleader, executory interest, demurrer and mens rea,oblige students to acquire some new vocabulary. Learning the meaning of these words is essential to understand any case or discussion which uses them.¶ Second, and a bit more difficult, some recognizable words take on different or new meanings when used in the law. Malice, for example, when used in the law of defamation, does not mean hatred or meanness; it means “with reckless disregard for the truth.” Similarly, “consideration” in contract law, has nothing to do with thoughtfulness; it means something of value given by a party to an agreement. When a party is “prejudiced” in the law it usually means that the party was put at some disadvantage, not that the party is bigoted. “Fixtures” in property law are much more than bathroom and kitchen equipment. There are many words like this in the law, and students must shake loose their ordinary understanding of a word to absorb its legal meaning. Words that have distinct or specialized meanings in the are sometimes called “terms of art.”¶ Third, there are words whose meaning expands, contracts or changes, depending on the context or the place in which it is used. In one context (divorce, for example), a person may be considered a “resident” of a state if she has lived there for 6 months. In another context (getting a driver’s license) a person may be considered a “resident” after just a few days. In one state, a person may be said to “possess” a firearm if it is within his/her reach in an auto. In another state, that person might have to be in control of the firearm to be considered in possession of it. Thus, the same word can have a different meaning depending on what question is being asked, and where it is being asked.¶ Fourth, there are words that have come to signify large bodies of law or legal doctrine, and act as shorthand terms for complex concepts. The terms “unfair competition,” “due process of law,” “foreseeable,” and “cruel and unusual punishment” are a few examples. These terms have been subject to interpretation by judges in many cases over long periods of time, and there is little hope of finding a clear and concise definition that can serve in all contexts.¶ Finally, students need to develop a heightened respect for linguistic precision carefully and precisely. Y. Because the meaning of words is so crucial to the craft of lawyering, students will be expected to use words ou will learn, for example, that there are legally significant differences between “Sally lives in the United States,” “Sally resides in the United States,” “Sally is domiciled in the United States,” and “Sally is a citizen of the United States.” Even grammar and punctuation can be crucial: a person who leaves $50,000 “to each of my children who took care of me,” has a different intention than a person who leaves $50,000 “to each of my children, who took care of me.” The lawyer drafting the will needs to know how to wield that comma, or better yet, how to avoid any confusion in the first place.¶ Once you have learned the legal meanings of words, you are expected to use them with precision. Substituting one for another can result in serious errors and misunderstandings. The legal meanings of words constitute the common language of lawyers and judges, who rely on this language to communicate efficiently and effectively.

#### Core of the topic---they ignore discretionary authority the exec creates by interpreting statute

William G. Howell 11, Sydney Stein Professor in American Politics at the University of Chicago, PhD in political science from Stanford University, “The Future of the War Presidency: the Case of the War Powers Consultation Act,” in The Presidency in the Twenty-first Century, Aug 1 2011, ed. Charles Dunn, google books

But a basic point remains: over the nation’s history, presidents have managed to secure a measure of influence over the doings of government that cannot be found either in a strict reading of the Constitution or in the expressed authority that Congress has delegated. This discretionary influence of presidential power encompasses a major pillar of recent scholarship on the modern presidency. Article II of the Constitution is notoriously vague. As a practical matter, Congress cannot write statutes with enough clarity or detail to keep presidents from reading into them at least some discretionary authority. And for their part, the courts have established as a basic principle of jurisprudence deference to administrative (and by extension presidential) expertise.17 It is little wonder, then, that through ambiguity presidents have managed to radically transform their office, placing it at the very epicenter of U.S. foreign policy.¶ By way of example, consider the mileage that President Bush derived from the 2001 Authorization for the Use of Military Force (AUMF). According to that law, the president was authorized to use all necessary and appropriate force against those nations, organizations, or persons he determined had planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or those that had harbored such organizations, or persons. President Bush cited this language to justify actions ranging from military deployments in Iraq, to the warrantless wiretapping of U.S. citizens to the indefinite detainment of enemy combatants at Guantanamo Bay, to the adoption of “enhanced interrogation techniques,” to the seizure of funds held by charities suspected of supporting terrorist activities. As the Iraq and Afghanistan wars and the war on terror proceeded, the adjoining branches of government looked upon such interpretations with increasing skepticism. But President Bush held steadfast to an expansive reading of the law and the seemingly limitless authority it conferred upon his office. As the U.S. Department of Justice put it, the AUMF “does not lend itself to a narrow reading.” Quite to the contrary: “The AUMF places the President’s authority at its zenith under Youngston.”18

#### Not effects T---immediate and direct effect of the plan RESTRICTS the war powers authority of sovereign immunity

#### Reasonability---competing interps cause a race to the bottom to arbitrarily exclude the aff

## 2AC Executive CP

#### Perm do both

#### Perm do the counterplan

#### Doesn’t solve

#### Normalizing the exception---exec will reverse restraint and grant exceptions---that’s Friedersdorf

#### Groupthink---game theory proves insular decision-making causes abuse and worse errors---that’s Dragu

#### Credibility---only external oversight is perceived as more rigorous verification---key to international precedent---that’s Bashir---ONLY judicial review sends a CREDIBLE SIGNAL of compliance---that’s Holman and Plaw

#### Exec fiat is a voter---aff authors assume the exec WON’T act---no comparative lit kills aff ground and real world education

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

#### Only judicial review offsets cognitive biases and is credible---psychology proves

Cassandra Burke Robertson 12, Associate Professor, Case Western Reserve University School of Law, 2012, “ARTICLE: DUE PROCESS IN THE AMERICAN IDENTITY,” Alabama Law Review, 64 Ala. L. Rev. 255, p. lexis

As a policy matter, offering a heightened level of due process may have positive effects. First, it better accounts for the true costs and benefits of counterterrorism practices, offsetting cognitive biases that affect this calculation. Second, it also likely increases the perceived legitimacy of U.S. government action--at least when such action does not violate individuals' sense of identity. Finally, heightened due process can also reconcile deontological and consequentialist views of due process and preserve the centrality of process in the American identity.¶ Providing a higher level of due process can guard against cognitive biases that cause us to overestimate the risks of events that are catastrophic and outside our direct control--two hallmarks of the terrorist threat. n154 First, the risk of a terrorist strike is perceived as a more short-term and immediate risk than the potential harm to judicial process in the long run, and "in a period of crisis, long-term costs are easily overshadowed by perceived short-term gains." n155 Second, the terrorist threat raises existential fears--it "threatens to change the way we experience our lives, draining meaning from relationships of trust and community, and coloring life with the awful hues of suspicion, intimidation, and fear." n156 Thus, we are predisposed to misjudge the risk of terrorism in a due process calculus, and as a result, "we have all too often" realized only with hindsight that we overestimated the potential emergency "after civil liberties have been sacrificed at the altar of national security." n157 By maintaining and even increasing traditional elements of procedural due process, we may offset [\*285] this cognitive bias to some degree by forcing a more reasoned analysis of long-term risks. n158¶ In addition to guarding against cognitive bias, heightened due process may also increase institutional legitimacy over time. This benefit would not be immediate; nevertheless, as Professor Lawrence Solum has noted, even a consequentialist approach to due process need not confine itself to a calculation of only the most obvious or short-term costs and benefits. n159 Instead, it should account for more far-reaching effects, including political legitimacy. n160 And a respect for procedural justice, in particular, can increase institutional legitimacy; as scholars have noted, "procedural fairness plays a key role in shaping the legitimacy that citizens grant to government authority." n161¶ Institutional legitimacy can have significant value in the fight against terrorism. n162 When institutions have a high level of political legitimacy, they possess "a reservoir of goodwill that allows the institutions of government to go against what people may want at the moment without suffering debilitating consequences." n163 Without this reservoir, governments must spend additional resources to monitor compliance and to create incentives for desired behavior. n164 But with such a reservoir, it is easier to encourage global cooperation in specific counterterrorism initiatives and to foster "the development of international legal norms against terrorism." n165¶ This legitimacy benefit only accrues when procedures comport with identity, however. n166 It has long been noted that fair procedures can improve participants' reactions to decisional outcomes--that is, even when [\*286] those decisions go against them, the existence of fair procedures minimizes people's negative reaction. n167 Recently, however, work in experimental psychology has revealed an exception to this "fair process effect"; namely, when individuals "have their identity violated by a decision outcome," they "will be motivated to find flaws in the procedure to justify being upset about the decision outcome." n168 That is, "if a decision damages a central part of an individual (i.e., one's identity), it is unlikely that providing a voice or having consistent procedures can remedy the situation." n169¶ This "identity violation effect" suggests that in considering whether to increase reliance on traditional mechanisms of judicial due process, we should explicitly consider questions of identity. The recent data on public opinion may indicate that a majority of Americans do not currently feel that counterterrorism policy violates their sense of identity. For some, in fact, extending due process to accused terrorists may violate their sense of self. n170¶ But for that portion of the population who opposes such tactics, the identity violation effect may come into play when considering executive-branch alternatives to judicial process. To the extent that extrajudicial counterterrorism measures violate some individuals' sense of what it means to be American, it may be impossible to persuade them that alternative processes such as military commissions or executive-branch level review of targeted killings offer sufficient protection. Indeed, those who oppose such procedures often frame their objections in terms of identity, suggesting that the identity violation effect is felt at least by a significant minority. n171 Even without a majority, this group can have a significant impact on public policy, especially in influencing others who attach both a "due process" and "strength" meaning to the American identity but who have found the "strength" meaning to be more salient up till now. n172¶ As a policy matter, a legal doctrine of due process will be most robust when it is informed by sociological realities as well as political realities. n173 Due process serves a truth-seeking function and protects against the abuse of governmental power. n174 But it also serves a political role "designed to engage the litigant qua citizen in an important governmental institution for [\*287] deciding rights." n175 This political function can only work effectively if our due process rights conform to our national identity.¶ A fundamental reliance on due process--even to the detriment of competing goals such as access to justice--is woven into the fabric of both American law and American identity. n176 This Article has argued that such considerations already run through the public dialogue regarding counterterrorism policy, albeit often at an unacknowledged and unconscious level. n177 Those implicit considerations should be made explicit and brought to the forefront of public debate.¶ CONCLUSION¶ Due process is a fundamental American value, and it is a value that deserves a role in the national debate over security. Perhaps harkening back to Immanuel Kant, the protagonists in Real Genius responsible for stopping the weapon deployment repeated the catchphrase "It's a moral imperative!" n178 In the debate over due process in the war on terror, however, commentators have frequently merged the moral view with the legal. This blending is understandable; although due process is a legal doctrine with consequentialist roots, it is also a deontological value with a significant place in the American identity.¶ Separating these strands in the public debate on the war on terror can facilitate the conscious consideration of our national identity. In turn, this explicit recognition of the intertwining of identity and policy can create the opportunity to intentionally shape this identity. As Professor (now Legal Adviser to the State Department) Harold Koh has noted, "national identities are not givens, but rather, socially constructed products of learning, knowledge, cultural practices, and ideology." n179 Reinforcing a deontological commitment to an identity founded on the rule of law--and to judicial process as an expression of that commitment--helps to create such a social construction by establishing "a shared cultural belief" that people can "take . . . for granted as a necessary and proper aspect of their [\*288] society." n180 In order to do so, however, we must broaden the discussion beyond the legality of the policies--or even their instrumental value--and move the discussion into an examination of more fundamental questions of who we are as a nation and who we want to be.

