### T

#### We meet---plan restricts Presidential authority to construe the legal limits on targeted killing---assassination ban proves

Jonathan Ulrich 5, associate in the International Arbitration Group of White & Case, LLP, JD from the University of Virginia School of Law, “NOTE: The Gloves Were Never On: Defining the President's Authority to Order Targeted Killing in the War Against Terrorism,” 45 Va. J. Int'l L. 1029, lexis

The discretionary authority to construe the limits of the assassination ban remains in the hands of the president. He holds the power, moreover, to amend or revoke the Executive Order, and may do so without publicly disclosing that he has done so; since the Order addresses intelligence activities, any modifications may be classified information. n24 The placement of the prohibition within an executive order, therefore, effectively "guarantees that the authority to order assassination lies with the president alone." n25 Congress has similar authority to revise or repeal the Order - though its failure to do so, when coupled with the three unsuccessful attempts to legislate a ban, may be read as implicit authority for the president to retain targeted killing as a [\*1035] policy option. n26 Indeed, in recent years, there have been some efforts in Congress to lift the ban entirely. n27

#### The authority to authorize without judicial permission is a war powers authority---we restrict it---FISA proves

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

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

#### Restriction means a limit or qualification---it includes conditions

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

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.

#### Restrictions can happen after the fact

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).

#### Ex ante doesn’t solve ground

Jameel Jaffer 13, Director of the ACLU’s Center for Democracy, “Judicial Review of Targeted Killings, 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. ¶ While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. ¶ The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats. ¶ These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. ¶ It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse. ¶ But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. ¶ First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it.

#### Authority is what the president may do not what the president can do

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

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

### T2

#### We meet---war powers authority is the basis for CIA targeted killing

John C. Dehn 13, Senior Fellow at the West Point Center for the Rule of Law at the US Military Academy, former Assistant Prof of Law at the US Military Academy, JD from the University of Oklahoma and LLM from Columbia University, comment on “Is the CIA in the Drone Kill Chain? (Answer: Likely.),” http://opiniojuris.org/2013/03/17/is-the-cia-in-the-drone-kill-chain-answer-likely/

The very text of the AUMF authorizes the President to use military force, interpreted in Hamdi to mean war powers. Those powers undoubtedly include targeting and detaining enemy fighters/belligerents/combatants. Supreme Court precedent permits the use of war powers against citizens when they are part of an enemy armed force. Federal law permits the use of the CIA to engage in a broad range of covert activity, which includes traditional war powers exercised in non-traditional ways. Thus, the CIA may target and kill enemy fighters/belligerents/combatants who are also citizens. Doing so is “lawful” for purposes of the foreign murder statute, just as the Court found with regard to detention despite a general federal criminal prohibition.

#### We meet---the Air Force does the killing, so we only restrict them

Marc Ambinder 13, editor-at-large of The Week and contributing editor at The Atlantic; former White House correspondent for National Journal, chief political consultant for CBS News, and politics editor at The Atlantic, Mar 13 2013, “5 truths about the drone war,” http://theweek.com/article/index/241363/5-truths-about-the-drone-war

2. The CIA does not "fly" drones. It "owns" drones, but the Air Force flies them. The Air Force coordinates (and deconflicts) their use through the CIA's Office of Military Affairs, which is run by an Air Force general. The Air Force performs maintenance on them. The Air Force presses the button that releases the missile. There are no CIA civilians piloting remote controlled air vehicles. The Agency has about 40 unmanned aerial vehicles in its worldwide arsenal, about 30 of which are deployed in the Middle East and Africa. Most of these thingies are equipped with sophisticated surveillance gear. A few of them are modified to launch missiles. The Air Force owns many more "lethal" RPVs, but it uses them in the contiguous battlefield of Afghanistan.

#### War powers authority is the President’s authority to wage war and conduct self defense

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.

#### We meet that

Lawfare no date, Lawfare Document Library, “Legality of U.S. Government’s Targeted Killing Program under Domestic Law,” http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/legality-of-targeted-killing-program-under-u-s-domestic-law/

The U.S. Government (via Eric Holder and Harold Koh) itself has stated that “[i]n response to the attacks perpetrated – and the continuing threat posed – by al Qaeda, the Taliban, and associated forces, Congress has authorized the President to use all necessary and appropriate force against those groups,” thus emphasizing the AUMF as a primary basis for its targeting authority. In addition, Holder asserted, “[t]he Constitution [itself] empowers the President to protect the nation from any imminent threat of violent attack.” Thus, en toto, the USG has asserted several bases of authority for its targeted killing program, namely (according to a leaked DOJ White Paper), “[the President's] constitutional responsibility to protect the country, the inherent right of the United States to national self defense under international law, Congress’s authorization of the use of all necessary and appropriate military force against [al-Qa'ida and associated forces], and the existence of an armed conflict with al-Qa’ida under international law.”