#### Not solvency---February memo proves

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

This memo is not a judicial opinion. It was not written by anyone independent of the president. To the contrary, it was written by life-long partisan lackeys: lawyers whose careerist interests depend upon staying in the good graces of Obama and the Democrats, almost certainly Marty Lederman and David Barron. Treating this document as though it confers any authority on Obama is like treating the statements of one's lawyer as a judicial finding or jury verdict.¶ Indeed, recall the primary excuse used to shield Bush officials from prosecution for their crimes of torture and illegal eavesdropping: namely, they got Bush-appointed lawyers in the DOJ to say that their conduct was legal, and therefore, it should be treated as such. This tactic - getting partisan lawyers and underlings of the president to say that the president's conduct is legal - was appropriately treated with scorn when invoked by Bush officials to justify their radical programs. As Digby wrote about Bush officials who pointed to the OLC memos it got its lawyers to issue about torture and eavesdropping, such a practice amounts to:¶ "validating the idea that obscure Justice Department officials can be granted the authority to essentially immunize officials at all levels of the government, from the president down to the lowest field officer, by issuing a secret memo. This is a very important new development in western jurisprudence and one that surely requires more study and consideration. If Richard Nixon and Ronald Reagan had known about this, they could have saved themselves a lot of trouble."¶ Life-long Democratic Party lawyers are not going to oppose the terrorism policies of the president who appointed them. A president can always find underlings and political appointees to endorse whatever he wants to do. That's all this memo is: the by-product of obsequious lawyers telling their Party's leader that he is (of course) free to do exactly that which he wants to do, in exactly the same way that Bush got John Yoo to tell him that torture was not torture, and that even it if were, it was legal.¶ That's why courts, not the president's partisan lawyers, should be making these determinations. But when the ACLU tried to obtain a judicial determination as to whether Obama is actually authorized to assassinate US citizens, the Obama DOJ went to extreme lengths to block the court from ruling on that question. They didn't want independent judges to determine the law. They wanted their own lawyers to do so.¶ That's all this memo is: Obama-loyal appointees telling their leader that he has the authority to do what he wants. But in the warped world of US politics, this - secret memos from partisan lackeys - has replaced judicial review as the means to determine the legality of the president's conduct.

#### Legitimizes violent unilateralism internationally

Ralph Nader 12, consumer advocate, lawyer, and author, Dec 1 2012, “Reining in Obama and His Drones,” http://www.truthdig.com/report/item/reining\_in\_obama\_and\_his\_drones\_20121201/

Critics point out how many times in the past that departments and agencies have put forth misleading or false intelligence, from the Vietnam War to the arguments for invading Iraq, or have missed what they should have predicted such as the fall of the Soviet Union. This legacy of errors and duplicity should restrain presidents who execute, by ordering drone operators to push buttons that target people thousands of miles away, based on secret, so-called intelligence.¶ Mr. Obama wants, in Mr. Fein’s view, to have “his secret and unaccountable predator drone assassinations to become permanent fixtures of the nation’s national security complex.” Were Obama to remember his constitutional law, such actions would have to be constitutionally authorized by Congress and subject to judicial review.¶ With his Attorney General Eric Holder maintaining that there is sufficient due process entirely inside the Executive Branch and without Congressional oversight or judicial review, don’t bet on anything more than a more secret, violent, imperial presidency that shreds the Constitution’s separation of powers and checks and balances.¶ And don’t bet that other countries of similar invasive bent won’t remember this green-light on illegal unilateralism when they catch up with our drone capabilities.

#### Other countries won’t believe us---external verification key

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the national procedures must themselves be sufficiently transparent to international bodies as to permit the latter to make their own assessment of the extent to which the state concerned is in compliance with its obligations. In other words, even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation to countries like Egypt, Libya, and Syria in the context of the Arab Spring of 2011.

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#### Obvi the executive can’t create a cause of action

Eric A. Posner 7, the Kirkland & Ellis Professor of Law, University of Chicago Law School; and Adrian Vermuele, Professor of Law, Harvard Law School, 2007, “The Credible Executive,” https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf

For completeness, we mention that the well-motivated executive might in principle subject himself to legal liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush’s telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas, not domesticto-domestic calls.103 There is widespread suspicion that this claim is false.104 In a recent poll, 26 percent of respondents believed that the National Security Agency listens to their calls.105 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are.

Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domesticto-domestic calls were examined.106 Liability would be strict, because a negligence rule—whether the Agency exerted reasonable efforts to avoid examining the communication—requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and nonnegligent) surveillance of purely domestic communications.

However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court. It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily specified lawsuits.107 Even so, statutory authorization for the president to create the strict liability cause of action would be necessary,108 as we discuss shortly.109 Practically, it is unclear whether government agents can be forced to “internalize costs” through money damages in the way that private parties can, at least if the treasury is paying those damages.110 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.

#### Their politics link is NOT about TKs---just military authority generally

#### Links to politics---makes Obama a lightning rod

Phillip Cooper 97, Prof of Public Administration @ Portland State, Nov 97, “Power tools for an effective and responsible presidency” Administration and Society, Vol. 29, p. Proquest

Interestingly enough, the effort to avoid opposition from Congress or agencies can have the effect of turning the White House itself into a lightning rod. When an administrative agency takes action under its statutory authority and responsibility, its opponents generally focus their conflicts as limited disputes aimed at the agency involved. Where the White House employs an executive order, for example, to shift critical elements of decision making from the agencies to the executive office of the president, the nature of conflict changes and the focus shifts to 1600 Pennsylvania Avenue or at least to the executive office buildings The saga of the OTRA battle with Congress under regulatory review orders and the murky status of the Quayle Commission working in concert with OIRA provides a dramatic case in point.

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#### Links to flex disad

Omar S. Bashir 12, Ph.D. candidate in the Department of Politics at Princeton University and a graduate of the Department of Aeronautics and Astronautics at MIT, 9/24/12, "Who Watches the Drones?" Foreign Affairs,www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones

First, imagine that the government opted for full transparency in its drone programs. That would certainly make the government more accountable, with no special oversight system needed. Officials would release all the necessary information for citizens to assess the ethics of the programs themselves. This would include answers to such questions as: What crimes have targeted individuals allegedly committed? What threats do they pose? Who else might be harmed in a drone attack? How feasible are non-lethal options such as capture? In practice, though, full transparency is neither morally nor strategically ideal. For one, the government has a duty to protect its civilian informants, so there is risk in revealing the government's sources of information. And potential targets could adjust their behaviors were capture proposals to be debated openly. That would make it all the more difficult for the government to use non-lethal options to round up suspects. ¶ So how much transparency is enough? How can citizens know that the state is not overselling the sensitivity of details that it chooses to withhold? This central dilemma has not been resolved. Well-intentioned legal efforts undertaken by the ACLU and others to force openness about the drone program have only led the government to dig in its heels. It refuses to formally declassify even widely known facets of its operations, let alone release new details. The refusal is absurd on the surface, but it fits into an understandable strategy. Washington does not believe that limited declassifications would appease drone skeptics. As Jack Goldsmith, the Harvard law professor, has explained, Washington fears a slippery slope toward full transparency in the courts that might render one of its most potent counterterrorism weapons unusable.

#### Transparency without reform doesn’t solve precedent---investigating wrongful deaths is key

Naureen Shah 13, August 17th, 2013, "Obama has not delivered on May's promise of transparency on drones," The Guardian, www.theguardian.com/commentisfree/2013/aug/17/obama-promise-transparency-drone-killing

Even more damning is that, in the absence of any commitment to investigating credible allegations of unlawful deaths, the United States appears indifferent to the question of who is actually dying in drone strikes. President Obama admitted in May that four US citizens had been killed, three of whom – including 16-year-old Abdulrahman Aal-Awlaki – he admitted were not intended targets. But the president did not define the identities of the more than 4,000 other people killed, or specifically address reports that a significant number of the dead – in assessments varying between 400 and nearly 1,000, according to the Bureau of Investigative Journalism – were civilians.¶ When the president acknowledges four deaths of US citizens, but not 4,000 deaths of non-Americans, he signals to the world a callous and discriminatory disregard for human life. Perhaps only a fraction of these 4,000 deaths were unlawful. But acknowledging and investigating these deaths is a matter of dignity and justice – for the survivors of strikes, their communities and their countrymen.¶ When deaths are found to be unlawful, victims' families and survivors have a right to reparation. Refusing to investigate deaths is a matter of disrespect both for international law and for the public's right to know the full truth.¶ Many critics, before President Obama's May address, feared that foreign governments would follow the US to lead and conduct secret drone strikes without regard for international law. They should still be concerned about the precedent the US government is setting: refusing to investigate or be held accountable for wrongful deaths.¶ The risk now is not just that the late May reforms on drone strikes were half-measures, but that they were calibrated to merely reassure the public, defuse criticism, and avert longer, harder scrutiny of whether the government's actions are lawful and right. A token dose of transparency may remove the sting of government secrecy, but it does not cure the disease.

#### Won’t fully disclose---proven by last memo

Ron Fournier 13, editorial director of the National Journal, February 21st, 2013, "The Credibility Gap: Shading the Truth Has Consequences," National Journal, www.nationaljournal.com/politics/the-credibility-gap-shading-the-truth-has-consequences-20130221

Drone warfare: After the leak of an unclassified Justice Department white paper justifying “targeted killings” of terrorist suspects, including U.S. citizens, Obama promised to share classified details with Congress. That pledge helped quiet critics of drone warfare and White House secrecy.¶ But lawmakers on the Intelligence committees were granted only brief access to the documents. Their lawyers and staff weren’t allowed to see the memos at all — a condition the White House knew would limit Congress’s oversight abilities.¶ “I recognize that in our democracy, no one should just take my word that we’re doing this the right way,” Obama said in his Feb. 12 State of the Union address. “So, in the months ahead, I will continue to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and the system of checks and balances, but that our efforts are even more transparent to the American people and the world.”¶ And yet, The New York Times reported Thursday that the White House is still refusing to share the legal opinions fully with Congress. Rather than keep his word, Obama’s team is negotiating with Republicans to provide more information on the deadly assault last year on the U.S. diplomatic compound in Benghazi, Libya, The Times reported.¶ The apparent White House goal: Use Republicans’ obsession with Benghazi to keep drone warfare tactics under wraps. Obama’s team doesn’t want John Brennan’s confirmation as CIA director to be tied up in the fight over drone documents. It’s a cynical strategy that might work with the acquiescence of the same Democratic senators who publicly denounced Obama for his secrecy over drone warfare.

## 2AC Flex DA

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

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#### Plan solves kick-out

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 ¶ This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets.¶ According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

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#### Restrictions inevitable---the aff prevents haphazard ones which are worse

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several

#### The aff is key middle ground---total flex causes worse decision-making in crises

Deborah N. Pearlstein 9, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained **by protocols or plans-may be** systematically more prone to error **than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance**.¶ **Examples of excessive flexibility producing adverse consequences are ample**. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors **replacing those rules with more than the most general guidance about custodial intelligence collection.** available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or **consider the widespread abuse of prisoners at U.S. detention facilities such as** Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, **investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without** n205 As one Army General later investigating the abuses noted: "**By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved**." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But **such findings should at least** call into question the inclination to simply maximize flexibility **and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise**. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid **before transcendent priorities are overridden.**

#### Oversight stops arbitrariness, not flex

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Concerted efforts to shirk and deflect responsibility, moreover, provide an illuminating context in which to reconsider Vice President Dick Cheney's mantra, "The risks of inaction are far greater than the risk of action." n41 The risks of inaction, in Cheney's worldview, are the risks of being "strangled by law," n42 in Jack Goldsmith's phrase, of being hamstrung by due process of law and constitutional checks and balances. Cheney's warnings about the hazards of failing to act, therefore, suggest that the metaphor of a tradeoff between liberty and security is not as anti-dogmatic and anti-hysterical as one might have initially thought. Behind the associated images of balances and scales, we find in fact that a spurious urgency is being invoked to justify a psychological or ideological unwillingness to submit proposed policies to a nonpartisan and professionally conducted cost-benefit analysis. This is the ultimate paradox of the anti-liberal approach to national security. The misleading hypothesis of a tradeoff between liberty and security has been used, surreptitiously, to prevent the application of cost-benefit thinking to alternative proposals for managing [\*321] the risk of terrorism, including nuclear terrorism.¶ Cheney's maxim about the risks of inaction escapes being false only by being meaningless. Given the scarcity of resources, every action is an inaction; heightening security in one respect opens up security vulnerabilities along other dimensions. For example, assigning the majority of the CIA's Arabic speakers to Iraq means withdrawing them from other missions; if the attention of high-level officials is devoted to one problem, it will not be devoted to another.¶ And here is another familiar example. American intelligence agencies reportedly hesitate to hire native Farsi-or Pashto-or Arabic-speaking agents because the best-qualified candidates have relatives in Muslim countries, where reliable background checks are difficult to carry out. n43 This is a serious problem because only CIA and FBI agents fluent in these languages are capable of recruiting and handling informants. n44 This example, too, illustrates that the real tradeoffs in the war on terror do not involve a sacrifice of liberty for security, but rather a willingness to increase one risk in order to reduce another risk. In this case, American intelligence has to run the risk of hiring compromised personnel n45 in order to reduce the risk of failing to understand the enemy. The tradeoffs necessary in the war on terror, as I have been arguing, almost always involve this sort of gamble. The question is: who has the right to choose the set of security risks that we, as a country, would be better off running?¶ Policymakers misunderstand worst-case reasoning when they use it to hide from themselves and others the opportunity costs of their risky choices. The commission of this elementary fallacy by Vice President Cheney and other architects of the U.S. response to 9/11 has been extensively documented by Ron Suskind. n46 Allocating national-security resources without paying attention to opportunity costs is equivalent to spending binges under soft budget constraints, an arrangement notorious for its unwelcome consequences. One cannot reasonably multiply "the magnitude of possible harm from an attack" (for example, a nuclear sneak attack by al Qaeda using WMD supplied by Saddam Hussein) by the low "probability of such an attack" n47 and then conclude that one must act immediately to preempt that remote threat without [\*322] first scanning the horizon and inquiring about other low-probability catastrophic events that are equally likely to occur. One cannot say that a one-percent possibility of a terrifying Saddam-Osama WMD handoff justifies placing seventy percent of our national-security assets in Iraq. But this seems to be how the Bush administration actually "reasoned," perhaps because of its go-it-alone fantasies, as if scarce resources were not a problem. Or, perhaps those responsible for national security during the Bush years succumbed to commission bias, namely, the overpowering feeling, in the wake of a devastating attack, that inaction is intolerable. This uncontrollable urge to act is often experienced in emergencies, namely, in situations where decision makers need to do something but do not know what to do.¶ Among President Bush's many unfortunate bequests to President Obama is the desperate "readiness" problem that afflicts the American military, overstretched in Iraq and Afghanistan and therefore unprepared to meet a third crisis elsewhere in the world. This problem was a direct result of the Bush administration's failure to take scarcity of resources and opportunity costs into account. What secret and unaccountable executive action made possible, it turns out, was not flexible adaptation to the demands of the situation but rather profligacy, arbitrariness and a failure to set priorities in a semi-rational way. Defenders of the half-truth that the capacity to adapt is increased when rules are bent or broken seem to have a weak grasp of the elementary distinction between flexibility and arbitrariness.¶ The Founders, by contrast, understood quite well the difference between the flexible and the arbitrary. The ground rules for decision making that they built into the American constitutional structure were meant to maximize the first while minimizing the second. From their perspective, therefore, the question "Can there be too much power to fight terrorism?" is poorly formulated. The right question to ask is: can there be too much arbitrary executive action in the United States' armed struggle with al Qaeda, potentially wasting scarce resources that could be more usefully deployed in another way? And the answer to this second question is obviously "yes."