### CP---Concurrent Resolution

#### Counterplan does not have the force of law

American Heritage Dictionary 2k http://www.thefreedictionary.com/concurrent+resolution

A resolution adopted by both houses of a bicameral legislature that does not have the force of law and does not require the signature of the chief executive.

#### Must be statutory---the court won’t infer a cause of action and immunity blocks

Steven Vladeck 13, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, “D RONES AND THE W AR ON T ERROR : W HEN C AN THE U.S. T ARGET A LLEGE D A MERICAN T ERRORISTS O VERSEAS ?” http://www.fas.org/irp/congress/2013\_hr/022713vladeck.pdf

As I mentioned before, there would still be a host of legal doctrines that wou ld likely get in the way of such suits. Just to name a few, there is the present (albeit , in my view , unjustified ) hostility to judicially inferred causes of actions under Bivens ; the state secrets privilege; and sovereign and official immunity doctrine s . But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded), 25 each of these concerns can be overcome by statute — as at least some of them arguably have been in the context of the express damages actions provided for under FISA . 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines ; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that wou ld arise in many — if not most — of these cases, these legal issues would be vitiated . Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the m odel of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation. 27

#### Low link threshold---court defers on immunity unless Congress codifies a different approach

Tony West 12, Assistant Attorney General, and Vincent M. Garvey, Deputy Branch Director, “SUGGESTION OF IMMUNITY SUBMITTED BY THE UNITED STATES OF AMERICA,” Brief submitted to the DC District Court, http://www.state.gov/documents/organization/211934.pdf

4. As the Supreme Court recently explained, however, Congress has not similarly codified standards governing the immunity of foreign officials from suit in our courts. Samantar v. Yousuf, 130 S. Ct. 2278, 2292 (2010) (“Although Congress clearly intended to supersede the common-law regime for claims against foreign states, we find nothing in the statute’s origin or aims to indicate that Congress similarly wanted to codify the law of foreign official immunity.”). Instead, when it codified the principles governing the immunity of foreign states, Congress left in place the practice of judicial deference to Executive Branch immunity determinations with respect to foreign officials. See id. at 2291 (“We have been given no reason to believe that Congress saw as a problem, or wanted to eliminate, the State Department’s role in determinations regarding individual official immunity.”). Thus, the Executive Branch retains its historic authority to determine a foreign official’s immunity from suit, including the immunity of foreign heads of state. See id. at 2284–85 & n.6 (noting the Executive Branch’s role in determining head of state immunity). 5. The doctrine of head of state immunity is well established in customary international law. See Satow’s Guide to Diplomatic Practice 9 (Lord Gore-Booth ed., 5th ed. 1979). In the United States, head of state immunity decisions are made by the Department of State, incident to the Executive Branch’s authority in the field of foreign affairs. The Supreme Court has held that the courts of the United States are bound by suggestions of immunity submitted by the Executive Branch. See Hoffman, 324 U.S. at 35–36; Ex parte Peru, 318 U.S. 578, 588–89 (1943). In Ex parte Peru, in the context of foreign state immunity, the Supreme Court, without further review of the Executive Branch’s immunity determination, declared that the Executive Branch’s suggestion of immunity “must be accepted by the courts as a conclusive determination by the political arm of the Government.” 318 U.S. at 589. After a suggestion of immunity is filed, it is the “court’s duty” to surrender jurisdiction. Id. at 588. The courts’ deference to Executive Branch suggestions of foreign state immunity is compelled by the separation of powers. See, e.g., Spacil v. Crowe, 489 F.2d 614, 619 (5th Cir. 1974).

#### The courts will only rule that there’s a cause of action if that was clearly Congressional intent

Thurgood Marshall 88, Associate Justice of the United States Supreme Court, writing the majority opinion in Thompson v. Thompson, https://bulk.resource.org/courts.gov/c/US/484/484.US.174.86-964.html

In determining whether to infer a private cause of action from a federal statute, our focal point is Congress' intent in enacting the statute. As guides to discerning that intent, we have relied on the four factors set out in Cort v. Ash, 422 U.S. 66, 78, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26 (1975), along with other tools of statutory construction. See Daily Income Fund, Inc. v. Fox, 464 U.S. 523, 535-536, 104 S.Ct. 831, 838, 78 L.Ed.2d 645 (1984); California v. Sierra Club, 451 U.S. 287, 293, 101 S.Ct. 1775, 1779, 68 L.Ed.2d 101 (1981); Touche Ross & Co. v. Redington, 442 U.S. 560, 575-576, 99 S.Ct. 2479, 2488-2489, 61 L.Ed.2d 82 (1979). Our focus on congressional intent does not mean that we require evidence that Members of Congress, in enacting the statute, actually had in mind the creation of a private cause of action. The implied cause of action doctrine would be a virtual dead letter were it limited to correcting drafting errors when Congress simply forgot to codify its evident intention to provide a cause of action. Rather, as an implied cause of action doctrine suggests, "the legislative history of a statute that does not expressly create or deny a private remedy will typically be equally silent or ambiguous on the question." Cannon v. University of Chicago, 441 U.S. 677, 694, 99 S.Ct. 1946, 1956, 60 L.Ed.2d 560 (1979). We therefore have recognized that Congress' "intent may appear implicitly in the language or structure of the statute, or in the circumstances of its enactment." Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 18, 100 S.Ct. 242, 246, 62 L.Ed.2d 146 (1979). The intent of Congress remains the ultimate issue, however, and "unless this congressional intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential predicate for implication of a private remedy simply does not exist." Northwest Airlines, Inc. v. Transport Workers, 451 U.S. 77, 94, 101 S.Ct. 1571, 1582, 67 L.Ed.2d 750 (1981). In this case, the essential predicate for implication of a private remedy plainly does not exist. None of the factors that have guided our inquiry in this difficult area points in favor of inferring a private cause of action. Indeed, the context, language, and legislative history of the PKPA all point sharply away from the remedy petitioner urges us to infer.