#### Aff still allows rapid response to crises---insularity causes worse decisions

Deborah N. Pearlstein 9, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

2. Unity and Insularity¶ As the new functionalists correctly anticipate, organization theorists have also recognized that strict bureaucratic control, intense socialization, and a highly developed sense of organizational culture can not only make rapid action possible**, but also ensure adherence to an identified, overarching priority**. n211 Indeed, it follows from the prior section that if formal rules and training are important, some significant level of control is absolutely necessary lest one risk effective top-down compliance.¶ At the same time, however, **institutions such as the military (and arguably aspects of the intel**ligence **community) that are defined by such insular organizational cultures have some** important disadvantages. n212 The exceptional degree of control such organizations exercise over their members has been used both to advance an organization's official goals, and to pursue the more self- serving or alternative goals of its leaders. **Members' intense organizational loyalty can foster** excessive secrecy and disdain for outside expertise**,** inhibiting the flow of information **both within and from outside the institution, and skewing attention to organizational priorities.** n213 **Especially when coupled with political incentives that impact governmental organizations, such features can** limit the institution's ability to take corrective action **or learn from past organizational mistakes**. n214¶ The post-9/11 context is rife with examples of such pathologies in organizations responsible for counterterrorism operations. Consider the U.S. response to the anthrax mailings of late 2001, which came at a time of already heightened vigilance against terrorist attack. After federal [\*1609] investigators concluded that the anthrax attacks were most likely launched by "U.S. nationals, almost certainly ones with experience in and access to the U.S. biodefense program and its facilities," and after they discovered that major U.S. biodefense facilities had been working with anthrax (including weapons-grade powder) for decades, military and intelligence agencies continued to withhold critical information from other federal agencies about the facilities and employees involved in such programs. This hamstrung post-attack efforts to identify the likely source of the attack, and therefore the likelihood of subsequent additional attacks from the same source. n215¶ Such behavior echoes that described by **the 9/11 Commission investigators studying the September 11th attacks** **themselves.** n216 Among other things, investigators concluded that one of the key problems leading to the failure to avert the attacks (despite increasingly alarming warnings) was the dearth of information sharing inside the intelligence and security communities. n217 Information was overly compartmentalized, "stove-piped" to too few decisionmakers, hidden by one executive agency from another and by one branch of government from another, and limited in its relevance and accuracy from an absence of oversight and competing analysis. n218 Such findings also emerge from studies of the generally effective Japanese response to the sarin gas attacks on the Tokyo subway system. Essential to the Japanese government's response was "a willingness to prioritize cooperation over interagency or intergovernment competition." n219 In all of these cases, it may well be that such behavior could be addressed by different incentive structures. But in the absence of such guidance, it was the organizations instinctive (and structural) insularity that prevailed.¶ The counterproductive effect of such pathologies can infect more than just real- time responsiveness; it inhibits error correction over time-a [\*1610] feature that theorists identify as central in explaining the success of those organizations that have operated effectively in chronically unpredictable environments. n220 In the nuclear safety context, for example, Scott Sagan showed that Americans had been at **greater risk than once thought from accidents involving the U.S. nuclear weapons** arsenal-threats ranging from pilot error, malfunctioning computer warnings, the miscalculation of an individual officer, and a host of other seemingly inconceivable mistakes n221 -in part because actors at every organizational level had incentives to cover up safety problems, "in order to protect the reputation of the institution." n222 While it was perhaps "not surprising that the military commands that are responsible for controlling nuclear forces would create a veil of safety to manage their image in front of the [P]resident, the Congress, and the public," Sagan found that concern for the effect of revealing mistakes skewed assessments at all levels, "influenc[ing] the reporting of near-accidents by operators, the beliefs of organizational historians about what is acceptable to record, and the public interpretation of events by senior authorities." n223 Particularly in operations where failure, when it does occur, can come at an extraordinarily high price, there is a premium on gaining (and implementing) as much insight as possible from those failures that do occur. n224¶ One finds a strikingly similar pattern in the conduct of organizations responsible for the detentions at Abu Ghraib, where organizational loyalty and a cultural disinclination to share negative information conspired to prevent the correction of systemic error. n225 In some cases, soldiers reported direct pressure to withhold unfavorable information. n226 More generally, investigators found agreement among commanders and enlisted personnel at Abu Ghraib that the early reports by outside monitors of [\*1611] serious abuses by soldiers at the facility were simply impossible to believe. n227 As General Fay's later investigation found:¶ Within this investigation's timeframe, . . . the [independent International Committee of the Red Cross (ICRC)] visited Abu Ghraib three times, notifying [the joint task force in charge] twice of their visit results, describing serious violations of international Humanitarian Law and of the Geneva Conventions. In spite of the ICRC's role as independent observers, there seemed to be a consensus among personnel at Abu Ghraib that the allegations were not true. Neither the leadership, nor [the joint task force in charge] made any attempt to verify the allegations. n228

#### Special expertise doesn’t apply to ex post

Ahmad Chehab 11, Georgetown University Law Center Spring, 2011 Wayne Law Review 57 Wayne L. Rev. 335, “THE BUSH AND OBAMA ADMINISTRATIONS' INVOCATION OF THE STATE SECRET PRIVILEGE IN NATIONAL SECURITY LITIGATION: A PROPOSAL FOR ROBUST JUDICIAL REVIEW,” lexis nexis

Part IV proposes several possible methods of examining the reliability and merit of SSP usage in national security litigation. Steering clear of the overly deferential approach often afforded to presidential invocations of purported privilege, this Note argues for a judicial balancing test that affords greater consideration to the interests of the plaintiffs. The central argument is that the SSP should not be able to shield constitutionally troubling presidential actions from public accountability and judicial redress. n40 Federal judges should not assume that the Executive Branch holds an advantage over the judiciary with respect to information access; the possibility that information can be passed through to the judge, combined with the potential for new information to emerge in the adversarial process, renders this inquiry manageable in many if not most instances. Special expertise is more likely to matter in the context of predictive policy or political strategic decisions than in the context of retrospective fact-finding adjudication, which is often the context in which national security litigation appears. In litigation in which the SSP is invoked, federal courts are often called on to adjudicate how a specific governmental policy that is widely acknowledged to exist has resulted in some sort of concrete damage toward a particular litigant or class of litigants.

## 2AC Immigration DA

#### No prolif impact

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\*cites Jacques Hymans, USC Associate Professor of IR\*\*\*