#### A concurrent resolution passed after the AUMF won’t prove intent

Jacob Gersen 8, Professor of Law @ Harvard, and Eric Posner, "Soft Law: Lessons from Congressional Practice," Stanford Law Review, 61, http://www.stanfordlawreview.org/sites/default/files/articles/Gersen-Posner.pdf

However, it would be unusual for Congress to issue a resolution expressing its understanding of a statute at the same time that it passes a statute, and we have found no such example.145 In the more usual case, Congress passes a resolution subsequently—later in the same session or during a later session—in response to a supervening event. The question then arises whether this postenactment history should be given weight by courts when interpreting the earlier enactment. For example, in December 2006, President Bush signed the Postal Accountability and Enhancement Act into law and issued a signing statement construing a provision to permit searches of sealed mail in exigent circumstances.146 In January 2007, a Senate Resolution was introduced “[r]eaffirming the constitutional and statutory protections accorded sealed domestic mail.”147 The resolution could be interpreted as an effort to reassert the legislative understanding of the original statute; if so, a court might properly rely on it when interpreting the Postal Accountability and Enhancement Act. ¶ In the sealed mail example, the enactment of the statute, the intervening act (President Bush’s signing statement), and the postenactment soft statute occurred within a few months of each other. Sometimes a good deal more time elapses. For example, in 1983, the House passed a resolution purporting to declare the intent of the 1972 legislature about the breadth of Title IX.148 Here, we might expect a court to be more suspicious about the House’s claim to know the legislative intent of the 1972 Congress, and, in fact, the conventional rule is that courts should give no weight to such resolutions.149 “[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.”150¶ \*\*\*TO FOOTNOTES\*\*\*¶ 149. See William N. Eskridge, Jr., Interpreting Legislative Inaction, 87 MICH. L. REV. 67, 96 (1988) (“Thus, nonbinding resolutions, passed by both Houses of Congress but not presented to the President, are not formally entitled to authoritative weight in statutory interpretation.”); see also John C. Grabow, Congressional Silence and the Search for Legislative Intent: A Venture into “Speculative Unrealities”, 64 B.U. L. REV. 737, 748 (1985) (noting that the Supreme Court has shown great reluctance to give weight to subsequent resolutions for construction of earlier statutes, and discussing the failure of the Grove City College Court even to mention a subsequent concurrent resolution that spoke directly to whether Title IX was program-specific or institution-wide). But see Butler v. U.S. Dep’t of Agric., 826 F.2d 409, 413 n.6 (5th Cir. 1987); see also N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 535 (1982); Cannon v. Univ. of Chi., 441 U.S. 677, 686 n.7 (1979); F.H.E. Oil Co. v. Comm’r, 150 F.2d 857, 858 (1945) (“The Resolution . . . does not make law, or change the law made by a previous Congress or President. . . . As an expression of opinion on a point of law it would . . . be entitled to most respectful consideration by the courts . . . .”).

### CP

#### Accountability DA and turn---they allow continued executive use of targeted killing through special ops which turns the Pakistan advantage by wrecking sovereignty etc---also turns terrorism because the hydra effect outweighs

Gabriella Blum 10, Assistant Professor of Law, Harvard Law School, and Philip Heymann, the James Barr Professor of Law, Harvard Law School, June 27, 2010, “Law and Policy of Targeted Killing,” Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2010/06/Vol-1\_Blum-Heymann\_Final.pdf

An immediate consequence of eliminating leaders of terrorist organizations will sometimes be what may be called the Hydra effect, the rise of more—and more resolute—leaders to replace them. The decapitating of the organization may also invite retaliation by the other members and followers of the organization. Thus, when Israel assassinated Abbas Mussawi, Hezbollah‘s leader in Lebanon, in 1992, a more charismatic and successful leader, Hassan Nassrallah, succeeded Mussawi. The armed group then avenged the assassination of its former leader in two separate attacks, blowing up Israeli and Jewish targets in Buenos Aires, killing over a hundred people and injuring hundreds more.¶ Targeted killing may also interfere with important gathering of critical intelligence. The threat of being targeted will drive current leaders into hiding, making the monitoring of their movements and activities by the counterterrorist forces more difficult. Moreover, if these leaders are found and killed, instead of captured, the counterterrorism forces lose the ability to interrogate them to obtain potentially valuable information about plans, capabilities, or organizational structure.¶ The political message flowing from the use of targeted killings may be harmful to the attacking country’s interest, as it emphasizes the disparity in power between the parties and reinforces popular support for the terrorists, who are seen as a David fighting Goliath. Moreover, by resorting to military force rather than to law enforcement, targeted killings might strengthen the sense of legitimacy of terrorist operations, which are sometimes viewed as the only viable option for the weak to fight against a powerful empire. If collateral damage to civilians accompanies targeted killings, this, too, may bolster support for what seems like the just cause of the terrorists, at the same time as it weakens domestic support for fighting the terrorists.¶ When targeted killing operations are conducted on foreign territory, they run the risk of heightening international tensions between the targeting government and the government in whose territory the operation is conducted. Israel’s relations with Jordan became dangerously strained following the failed attempt in September 1997 in Jordan to assassinate Khaled Mashaal, the leader of Hamas. Indeed, international relations may suffer even where the local government acquiesces in the operation, but the operation fails or harms innocent civilians, bringing the local government under political attack from domestic constituencies (recall the failed attack in Pakistan on Al-Zawahiri that left eighteen civilians dead).¶ Even if there is no collateral damage, targeted killings in another country’s territory threatens to draw criticism from local domestic constituencies against the government, which either acquiesced or was too weak to stop the operation in its territory. Such is the case now in both Pakistan and Yemen, where opposition forces criticize the governments for permitting American armed intervention in their countries.¶ The aggression of targeted killings also runs the risk of spiraling hatred and violence, numbing both sides to the effects of killing and thus continuing the cycle of violence. Each attack invites revenge, each revenge invites further retaliation. Innocent civilians suffer whether they are the intended target of attack or its unintentional collateral consequences.¶ Last but not least, exceptional measures tend to exceed their logic. As in the case of extraordinary detention or interrogation methods, there is a danger of over-using targeted killings, both within and outside of the war on terrorism. A particular danger in this context arises as the killing of a terrorist often proves a simpler operation than protracted legal battles over detention, trial, extradition, and release.

#### Judicial review makes CT effective

Tiberiu Dragu 13, Assistant Prof in the Dept of Politics at NYU, PhD in Poli Sci from Stanford University, and Oliver Board, associate in the Corporate Department of Wachtell, Lipton, Rosen & Katz, former Assistant Prof of Economics at the University of Pittsburgh, D.Phil. in Economics from the University of Oxford, J.D. from NYU School of Law, “On Judicial Review in a Separation of Powers System,” June 3 2013, https://files.nyu.edu/tcd224/public/papers/judicial.pdf

Our analysis has relevance for existing debates on the scope of judicial review in the context of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) governmental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below.¶ First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991).¶ Second, the president, like all elected representatives, is a politician making choices under the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overreaction (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006; Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be necessary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, “it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illustration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011).¶ Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insulated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive decisions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for counterterrorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to design the institutional structure of liberal governments when the social objective is terrorism prevention.

#### Chance of acquiring one is 1 in 3.5 billion

Schneidmiller 9(Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

There is an "almost vanishinglysmall" likelihood that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, *Atomic Obsession*. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see *GSN*, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim**,** which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

### DA---Iran Rd 7

#### Sanctions now---this is THEIR uniqueness ev

Landler and Sanger 11/14 , Mark and David, New York Times, Obama Calls for Patience in Iran Talks, 11/14/13, http://www.nytimes.com/2013/11/15/us/politics/obama-iran.html?\_r=0

Nader Karimi Joni, a political analyst close to the Rouhani administration, said, “It is fair to say that Iran is showing good will, just like the European Union and the United States have done.”¶ Still, experts on Iran cautioned against imputing a political motive to what is fundamentally a technical decision.¶ “It is difficult to decipher political motivation from technological pace,” said Ray Takeyh, a senior fellow at the Council on Foreign Relations. “Having said that, it may be a signal of some sort. Alternatively, Iran has been having difficulty with its machines, so it may be trying to perfect their design and operation. Or a combination of all the above.”¶ The lack of certainty about Iran’s motives lends itself to widely conflicting interpretations of the report’s findings.¶ “They’ve got enough facilities, enough centrifuges, to develop and to complete the fissile material which is at the core of an atomic bomb,” Mr. Netanyahu said Thursday.¶ On Capitol Hill, aides to Republican and Democratic senators dismissed the report. “It simply confirms the concerns that senators already have: There have been no centrifuges removed,” said one. Another added, “They’re closing it down in the morning and opening it up in the afternoon.”¶ On Wednesday, Mr. Kerry and Vice President Joseph R. Biden Jr. met with Senate leaders, who are considering a new set of sanctions that aim to drive Iran’s oil exports to zero. But there was little evidence that the senators were persuaded to delay action.