I I I . LESSONS FROM HISTOR Y Concerns over “regional proliferation chains,” “falling nuclear dominos” and “nuclear tipping points” are nothing new; indeed, reactive proliferation fears date back to the dawn of the nuclear age.14 Warnings of an inevitable deluge of proliferation were commonplace from the 1950s to the 1970s, resurfaced during the discussion of “rogue states” in the 1990s and became even more ominous after 9/11.15 In 2004, for example, Mitchell Reiss warned that “in ways both fast and slow, we may very soon be approaching a nuclear ‘tipping point,’ where many countries may decide to acquire nuclear arsenals on short notice, thereby triggering a proliferation epidemic.” Given the presumed fragility of the nuclear nonproliferation regime and the ready supply of nuclear expertise, technology and material, Reiss argued, “a single new entrant into the nuclear club could catalyze similar responses by others in the region, with the Middle East and Northeast Asia the most likely candidates.”16 Nevertheless, predictions of inevitable proliferation cascades have historically proven false (see The Proliferation Cascade Myth text box). In the six decades since atomic weapons were first developed, nuclear restraint has proven far more common than nuclear proliferation, and cases of reactive proliferation have been exceedingly rare. Moreover, most countries that have started down the nuclear path have found the road more difficult than imagined, both technologically and bureaucratically, leading the majority of nuclear-weapons aspirants to reverse course. Thus, despite frequent warnings of an unstoppable “nuclear express,”17 William Potter and Gaukhar Mukhatzhanova astutely note that the “train to date has been slow to pick up steam, has made fewer stops than anticipated, and usually has arrived much later than expected.”18 None of this means that additional proliferation in response to Iran’s nuclear ambitions is inconceivable, but the empirical record does suggest that regional chain reactions are not inevitable. Instead, only certain countries are candidates for reactive proliferation. Determining the risk that any given country in the Middle East will proliferate in response to Iranian nuclearization requires an assessment of the incentives and disincentives for acquiring a nuclear deterrent, the technical and bureaucratic constraints and the available strategic alternatives. Incentives and Disincentives to Proliferate Security considerations, status and reputational concerns and the prospect of sanctions combine to shape the incentives and disincentives for states to pursue nuclear weapons. Analysts predicting proliferation cascades tend to emphasize the incentives for reactive proliferation while ignoring or downplaying the disincentives. Yet, as it turns out, instances of nuclear proliferation (including reactive proliferation) have been so rare because going down this road often risks insecurity, reputational damage and economic costs that outweigh the potential benefits.19 Security and regime survival are especially important motivations driving state decisions to proliferate. All else being equal, if a state’s leadership believes that a nuclear deterrent is required to address an acute security challenge, proliferation is more likely.20 Countries in conflict-prone neighborhoods facing an “enduring rival”– especially countries with inferior conventional military capabilities vis-à-vis their opponents or those that face an adversary that possesses or is seeking nuclear weapons – may be particularly prone to seeking a nuclear deterrent to avert aggression.21 A recent quantitative study by Philipp Bleek, for example, found that security threats, as measured by the frequency and intensity of conventional militarized disputes, were highly correlated with decisions to launch nuclear weapons programs and eventually acquire the bomb.22 The Proliferation Cascade Myth Despite repeated warnings since the dawn of the nuclear age of an inevitable deluge of nuclear proliferation, such fears have thus far proven largely unfounded. Historically, nuclear restraint is the rule, not the exception – and the degree of restraint has actually increased over time. In the first two decades of the nuclear age, five nuclear-weapons states emerged: the United States (1945), the Soviet Union (1949), the United Kingdom (1952), France (1960) and China (1964). However, in the nearly 50 years since China developed nuclear weapons, only four additional countries have entered (and remained in) the nuclear club: Israel (allegedly in 1967), India (“peaceful” nuclear test in 1974, acquisition in late-1980s, test in 1998), Pakistan (acquisition in late-1980s, test in 1998) and North Korea (test in 2006).23 This significant slowdown in the pace of proliferation occurred despite the widespread dissemination of nuclear know-how and the fact that the number of states with the technical and industrial capability to pursue nuclear weapons programs has significantly increased over time.24 Moreover, in the past 20 years, several states have either given up their nuclear weapons (South Africa and the Soviet successor states Belarus, Kazakhstan and Ukraine) or ended their highly developed nuclear weapons programs (e.g., Argentina, Brazil and Libya).25 Indeed, by one estimate, 37 countries have pursued nuclear programs with possible weaponsrelated dimensions since 1945, yet the overwhelming number chose to abandon these activities before they produced a bomb. Over time, the number of nuclear reversals has grown while the number of states initiating programs with possible military dimensions has markedly declined.26 Furthermore – especially since the Nuclear Non-Proliferation Treaty (NPT) went into force in 1970 – reactive proliferation has been exceedingly rare. The NPT has near-universal membership among the community of nations; only India, Israel, Pakistan and North Korea currently stand outside the treaty. Yet the actual and suspected acquisition of nuclear weapons by these outliers has not triggered widespread reactive proliferation in their respective neighborhoods. Pakistan followed India into the nuclear club, and the two have engaged in a vigorous arms race, but Pakistani nuclearization did not spark additional South Asian states to acquire nuclear weapons. Similarly, the North Korean bomb did not lead South Korea, Japan or other regional states to follow suit.27 In the Middle East, no country has successfully built a nuclear weapon in the four decades since Israel allegedly built its first nuclear weapons. Egypt took initial steps toward nuclearization in the 1950s and then expanded these efforts in the late 1960s and 1970s in response to Israel’s presumed capabilities. However, Cairo then ratified the NPT in 1981 and abandoned its program.28 Libya, Iraq and Iran all pursued nuclear weapons capabilities, but only Iran’s program persists and none of these states initiated their efforts primarily as a defensive response to Israel’s presumed arsenal.29 Sometime in the 2000s, Syria also appears to have initiated nuclear activities with possible military dimensions, including construction of a covert nuclear reactor near al-Kibar, likely enabled by North Korean assistance.30 (An Israeli airstrike destroyed the facility in 2007.31) The motivations for Syria’s activities remain murky, but the nearly 40-year lag between Israel’s alleged development of the bomb and Syria’s actions suggests that reactive proliferation was not the most likely cause. Finally, even countries that start on the nuclear path have found it very difficult, and exceedingly time consuming, to reach the end. Of the 10 countries that launched nuclear weapons projects after 1970, only three (Pakistan, North Korea and South Africa) succeeded; one (Iran) remains in progress, and the rest failed or were reversed.32 The successful projects have also generally needed much more time than expected to finish. According to Jacques Hymans, the average time required to complete a nuclear weapons program has increased from seven years prior to 1970 to about 17 years after 1970, even as the hardware, knowledge and industrial base required for proliferation has expanded to more and more countries.33 Yet throughout the nuclear age, many states with potential security incentives to develop nuclear weapons have nevertheless abstained from doing so.34 Moreover, contrary to common expectations, recent statistical research shows that states with an enduring rival that possesses or is pursuing nuclear weapons are not more likely than other states to launch nuclear weapons programs or go all the way to acquiring the bomb, although they do seem more likely to explore nuclear weapons options.35 This suggests that a rival’s acquisition of nuclear weapons does not inevitably drive proliferation decisions. One reason that reactive proliferation is not an automatic response to a rival’s acquisition of nuclear arms is the fact that security calculations can cut in both directions. Nuclear weapons might deter outside threats, but leaders have to weigh these potential gains against the possibility that seeking nuclear weapons would make the country or regime less secure by triggering a regional arms race or a preventive attack by outside powers. Countries also have to consider the possibility that pursuing nuclear weapons will produce strains in strategic relationships with key allies and security patrons. If a state’s leaders conclude that their overall security would decrease by building a bomb, they are not likely to do so.36 Moreover, although security considerations are often central, they are rarely sufficient to motivate states to develop nuclear weapons. Scholars have noted the importance of other factors, most notably the perceived effects of nuclear weapons on a country’s relative status and influence.37 Empirically, the most highly motivated states seem to be those with leaders that simultaneously believe a nuclear deterrent is essential to counter an existential threat and view nuclear weapons as crucial for maintaining or enhancing their international status and influence. Leaders that see their country as naturally at odds with, and naturally equal or superior to, a threatening external foe appear to be especially prone to pursuing nuclear weapons.38 Thus, as Jacques Hymans argues, extreme levels of fear and pride often “combine to produce a very strong tendency to reach for the bomb.”39 Yet here too, leaders contemplating acquiring nuclear weapons have to balance the possible increase to their prestige and influence against the normative and reputational costs associated with violating the Nuclear Non-Proliferation Treaty (NPT). If a country’s leaders fully embrace the principles and norms embodied in the NPT, highly value positive diplomatic relations with Western countries and see membership in the “community of nations” as central to their national interests and identity, they are likely to worry that developing nuclear weapons would damage (rather than bolster) their reputation and influence, and thus they will be less likely to go for the bomb.40 In contrast, countries with regimes or ruling coalitions that embrace an ideology that rejects the Western dominated international order and prioritizes national self-reliance and autonomy from outside interference seem more inclined toward proliferation regardless of whether they are signatories to the NPT.41 Most countries appear to fall in the former category, whereas only a small number of “rogue” states fit the latter. According to one count, before the NPT went into effect, more than 40 percent of states with the economic resources to pursue nuclear programs with potential military applications did so, and very few renounced those programs. Since the inception of the nonproliferation norm in 1970, however, only 15 percent of economically capable states have started such programs, and nearly 70 percent of all states that had engaged in such activities gave them up.42 The prospect of being targeted with economic sanctions by powerful states is also likely to factor into the decisions of would-be proliferators. Although sanctions alone proved insufficient to dissuade Iraq, North Korea and (thus far) Iran from violating their nonproliferation obligations under the NPT, this does not necessarily indicate that sanctions are irrelevant. A potential proliferator’s vulnerability to sanctions must be considered. All else being equal, the more vulnerable a state’s economy is to external pressure, the less likely it is to pursue nuclear weapons. A comparison of states in East Asia and the Middle East that have pursued nuclear weapons with those that have not done so suggests that countries with economies that are highly integrated into the international economic system – especially those dominated by ruling coalitions that seek further integration – have historically been less inclined to pursue nuclear weapons than those with inward-oriented economies and ruling coalitions.43 A state’s vulnerability to sanctions matters, but so too does the leadership’s assessment regarding the probability that outside powers would actually be willing to impose sanctions. Some would-be proliferators can be easily sanctioned because their exclusion from international economic transactions creates few downsides for sanctioning states. In other instances, however, a state may be so vital to outside powers – economically or geopolitically – that it is unlikely to be sanctioned regardless of NPT violations. Technical and Bureaucratic Constraints In addition to motivation to pursue the bomb, a state must have the technical and bureaucratic wherewithal to do so. This capability is partly a function of wealth. Richer and more industrialized states can develop nuclear weapons more easily than poorer and less industrial ones can; although as Pakistan and North Korea demonstrate, cash-strapped states can sometimes succeed in developing nuclear weapons if they are willing to make enormous sacrifices.44 A country’s technical know-how and the sophistication of its civilian nuclear program also help determine the ease and speed with which it can potentially pursue the bomb. The existence of uranium deposits and related mining activity, civilian nuclear power plants, nuclear research reactors and laboratories and a large cadre of scientists and engineers trained in relevant areas of chemistry and nuclear physics may give a country some “latent” capability to eventually produce nuclear weapons. Mastery of the fuel-cycle – the ability to enrich uranium or produce, separate and reprocess plutonium – is particularly important because this is the essential pathway whereby states can indigenously produce the fissile material required to make a nuclear explosive device.45 States must also possess the bureaucratic capacity and managerial culture to successfully complete a nuclear weapons program. Hymans convincingly argues that many recent would-be proliferators have weak state institutions that permit, or even encourage, rulers to take a coercive, authoritarian management approach to their nuclear programs. This approach, in turn, politicizes and ultimately undermines nuclear projects by gutting the autonomy and professionalism of the very scientists, experts and organizations needed to successfully build the bomb.46 Alternative Sources of Nuclear Deterrence Historically, the availability of credible security guarantees by outside nuclear powers has provided a potential alternative means for acquiring a nuclear deterrent without many of the risks and costs associated with developing an indigenous nuclear weapons capability. As Bruno Tertrais argues, nearly all the states that developed nuclear weapons since 1949 either lacked a strong guarantee from a superpower (India, Pakistan and South Africa) or did not consider the superpower’s protection to be credible (China, France, Israel and North Korea). Many other countries known to have pursued nuclear weapons programs also lacked security guarantees (e.g., Argentina, Brazil, Egypt, Indonesia, Iraq, Libya, Switzerland and Yugoslavia) or thought they were unreliable at the time they embarked on their programs (e.g., Taiwan). In contrast, several potential proliferation candidates appear to have abstained from developing the bomb at least partly because of formal or informal extended deterrence guarantees from the United States (e.g., Australia, Germany, Japan, Norway, South Korea and Sweden).47 All told, a recent quantitative assessment by Bleek finds that security assurances have empirically significantly reduced proliferation proclivity among recipient countries.48 Therefore, if a country perceives that a security guarantee by the United States or another nuclear power is both available and credible, it is less likely to pursue nuclear weapons in reaction to a rival developing them. This option is likely to be particularly attractive to states that lack the indigenous capability to develop nuclear weapons, as well as states that are primarily motivated to acquire a nuclear deterrent by security factors (as opposed to status-related motivations) but are wary of the negative consequences of proliferation.