#### Deterrence solves aggression

Joshi 12—associate fellow at the Royal United Services Institute. Doctoral student at Harvard (Shashank, Nuclear alarmism over Iran is backing us into a corner, 2/21/12, www.guardian.co.uk/commentisfree/2012/feb/21/nuclear-alarmism-iran)’

The first argument, that Iran is too crazy to be deterred, is historically untenable. Stalin's Soviet Union was viewed in exactly the same terms. NSC-68, one of the most famous American intelligence assessments of the cold war, judged Moscow to be "animated by a new fanatic faith, antithetical to our own", aimed at "domination of the Eurasian landmass". That was the year after the Soviets' first nuclear test. Mao Zedong, who was to acquire a bomb shortly thereafter, welcomed a nuclear war in which "imperialism would be razed to the ground, and the whole world would become socialist".¶ Senator Joseph Lieberman last week fumed that "containment might have been viable for the Soviet Union during the cold war, but it's not going to work with the current fanatical Islamist regime in Tehran". Well, fanaticism has pedigree. Stalin and Mao might have been bloodthirsty fanatics, but they were not suicidal. Nor is Mahmoud Ahmadinejad.¶ Last week, two of America's top intelligence officials told a senate hearing two important things. First, any Iranian decision to build a nuclear weapon would be based "on a cost-benefit analysis". Even fanatical theocracies are governed by reason. Second, "Iran is unlikely to initiate or intentionally provoke a conflict". If Iran is deemed to be unlikely to start a conventional war, it's not going to start a nuclear war.¶ And there's a simple reason for this. The area around Tehran contains a fifth of Iran's population, and half of the country's industry. A single Israeli thermonuclear bomb would wipe this out in the blink of an eye. Iran's abhorrent calls to wipe Israel off the map are gestures as empty as Mao's nuclear posturing.

#### No US strike

Anne Applebaum 10**,** Washington Post, “Prepare for war with Iran -- in case Israel strikes”, 2-23, http://www.washingtonpost.com/wp-dyn/content/article/2010/02/22/AR2010022203528.html

Let's be serious for a moment: Barack Obama will not bomb Iran**.** This is not because he is a liberal, or because he is a peacenik, or because he doesn't have the guts to try and "save his presidency" in this time-honored manner, as Daniel Pipes has urged and Sarah Palin said she would like him to do.

The president will not bomb Iran's nuclear installations for precisely **the same reasons** that George W. **Bush did not bomb Iran's nuclear installations:** Because we don't know exactly where they all are, because we don't know whether such a raid could stop the Iranian nuclear program for more than a few months, and because Iran's threatened response -- against Israelis and U.S. troops, via Iranian allies in Iraq, Afghanistan, Palestine and Lebanon -- isn't one we want to cope with at this moment. Nor do we want the higher oil prices that would instantly follow. **No American president** doing a sober calculation **would start a war of choice now**, while U.S. troops are actively engaged on two other fronts, and no American president could expect public support for more than a nanosecond.

#### No arms race

Procida 9—National Intelligence Fellow at the Council on Foreign Relations (Frank, Why an Iranian Nuclear Bomb Is Not the End of the World, 9 June 2009, http://www.foreignaffairs.com/articles/65127/frank-procida/overblown)

Since the advent of the nuclear age, scientists, activists, academics, and politicians have feared that the spread of atomic weapons would prove unstoppable. The rhetoric one hears today regarding the probable reaction of Middle Eastern countries to a nuclear Iran echoes concerns put forth by experts when the Soviet Union, China, and even France got the bomb. Yet the worst-case scenarios rarely came to pass -- Germany and Japan, for instance, remained nonnuclear despite expectations -- and there is no reason to suspect that the Middle East will buck this historical trend. Analysts are particularly concerned about the reactions of countries such as Egypt and Saudi Arabia to an Iranian nuclear program. What they seem to forget is that the Arab world already has been living with a nuclear neighbor, Israel -- a state against which many Arab countries have fought wars and still do not recognize. Still, the Arab world has been unable or unwilling to respond in kind. An Iranian nuclear capability would not threaten these states more, or even as much as, an Israeli weapon. And in terms of prestige and influence, a Persian bomb should not be any more significant to these states than a Jewish one. Furthermore, developing a nuclear weapon is not as simple as flipping a switch. Libya spent close to two decades trying to acquire a nuclear weapon before giving up its program in 2003. Technology has never been the region's strong suit, and even with A. Q. Khan-supplied centrifuge drawings readily available, it would be foolish to expect a rash of nuclear successes in the near future.