#### US influence in Latin America resilient and inevitable

Frank O. Mora '13, PhD in international affairs, Director of the Latin American and Caribbean Center and Professor of international relations at FSU AND Patrick Duddy, an American diplomat, formerly United States Ambassador to Venezuela, 5/1/13, "Latin America: Is U.S. influence waning?," http://www.miamiherald.com/2013/05/01/3375160/latin-america-is-us-influence.html#storylink=cpy

Is U.S. influence in Latin America on the wane? It depends how you look at it.¶ As President Obama travels to Mexico and Costa Rica, it’s likely the pundits will once again underscore what some perceive to be the eroding influence of the United States in the Western Hemisphere. Some will point to the decline in foreign aid or the absence of an overarching policy with an inspiring moniker like “Alliance for Progress” or “Enterprise Area of the Americas” as evidence that the United States is failing to embrace the opportunities of a region that is more important to this country than ever.¶ The reality is a lot more complicated. Forty-two percent of all U.S. exports flow to the Western Hemisphere. In many ways, U.S. engagement in the Americas is more pervasive than ever, even if more diffused. That is in part because the peoples of the Western Hemisphere are not waiting for governments to choreograph their interactions.¶ A more-nuanced assessment inevitably will highlight the complex, multidimensional ties between the United States and the rest of the hemisphere. In fact, it may be that we need to change the way we think and talk about the countries of Latin America and the Caribbean. We also need to resist the temptation to embrace overly reductive yardsticks for judging our standing in the hemisphere.¶ As Moises Naim notes in his recent book, The End of Power, there has been an important change in power distribution in the world away from states toward an expanding and increasingly mobile set of actors that are dramatically shaping the nature and scope of global relationships. In Latin America, many of the most substantive and dynamic forms of engagement are occurring in a web of cross-national relationships involving small and large companies, people-to-people contact through student exchanges and social media, travel and migration.¶ Trade and investment remain the most enduring and measurable dimensions of U.S. relations with the region. It is certainly the case that our economic interests alone would justify more U.S. attention to the region. Many observers who worry about declining U.S. influence in this area point to the rise of trade with China and the presence of European companies and investors.¶ While it is true that other countries are important to the economies of Latin America and the Caribbean, it is also still true that the United States is by far the largest and most important economic partner of the region and trade is growing even with those countries with which we do not have free trade agreements.¶ An area of immense importance to regional economies that we often overlook is the exponential growth in travel, tourism and migration. It is commonplace to note the enormous presence of foreign students in the United States but in 2011, according to the Institute of International Education, after Europe, Latin America was the second most popular destination for U.S. university students. Hundreds of thousands of U.S. tourists travel every year to Latin America and the Caribbean helping to support thousands of jobs.¶ From 2006-2011 U.S. non-government organizations, such as churches, think tanks and universities increased the number of partnerships with their regional cohorts by a factor of four. Remittances to Latin America and the Caribbean from the United States totaled $64 billion in 2012. Particularly for the smaller economies of Central America and the Caribbean these flows can sometimes constitute more than 10 percent of gross domestic product.¶ Finally, one should not underestimate the resiliency of U.S. soft power in the region. The power of national reputation, popular culture, values and institutions continues to contribute to U.S. influence in ways that are difficult to measure and impossible to quantify.

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#### Reform fails---changes cause backlog

Murthy 9 Law Firm, “What if CIR Passes? Can USCIS Handle the Increased Workload?”, NewsBrief, 10-30, http://www.murthy.com/news/n\_cirwkl.html

Any type of legalization program will face significant opposition, particularly during an economic downturn. However, given the numbers of individuals possibly eligible, even under a less expansive program, the USCIS must prepare for a potential onslaught of applications if any type of CIR passes and becomes the law. As many MurthyDotCom and MurthyBulletin readers know from personal experience, the USCIS has historically suffered from backlogs and capacity issues. Were such a measure to pass, absent substantial changes, a flood of new applications could pose a significant challenge to the processing capacity of the USCIS. *USCIS Preparing to Expand Rapidly, Should Need Arise* A Reuters blog quoted USCIS spokesman, Bill Wright, as saying, “The agency has been preparing for the advent of any kind of a comprehensive immigration reform, and if that means a surge of applications and operations, we have been working toward that.” USCIS Director, Alejandro Mayorkas, has stated that the goal of the USCIS is to be ready to expand rapidly to handle the increase in applications that would result from CIR. In the past, opponents have used lack of capacity and preparation as an argument against CIR and expansion of eligibility for immigration benefits. *Will CIR Result in Increased or Reduced Backlogs for Others?* Legal immigrants and their employers have concerns about being disadvantaged by any CIR legislation that would provide benefits to undocumented workers. However, true CIR is not limited to these provisions, and would be expected to contain provisions regarding various aspects of legal immigration. CIR certainly will be hotly debated and any proposed legislation will be modified throughout the debate process. As part of the preparations of the USCIS, and in order not to harm those who have already initiated cases under existing law, the USCIS needs to continue to work on backlogs. While significant progress has been made in many areas, and case processing times have been improved greatly, there are still case backlogs that need to be addressed.

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#### No window---healthcare and budget thumps

WSJ 10/17, Peter Nicholas and Carol E. Lee, "Obama's Agenda Faces Rocky Road", 2013, online.wsj.com/news/articles/SB10001424052702303680404579141472200495820

Yet as much as he wants to shift the focus to immigration and the farm bill, Mr. Obama will have trouble pulling it off. His administration is under pressure to fix the operational problems that have bedeviled the new health-care exchanges.¶ The next set of fiscal deadlines, and worries about the next round of the across-the-board spending cuts, scheduled to take effect in mid-January, are likely to overshadow other efforts. That leaves lawmakers with only a narrow window of time to tackle any remotely complex legislation before the 2014 midterm dynamics overtake Washington.¶ Messy internal GOP politics over the farm bill could also complicate lawmakers' efforts to reconcile the different measures passed by the House and Senate.¶ As for immigration, House Republicans have said they plan to consider piecemeal immigration bills, but so far not one has reached the House floor.¶ Rep. Raul Labrador (R., Idaho), a conservative who has urged Republicans to tackle immigration changes, said Wednesday the budget fight would make it harder for GOP leaders to negotiate with the president on immigration.