#### Negotiations will fail

Lee H. Hamilton 11/15/13, Professor of Practice, Indiana University School of Public and Environmental Affairs; Distinguished Scholar, IU School of Global and International Studies; Director, Center on Congress at Indiana University, "Iran Nuclear Talks Are Bound to Get Tougher," http://www.huffingtonpost.com/lee-h-hamilton/iran-nuclear-talks-are-bo\_b\_4269412.html

¶ So now what?¶ ¶ That's the big question following last weekend's talks in Geneva over curbing Iran's nuclear program. The conversation closed without a deal, dashing the hopes of those here in America and abroad who believed that -- after decades of tension and stalemate -- an agreement over Tehran's atomic ambitions might actually be achievable.¶ ¶ Those high hopes have been quickly replaced by heated accusations over who was ultimately responsible for the failure of the weekend talks to result in a nuclear deal, anger and frustration in Iran and questions about whether the negotiating group in Geneva better known as the P5+1 (the U.S., Russia, China, France, Germany and Britain) left the table in a better or worse bargaining position than when the talks began.¶ ¶ Talks are expected to resume later this month, and I'm here to tell you that they are only bound to get tougher moving forward.¶ ¶ What Iran and the P5+1 are aiming to agree upon is a two-part strategy. The first stage of this strategy would include an interim agreement that would temporarily freeze Iran's nuclear program for as long as sixth months and ease more than three decades of crippling economic sanctions and political isolation levied by the West.¶ ¶ The second stage would represent a more comprehensive accord that results in Iran significantly restraining its nuclear program, limiting uranium enrichment and accepting full transparency into the nation's nuclear production in return for lifting the economic sanctions.¶ ¶ Going into last week's Geneva talks, Iran signaled a willingness to accept the outlines of such an accord and start to put an end to the sanctions. Indeed, gaining rapid relief from those sanctions is extremely important to Iran's leaders, who need to demonstrate to their populace that they are making real progress on this front.¶ ¶ For its part, the Obama administration has acknowledged the opportunity before it to make major progress on one of the greatest challenges facing American foreign policy. Indeed, no country has caused the U.S. more past and present heartburn than Iran, which poses complex challenges to our nation's security, and it would be difficult to exaggerate the fundamental mistrust that has existed between our two countries. It's safe to say that such a great opportunity for resolving the standoff over Iran's nuclear program may not come again.¶ ¶ That said, even before the negotiations began, there was cause for concern that hopes and expectations were running too high and were too unrealistic. After talks between Iran and the P5+1 ended last month, many news commentators lamented the lack of a major "breakthrough," even though it was clear that each of the options before us for curtailing Iran's nuclear program contained significant disadvantages.

#### Health care and laundry list pound the DA

Michael D. Shear 11/14/13, The New York Times, "Health Law Rollout’s Stumbles Draw Parallels to Bush’s Hurricane Response," http://www.nytimes.com/2013/11/15/us/politics/parallels-to-bush-in-toxic-political-mix-threatening-obama.html?hpw&rref=us&\_r=0

WASHINGTON — Barack Obama won the presidency by exploiting a political environment that devoured George W. Bush in a second term plagued by sinking credibility, failed legislative battles, fractured world relations and revolts inside his own party. President Obama is now threatened by a similar toxic mix. The disastrous rollout of his health care law not only threatens the rest of his agenda but also raises questions about his competence in the same way that the Bush administration’s botched response to Hurricane Katrina undermined any semblance of Republican efficiency.¶ But unlike Mr. Bush, who faced confrontational but occasionally cooperative Democrats, Mr. Obama is battling a Republican opposition that has refused to open the door to any legislative fixes to the health care law and has blocked him at virtually every turn. A contrite-sounding Mr. Obama repeatedly blamed himself on Thursday for the failed health care rollout, which he acknowledged had thrust difficult burdens on his political allies and hurt Americans’ trust in him.¶ “It’s legitimate for them to expect me to have to win back some credibility on this health care law in particular and on a whole range of these issues in general,” Mr. Obama said. The president did not admit to misleading people about whether they could keep their insurance, but again expressed regret that his assurances turned out to be wrong.¶ “To those Americans, I hear you loud and clear,” Mr. Obama said as he announced changes intended to allow some people to keep their insurance.¶ But earning back the confidence of Americans, as he pledged to do, will require Mr. Obama to right more than just the health care law. At home, his immigration overhaul is headed for indefinite delay, and new budget and debt fights loom. Overseas, revelations of spying by the National Security Agency have infuriated American allies, and negotiations over Iran’s nuclear arsenal have set off bipartisan criticism.¶ For the first time in Mr. Obama’s presidency, surveys suggest that his reserve of good will among the public is running dry. Two polls in recent weeks have reported that a majority of Americans no longer trust the president or believe that he is being honest with them.¶ “When you start losing the trust and confidence, not only of Congress, but the American people, that makes it even more difficult,” said Senator Joe Manchin III, Democrat of West Virginia. “You can work yourself out. But you have to be sincere, and you have to be honest.”¶ The difficulties have put Mr. Obama on the defensive at exactly the moment he might have seized political advantage in a dysfunctional Washington. If not for the health care disaster, the two-week shutdown of the government last month would have been an opportunity for Mr. Obama to sharpen the contrast with Republicans. Democratic lawmakers expressed growing frustration on Thursday with the opportunities the party had missed to hammer home the ideological differences between the two parties. The lawmakers say there is intensifying anxiety within the Democratic caucus that the poor execution of the health care law could bleed into their 2014 re-election campaigns.