#### Won’t pass---no compromise, PC doesn’t solve lack of GOP motive

Russell Berman 10-25-2013, “GOP comfortable ignoring Obama pleas for vote on immigration bill,” Hill, http://thehill.com/homenews/house/330527-gop-comfortable-ignoring-obama-pleas-to-move-to-immigration-reform

For President Obama and advocates hoping for a House vote on immigration reform this year, the reality is simple: Fat chance. [Video] Since the shutdown, Obama has repeatedly sought to turn the nation’s focus to immigration reform and pressure Republicans to take up the Senate’s bill, or something similar. But there are no signs that Republicans are feeling any pressure. Speaker John Boehner (R-Ohio) has repeatedly ruled out taking up the comprehensive Senate bill, and senior Republicans say it is unlikely that the party, bruised from its internal battle over the government shutdown, would pivot quickly to an issue that has long rankled conservatives. Rep. Tom Cole (R-Okla.), a leadership ally, told reporters Wednesday there is virtually no chance the party would take up immigration reform before the next round of budget and debt-ceiling fights are settled. While that could happen by December if a budget conference committee strikes an agreement, that fight is more likely to drag on well into 2014: The next deadline for lifting the debt ceiling, for example, is not until Feb. 7. “I don’t even think we’ll get to that point until we get these other problems solved,” Cole said. He said it was unrealistic to expect the House to be able to tackle what he called the “divisive and difficult issue” of immigration when it can barely handle the most basic task of keeping the government’s lights on. “We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while,” Cole said. In a colloquy on the House floor, Minority Whip Steny Hoyer (D-Md.) asked Majority Leader Eric Cantor (R-Va.) to outline the GOP's agenda between now and the end of 2013. Cantor rattled off a handful of issues — finishing a farm bill, energy legislation, more efforts to go after ObamaCare — but immigration reform was notably absent. When Hoyer asked Cantor directly on the House floor for an update on immigration efforts, the majority leader was similarly vague. “There are plenty of bipartisan efforts underway and in discussion between members on both sides of the aisle to try and address what is broken about our immigration system,” Cantor said. “The committees are still working on this issue, and I expect us to move forward this year in trying to address reform and what is broken about our system.” Immigration reform advocates in both parties have long set the end of the year as a soft deadline for enacting an overhaul because of the assumption that it would be impossible to pass such contentious legislation in an election year. Aides say party leaders have not ruled out bringing up immigration reform in the next two months, but there is no current plan to do so. The legislative calendar is also quite limited; because of holidays and recesses, the House is scheduled to be in session for just five weeks for the remainder of the year. In recent weeks, however, some advocates have held out hope that the issue would remain viable for the first few months of 2014, before the midterm congressional campaigns heat up. Democrats and immigration reform activists have long vowed to punish Republicans in 2014 if they stymie reform efforts, and the issue is expected to play prominently in districts with a significant percentage of Hispanic voters next year. With the shutdown having sent the GOP’s approval rating plummeting, Democrats have appealed to Republicans to use immigration reform as a chance to demonstrate to voters that the two parties can work together and that Congress can do more than simply careen from crisis to crisis. “Rather than create problems, let’s prove to the American people that Washington can actually solve some problems,” Obama said Thursday in his latest effort to spur the issue on. But Republicans largely dismiss that line of thinking and say the two-week shutdown damaged what little trust between the GOP and Obama there was at the outset. “There is a sincere desire to get it done, but there is also very little goodwill after the president spent the last two months refusing to work with us,” a House GOP leadership aide said. “In that way, his approach in the fiscal fights was very short-sighted: It made his achieving his real priorities much more difficult.”

#### Not intrinsic---a logical policymaker could do both, key to op cost decision-making.

#### Fiat solves the link--- plan passes without backlash

#### Only constituents matter to GOP

Dan Nowicki 10-25, October 25th, 2013, USA Today, "Pleas from Obama may hinder immigration bill push," www.usatoday.com/story/news/politics/2013/10/25/obama-immigration-bill-partisanship/3188629/

Limited influence Other observers, including two members of the Senate Gang of Eight, suggested that Obama's powers of persuasion probably are limited with many House Republicans. "I think that the Republican Party understands the majority of Americans want this issue resolved," said Sen. John McCain, R-Ariz. "There are many members of Congress that represent districts where the majority do not support immigration reform, and we understand and respect that." John J. "Jack" Pitney Jr., a political scientist at Claremont McKenna College in Southern California, also said rank-and-file House Republicans are more likely to take their cues on immigration reform from their conservative base than national GOP leaders who want to improve the party's image with Latino voters. "For the average House Republican, the No. 1 concern is his or her own district, and most Republicans are not getting much clamor for the liberalization of immigration laws in their own districts," Pitney said. "You can argue that it's in the party's long-term interest to address the issue, but 'long-term interest' doesn't get a vote in primaries and general elections."

#### Obama won’t fight plan

Carlo Munoz 5/23/13, staff writer for defense and national security for the Hill, “Obama seeks to ramp down 9/11-era rules for war on terror,” http://thehill.com/blogs/defcon-hill/policy-and-strategy/301737-obama-seeks-to-ramp-down-911-rules-for-war-on-terror

But Obama argued in his address Thursday at the National Defense University that the law has expanded beyond its intent and should be repealed.¶ "I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF’s mandate," Obama said.¶ Obama argued that unless the 12-year-old rules are rewritten, Congress risked giving future presidents unbound powers.¶ “Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states,” Obama said in arguing for the AUMF’s change.¶ “So I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF’s mandate,” he said. “And I will not sign laws designed to expand this mandate further. Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.”¶ It seems unlikely Congress will approve legislation to change the rules of engagement, however, and it is unclear how hard Obama — already focused on immigration reform and distracted by a trio of controversies — will push on the issue.¶ Some Republicans argued Obama was weakening the U.S. war on terror with his proposals.¶ “I believe we are still in a long, drawn-out conflict with al Qaeda. To somehow argue that al Qaeda is ‘on the run,’ comes from a degree of un-reality to me that is really incredible,” said Sen. John McCain (R-Ariz.).¶ Violent al Qaeda affiliates in Yemen, West Africa, Libya and elsewhere that continue to plot attacks against the United States are proof positive the rules of engagement must remain intact, he said.¶ "To somehow think we can bring the [AUMF] to a complete closure contradicts the reality of the facts on the ground," McCain said. "Al Qaeda will be with us for a long time."¶ A former CIA officer argued the White House simply does not have the political capital to burn in order to get the counterterrorism rules changed.¶ "Congress is not going to allow [Obama] to move" on the rules changes or any of the other initiatives laid out by the president during Thursday's speech, Frederick Fleitz, a former CIA official, told The Hill on Thursday.¶ "I do not think the president is going to spend a lot of political capital on this," said Fleitz, who described Thursday's speech as being geared more toward preserving Obama's foreign policy legacy than actual changes in counterterrorism strategy.

#### Plan’s bipartisan

Peter Weber 13, February 6th, 2013, "Will Congress curb Obama's drone strikes?" The Week, theweek.com/article/index/239716/will-congress-curb-obamas-drone-strikes

Since at least the 9/11 attacks, Congress has been less than confrontational with the White House over presidential powers to conduct war and anti-terrorism operations, to the dismay of civil libertarians. So we had President George W. Bush's warrantless domestic wiretaps retroactively green-lighted by Congress, torture only officially nixed by a change in presidents, and a big ramping-up of lethal drones being used to kill terrorism suspects under President Obama. But Obama's decision to kill at least two Americans working for al Qaeda in Yemen in 2011, and the legal justification that emerged in a leaked white paper (read below) this week, has caused a big, unusual outcry from both the Left and Right. When was the last time lefties Glenn Greenwald, Salon's Joan Walsh, and MSNBC host Ed Shultz were on the same page as conservatives Patrick (Patterico) Frey, Joe Scarborough, and Judge Andrew Napolitano of Fox News? ¶ Some members of Congress "uncomfortable with the Obama administration's use of deadly drones," mostly but not all Democrats, are "looking to limit America's authority to kill suspected terrorists, even U.S. citizens," says Lara Jakes of The Associated Press. The Obama team's justification for carrying out drone strikes relies heavily on a law Congress passed three days after the 9/11 attacks that authorizes the military to use "all necessary and appropriate force" — including drone attacks — against al Qaeda and affiliated terrorist groups.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons (D-Del.) tells the AP. "We are sort of running on the steam that we acquired right after our country was attacked in the most horrific act of terror in U.S. history," agrees Rep. Keith Ellison (D-Minn.). "We have learned much since 9/11, and now it's time to take a more sober look at where we should be with use of force."