#### Obama won’t fight the plan

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

In an October 2012 interview, Mr. Obama said of the drone program, "we've got to ... put a legal architecture in place, and we need Congressional help in order to do that, to make sure that not only am I reined in but any president's reined in, in terms of some of the decisions that we're making."¶ The president has not taken up the drone issue in public again but White House press secretary Jay Carney, asked Wednesday about the drone hearing, said, "We have been in regular contact with the committee. We will continue to engage Congress...to ensure our counterterrorism efforts are not only consistent with our laws and system of checks and balances, but even more transparent to the American people and the world."¶ And after the hearing, Brooks, too, sounded optimistic.¶ "My own sense is that the executive branch is open to discussion of some kind of judicial process," she said.¶ While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.

#### No veto

Dave Boyer 12, Washington Times, “For Obama, veto isn’t overriding concern,” http://www.washingtontimes.com/news/2012/dec/25/record-shows-obamas-veto-threats-carry-little-weig/?page=all

Lawmakers don’t expect Mr. Obama to veto the bill, and there is good reason for that view. The president has followed through on veto threats only twice in his first term, both on relatively inconsequential bills.¶ “With a lot of these veto threats, they’re just simply political statements,” said Gerhard Peters, co-founder of the American Presidency Project at the University of California at Santa Barbara. “It’s a way for the White House to distinguish itself from the Republicans in the House.”¶ By using the veto pen only twice in his first term, Mr. Obama ranks near the bottom among post-Watergate presidents. Republican George W. Bush didn’t use the veto once in his first term, when lawmakers were generally supportive of his initiatives in the wake of the Sept. 11 attacks. Mr. Bush did use the veto 12 times in his second term. Four were overridden.¶ President Reagan used the veto 78 times over eight years; Congress upheld 69. President George H.W. Bush vetoed legislation 44 times in his single term; all but one were sustained. President Clinton used the veto pen 37 times in eight years, with only two overridden. President Carter vetoed 31 pieces of legislation; only two were overridden.¶ A White House spokesman wouldn’t comment on Mr. Obama’s rare use of the veto. In some cases, the president has threatened a veto knowing that the risk of a real confrontation with Congress is low, such as the administration’s promise last week to veto House Republicans’ “Plan B” during the “fiscal cliff” negotiations. The proposal by House Speaker John A. Boehner, Ohio Republican, would have raised taxes on families earning $1 million or more, but Senate Democrats made it clear that the legislation would never reach the president’s desk.¶ Mr. Boehner decided not to hold a vote on the bill after realizing that Republicans lacked the votes to pass it in the House.¶ Mr. Peters said he doesn’t see “much of a coherent strategy” in Mr. Obama’s veto threats and that the role of the veto has evolved in an increasingly partisan Washington.¶ “The increased threat of the filibuster is constantly used,” Mr. Peters said. “That’s one thing that makes it difficult for things to get out of the Senate, even in the previous Congress when you had a Democratic House. It’s very indicative of the changing nature of American politics over the last three or four decades. The fact is that the parties have just become more polarized. Jimmy Carter had a much different Democratic Party to deal with in Congress than Barack Obama has today. That’s one of the reasons that Jimmy Carter had to veto more things.”¶ One of Mr. Obama’s most serious veto run-ins with lawmakers was the defense-authorization battle of December 2011, which hinged on the question of Guantanamo detainees.¶ The president objected to provisions of the military spending bill that would have forced the administration to try terrorism suspects in military courts. But Mr. Obama signed the legislation on New Year’s Eve, when it was likely to attract little attention, but said he didn’t agree with everything in the bill.

#### No signing statement

Kevin Evans 13, Assistant Professor in the Department of Politics and International Relations at Florida International University “Why the Obama Administration Has Issued Fewer Signing Statements,” http://millercenter.org/ridingthetiger/obama-administration-signing-statements-evans

The Obama administration has only issued 22 statements during his first term. While these statements are chock-full of constitutional challenges (Obama’s most recent NDAA signing statement challenges more than 20 sections of law on constitutional grounds), the lack of frequency with which the administration issues them leaves Obama nowhere close to Bush in terms of the number of provisions challenged over a similar timeframe.

#### Obama waivers solve

Eric Auner 11/15/13, a senior analyst at Guardian Six Consulting, "In Congress, Obama Administration Faces Uphill Battle on Iran Sanctions," World Politics Review,http://www.worldpoliticsreview.com/trend-lines/13386/in-congress-obama-administration-faces-uphill-battle-on-iran-sanctions

Whether or not the Obama administration can convince Congress to hold off on new sanctions, the administration still has room to maneuver in offering some limited short-term relief to ease negotiations forward. Kenneth Katzman of the Congressional Research Service wrote in Al-Monitor in August that there is a “vibrant debate among experts” on whether the administration “has the latitude to ease U.S. sanctions to the point where a nuclear deal with Iran can be concluded.” Many of the sanctions give “substantial waiver authority” to the president, according to Katzman, though the standards for issuing such waivers have been steadily increased by Congress.¶ “In a first-phase agreement, sanctions relief would be limited and unlikely to address the core of the [congressionally mandated] sanctions in place, which are on the banking and oil sectors,” said Kelsey Davenport of the Arms Control Association in an email interview. This could take place “over the six months following a first-phase agreement.” Measures could also be taken to “ease restrictions on precious metals and petrochemicals, as well as parts for the automotive and airline industries,” she said. Waivers on some sanctions “could be implemented almost immediately,” said Ali Vaez of the International Crisis Group in an email interview.