#### Won’t pass---shutdown, piecemeal disagreements

Amanda Becker 10-24, Reuters, October 24th, 2013, "Obama presses Republicans to end stalemate on immigration," www.reuters.com/article/2013/10/24/us-usa-obama-immigration-idUSBRE99N1DT20131024

"Let's do it now. Let's not delay. Let's get this done, and let's do it in a bipartisan fashion," Obama said at a White House event that was part of a renewed push he is making on one of his top domestic priorities.¶ But immigration reform remains stalled in the Republican-led House and, if anything, the budget fight that caused a 16-day shutdown of the federal government could add to the struggles facing immigration reform.¶ In one sign of the hurdles, a spokesman for House Speaker John Boehner said the House would not consider any "massive, Obamacare-style legislation," though the spokesman left open the possibility of tackling immigration reform through smaller, piecemeal bills.¶ The comment hinted at the antipathy many Republicans feel toward any initiative associated with Obama's agenda. That antipathy has grown after a budget struggle in which Republicans sought to weaken the 2010 health care law known as "Obamacare."¶ "It's too early to tell, the shutdown battle was too bruising and the dust has to settle; passions and tempers have to decrease," said Republican strategist Ana Navarro, noting that many House Republicans, including leadership, support immigration reform.¶ OBAMACARE TRUMPING IMMIGRATION¶ Still, in the shutdown's aftermath, Boehner and other Republicans have focused almost exclusively on problems in Obamacare's rollout and have said little on immigration reform.¶ Boehner told reporters this week he was "hopeful" immigration reform might be addressed this year but gave no specifics.¶ The Senate in June passed a sweeping measure that would strengthen border security, require employers to verify workers' legal status and create a provisional status for workers as part of a 13-year path to citizenship.¶ House Democrats have introduced a nearly identical bill but it stands almost no chance of passing the Republican-led House.¶ One avenue for moving forward on immigration reform in the House could be to use a series of separate bills on border security and related issues that could be packaged together and form the basis for a compromise with the Senate.¶ House Judiciary Committee Chairman Robert Goodlatte of Virginia is leading that effort. His panel passed four Republican-backed bills over the summer but there has been little recent activity on the issue in the Judiciary Committee.¶ Goodlatte and the House's second-ranking Republican, Representative Eric Cantor of Virginia, are working on a measure to help those brought illegally into the country as children.¶ But there is no date set for introducing such a measure and a chief sponsor has yet to be determined, according to a House aide close to the situation.¶ California Republican Darrell Issa is also drafting a measure that could be released as early as next week.

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## Politics

### No Ag

#### No resource wars

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The Unconvincing Case for ‘‘New Wars’’ ¶ Is the demise of war reversible? In recent years, the metaphor of a new ‘‘Dark Age’’ or ‘‘Middle Ages’’ has flourished. 57 The rise of political Islam, Western policies in the Middle East, the fast development of emerging countries, population growth, and climate change have led to fears of ‘‘civilization,’’ ‘‘resource,’’ and ‘‘environmental’’ wars. We have heard the New Middle Age theme before. In 1973, Italian writer Roberto Vacca famously suggested that mankind was about to enter an era of famine, nuclear war, and civilizational collapse. U.S. economist Robert Heilbroner made the same suggestion one year later. And in 1977, the great Australian political scientist Hedley Bull also heralded such an age. 58 But the case for ‘‘new wars’’ remains as flimsy as it was in the 1970s.¶ Admittedly, there is a stronger role of religion in civil conflicts. The proportion of internal wars with a religious dimension was about 25 percent between 1940 and 1960, but 43 percent in the first years of the 21st century. 59 This may be an effect of the demise of traditional territorial conflict, but as seen above, this has not increased the number or frequency of wars at the global level. Over the past decade, neither Western governments nor Arab/Muslim countries have fallen into the trap of the clash of civilizations into which Osama bin Laden wanted to plunge them. And ‘‘ancestral hatreds’’ are a reductionist and unsatisfactory approach to explaining collective violence. Professor Yahya Sadowski concluded his analysis of post-Cold War crises and wars, The Myth of Global Chaos, by stating, ‘‘most of the conflicts around the world are not rooted in thousands of years of historythey are new and can be concluded as quickly as they started.’’ 60¶ Future resource wars are unlikely. There are fewer and fewer conquest wars. Between the Westphalia peace and the end of World War II, nearly half of conflicts were fought over territory. Since the end of the Cold War, it has been less than 30 percent. 61 The invasion of Kuwaita nationwide bank robberymay go down in history as being the last great resource war. The U.S.-led intervention of 1991 was partly driven by the need to maintain the free flow of oil, but not by the temptation to capture it. (Nor was the 2003 war against Iraq motivated by oil.) As for the current tensions between the two Sudans over oil, they are the remnants of a civil war and an offshoot of a botched secession process, not a desire to control new resources.¶ China’s and India’s energy needs are sometimes seen with apprehension: in light of growing oil and gas scarcity, is there not a risk of military clashes over the control of such resources? This seemingly consensual idea rests on two fallacies. One is that there is such a thing as oil and gas scarcity, a notion challenged by many energy experts. 62 As prices rise, previously untapped reserves and non-conventional hydrocarbons become economically attractive. The other is that spilling blood is a rational way to access resources. As shown by the work of historians and political scientists such as Quincy Wright, the economic rationale for war has always been overstated. And because of globalization, it has become cheaper to buy than to steal. We no longer live in the world of 1941, when fear of lacking oil and raw materials was a key motivation for Japan’s decision to go to war. In an era of liberalizing trade, many natural resources are fungible goods. (Here, Beijing behaves as any other actor: 90 percent of the oil its companies produce outside of China goes to the global market, not to the domestic one.) 63 There may be clashes or conflicts in regions in maritime resource-rich areas such as the South China and East China seas or the Mediterranean, but they will be driven by nationalist passions, not the desperate hunger for hydrocarbons.

### Won’t Pass

Newest ev proves they won’t schedule a vote

Rebecca Leber 10-25, Think Progress, “GOP Congressman: We Can’t Tackle Immigration Because We Can’t Even Keep The Government Open,” http://thinkprogress.org/immigration/2013/10/25/2837481/tom-cole-immigration-reform-incompetent-gop/

House Republicans no longer plan to vote on an immigration reform bill this year. As one prominent Republican congressman explained, it’s unreasonable to expect a party that can’t keep the government open to be able to pass a bill like immigration reform.

The Hill reported that Rep. Tom Cole (R-OK) said he thinks it is unrealistic to pass the “divisive and difficult issue” of reform because it can barely handle the basics of a functioning government.

“I don’t even think we’ll get to that point until we get these other problems solved,” Cole said. “We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while.”

Prior to the shutdown, this Congress was already the least productive in U.S. history. Having passed a little over a dozen bills this year, Congress has yet to even undo the damage caused by sequestration cuts, even as the House repeatedly votes to repeal Obamacare.

Other GOP representatives declared immigration dead, as well, though they blame Obama and not party infighting. Rep. Raul Labrador (R-ID) said Obama would try to “destroy” Republicans with immigration reform and said leadership would be “crazy” to negotiate. Rep. Aaron Schock (R-IL) said Republicans should withhold legislating until they get what they want in budget cuts. to other congressional priorities. “He ain’t gonna get a willing partner in the House until he actually gets serious about … his plan to deal with the debt.”

#### Won’t pass---GOP more partisan than ever and Obama won’t spend PC

Zeke J. Miller 10/24, TIME, "Obama's New Immigration Pivot Isn't About Immigration", 2013, swampland.time.com/2013/10/24/obamas-new-immigration-pivot-isnt-about-immigration/

But privately, administration officials and congressional Democrats admit that they are unlikely to get immigration reform through Congress any time soon. Minutes after Obama spoke, Brendan Buck, a spokesman for Speaker John Boehner released a statement rejecting Obama’s calls for a comprehensive plan. “The House will not consider any massive, Obamacare-style legislation that no one understands,” Buck wrote. “Instead, the House is committed to a common sense, step-by-step approach that gives Americans confidence that reform is done the right way.”¶ Obama has long approached the issue of immigration cautiously, preferring to let congressional Democrats shoulder the burden of trying to push legislation through Congress—a fact that didn’t go unnoticed by activists. Obama has deported illegal immigrants at a faster rate than any other president, quickly approaching 2 million deportations in five years in office. That careful path shifted in 2012 when Obama signed an executive order deferring action for young illegal immigrants, known by advocates as “DREAMers” for the stymied legislation that would grant them a path to citizenship. The poll-tested election-year action helped Obama capture over 70 percent of the national Hispanic vote last November, and quickly after the election Obama made immigration reform a top priority.¶ Earlier this year the conditions were ripe for a compromise. Moderate Republicans, sensing that their party was rushing toward a demographic time bomb, were ready to compromise. Now the situation is entirely different. Some Republican proponents, like Sen. Marco Rubio, have gone quiet. The shutdown and debt limit battle has only emboldened the party’s conservative wing, who are less likely than ever before to embrace a part of the president’s agenda.

### PC Not Key

#### Obama’s involvement wrecks chances of passage---spooks GOP

Brian Bennett 10/24, and Christi Parsons, LA Times "Obama softens tone on immigration reform", 2013, www.latimes.com/nation/la-na-immigration-obama-20131025,0,6755968.story#axzz2ihpoZszR

Outside analysts and advocates say Obama needs to gain support from House Republicans who might be tempted to support immigration reform but are wary of supporting a bill he has embraced. Simply urging the House to pass the Senate bill may antagonize them.¶ "He has zero credibility," said Rep. Mario Diaz-Balart (R-Fla.), who has worked for months on a House bill that would increase border security and make it possible for some immigrants without legal status to pay a penalty and eventually apply for legal status. "If he wants to be helpful on immigration reform, he has to do what he has been doing for the past five years, which is nothing."