#### Sanctions will pass

Max Fisher 11/14/13, Washington Post foreign affairs blogger, master's degree in security studies from Johns Hopkins, "Obama’s approaching an Iran deal. Here’s why Congress might stop it," http://www.washingtonpost.com/blogs/worldviews/wp/2013/11/14/obamas-approaching-an-iran-deal-heres-why-congress-might-stop-it/

Here's where Congress comes in: If the United States does strike some kind of deal, eventually Congress will have to approve a reduction, whether permanent or temporary, in Iran sanctions. In the meantime, the White House has asked lawmakers not to pass any new sanctions, which would undercut U.S. diplomacy and risk sending the message to Tehran that they can't trust the Americans to deliver on their end of any bargain, either because Washington isn't negotiating in good faith or because Obama is powerless to deliver. No one is sure how Iran would react, but given that even talking to the United States is deeply controversial in Tehran, there's good reason to worry that Iranians would walk away.¶ Congress, being Congress, has ignored this and is pushing ahead with new sanctions anyway. The Obama administration is so worried that it dispatched Secretary of State John Kerry to try to talk them out of it.¶ Members of Congress who support imposing new sanctions right now have offered a less-than-persuasive case: first, that Congress should punish Iran for failing to unilaterally roll back its nuclear program, which is strange as it's not clear why Tehran would want to weaken its own position going into negotiations, and; second, that if sanctions brought Iran to the negotiating table, then more sanctions will keep them there. That last point would seem to contradict basic principles of negotiation, in which escalation normally pauses during talks, to demonstrate good faith and avoid pushing away your partner.¶ Okay, you might be saying, so far this post is not expressing much sympathy for Congress. But U.S. lawmakers are facing four dilemmas on Iran sanctions. On their own, these are all pretty minor, but taken together you might start to get a sense why lawmakers are so hesitant to follow the White House on Iran sanctions.¶ First, and maybe most importantly, U.S. sanctions on Iran are about more than just the nuclear stuff that's currently on the negotiating table.¶ "Those sanctions, in almost every case, are predicated not just on Iran's nuclear activities but also on their support for international terrorism, their opposition to the Middle East peace process and a whole list of other things," Kenneth Pollack, an Iran scholar at the Brookings Institution, told me recently. Pollack warned, "I think it's going to be very hard for the president to go to Congress" and ask for sanctions relief just on the specific nuclear issue, as those issues are left unaddressed.¶ The dilemma here is that the only way for Iran to address all of these issues at once would be in a grand bargain. Given how hard it is just for Tehran and the Western powers to come together on the nuclear issue, a grand bargain probably isn't likely. At least not all at once; if Congress wants all of these Iranian issues addressed, it will probably need to go through them one at a time.¶ Second, as Tufts University professor and Foreign Policy magazine blogger Dan Drezner points out, members of Congress might be validly concerned about "the Obama administration's distinguished record of bollixing up its Middle East diplomacy." (I wrote earlier on that record, and how the administration's internal politics might explain it.) In other words, a member of Congress who sees the administration's vacillating approach to Syria or Egypt might worry that, even if Congress holds back on sanctions to help out the administration's diplomacy, the administration might not come through on its end and then sanctions will have been paused for nothing.¶ Third, also from Drezner, Iran has earned something of a reputation for "evading" the International Atomic Energy Agency (the United Nations nuclear watchdog) on inspections. So lawmakers are weighing their willingness to trust Tehran in their calculations. Of course, Congress doesn't need to actively trust Iran to hold off on passing new sanctions -- lawmakers can always just do it later -- but its members do at least need to temper their feelings of mistrust.¶ Fourth, and most simply, Iran is very unpopular in the United States. Republicans are already signaling that they may use the Obama administration's Iran outreach as a political weapon in coming elections. Any lawmaker who votes against new sanctions, even if it is for very sound foreign policy reasons, is taking a big political risk. Democrats risk being targeted as part of a broader political campaign in 2014 or 2016. Maybe so do Republicans, who are already worried about getting on the wrong side of a conservative wing that's been perfectly happy to unseat legislators who don't toe the line.¶ It's not hard to see how legislators could conclude that, if Iran becomes a big political issue in coming elections, it won't matter whether U.S. diplomacy works, or if holding back on new sanctions was the right call. Even if a deal does succeed, all the political credit would likely go to the Obama administration.