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#### Restrictions on authority prohibit- the aff is a condition

William **Conner 78**,former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. **Properly interpreted,** **the "conditions" that had been imposed by plaintiff's** Board of Directors and by the Venezuelan Cabinet **were not "restrictions" or "limitations"** up**on** the **authority of** plaintiff's **agents but rather conditions precedent to the granting of authority**. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

**Vote neg  
limits and ground- anything can indirectly affect war powers--also makes the topic bidirectional because conditions can enhance executive power**

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#### Politics is Schmittian – trying to fight the executive on their own battlefield is naïve – the aff is just a liberal knee-jerk reaction that swells executive power

Kinniburgh, 5/27 **–** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### Legality is what feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

#### The alt is to reject the aff in favor of building a culture of resilience

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

We do not yet live under a plebiscitary presidency. In such a system, the president has unchecked legal powers except for the obligation to submit to periodic elections. In our system, Congress retains the formal power to make law. It has subjected presidential lawmaking to complex procedures and bureaucratic checks,1 and it has created independent agencies over which the president in theory has limited control. The fed­eral courts can expect the executive to submit to their orders, and the Supreme Court retains certain quasi-lawmaking powers, which it exercises by striking down statutes and blocking executive actions. The federal system is still in place. State legal institutions retain considerable power over their populations. But these legal checks on executive authority (aside from the electoral constraint) have eroded considerably over the last two hundred years. Congress has delegated extensive powers to the executive. For new initia­tives, the executive leads and Congress follows. Congress can certainly slow down policymaking, and block bills proposed by the executive; but it cannot set the agenda. It is hard to quantify the extent of congressional control over regulatory agencies, but it is fair to say that congressional intervention is episodic and limited, while presidential control over both the executive and independent agencies is strong and growing stronger. The states increasingly exercise authority at the sufferance of the national government and hence the president. The federal courts have not tried to stop the erosion of congressional power and state power. Some commentators argue that the federal courts have taken over Con­gress’s role as an institutional check. It is true that the Supreme Court has shown little compunction about striking down statutes (although usually state statutes), and that it rejected some of the legal theories that the Bush administration used to justify its counterterrorism policies. However, the Court remains a marginal player. The Court ducked any legal rulings on counterterror policies until the 2004 Hamdi decision, and even after the Boumediene decision in 2008, no detainee has been released by final judicial order, from Guantanamo or elsewhere, except in cases where the government chose not to appeal the order of a district judge. The vast majority of detainees have received merely another round of legal process. Some speculate that judicial threats to release detainees have caused the administration to release them preemptively. Yet the judges would incur large political costs for actual orders to release suspected terrorists, and the government knows this, so it is unclear that the government sees the judi­cial threats as credible or takes them very seriously. The government, of course, has many administrative and political reasons to release detainees, quite apart from anything the courts do. So the executive submits to judi­cial orders in part because the courts are careful not to give orders that the executive will resist. In general, judicial opposition to the Bush administration’s counterter­rorism policies took the form of incremental rulings handed down at a gla­cial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, tar­geted assassinations, the immigration sweeps, even coercive interrogation. The (limited) modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan. The 9/11 attack provided a reminder of just how extensive the presi­dent’s power is. The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant stat­utory authority, and the Supreme Court has steadfastly refused to address the ultimate merits of the executives constitutional claims, these claims were never tested in a legal or public forum. But it is worth trying to ima­gine what would have happened if Congress had refused to pass the Autho­rization for Use of Military Force and the Supreme Court had ordered the executive to release detainees in a contested case. We think that the execu­tive, backed up as it was by popular opinion, would have refused to obey. And, indeed, for just that reason, Congress would, never have refused its imprimatur and the Supreme Court would never have stood in the execu­tive’s way. The major check on the executives power to declare an emer­gency and to use emergency powers is—political. The financial crisis of 2008-2009 also revealed the extent of executive power. Acting together, the Fed, the Treasury, and other executive agencies spent hundreds of billions of dollars, virtually nationalizing parts of the financial system. Congress put up a fuss, but it could not make policy and indeed hardly even influenced policy. Congress initially refused to supply a blank check, then in world-record time changed its mind and gave the blank check, then watched helplessly as the administration adopted pol­icies different from those for which it said the legislation would be needed. Courts played no role in the crisis except to ratify executive actions in tension with the law.2 What, then, prevents the executive from declaring spurious emergencies and using the occasion to consolidate its power—or for that matter, consolidating its power during real emergencies so that it retains that power even after normal times return? In many countries, notably in Latin America, presidents have done just that. Citing an economic crisis, or a military threat, or congressional gridlock, executives have shut down independent media, replaced judges with their cronies, suppressed political opposition, and ruled by dictate. Could this happen in the United States? The answer is, very probably, no. The political check on the executive is real. Declarations of emergency not justified by publicly visible events would be met with skepticism. Actions said, to be justified by emergency would not be approved if the justification were not plausible. Separation of powers may be suffering through an enfeebled old age, but electoral democracy is alive and well. We have suggested that the historical developments that have under­mined separation of powers have strengthened democracy. Consider, for example, the communications revolution, which has culminated (so far) in the Internet Age. As communication costs decrease, the size of markets expand, and hence the scale of regulatory activity must increase. Localities and states lose their ability to regulate markets, and the national govern­ment takes over. Meanwhile, reduced communication costs increase the relative value of administration (monitoring firms and ordering them to change their behavior) and reduce the relative value of legislation (issuing broad-gauged rules), favoring the executive over Congress. At the same time, reduced communication costs make it easier for the public to mon­itor the executive. Today, whistleblowers can easily find an audience on the Internet,; people can put together groups that focus on a tiny aspect of the government s behavior; gigabytes of government data are uploaded onto the Internet and downloaded by researchers who can subject them to rigorous statistical analysis. It need not have worked out this way. Govern­ments can also use technology to monitor citizens for the purpose of suppressing political opposition. But this has not, so far, happened in the United States. Nixon fell in part because his monitoring of political enemies caused an overwhelming political backlash, and although the Bush administration monitored suspected terrorists, no reputable critic suggested that it targeted domestic political opponents. Our main argument has been methodological and programmatic: researchers should no longer view American political life through the Madisonian prism, while normative theorists should cease bemoaning the decline of Madisonianism and instead make their peace with the new political order. The center of gravity has shifted to the executive, which both makes policy and administers it, subject to weak constraints imposed by Congress, the judiciary, and the states. It is pointless to bewail these developments, and futile to argue that Madisonian structures should be reinvigorated. Instead, attention should shift to the political constraints on the president and the institutions through, which those political con­straints operate—chief among them elections, parties, bureaucracy, and the media. As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public s trust. The irony of the new political order is that the executive, freed from the bonds of law, inspires more distrust than in the past, and thus must enter ad hoc partnerships with political rivals in order to persuade people that it means well. But the new system is more fluid, allowing the executive to form those partnerships when they are needed to advance its goals, and not otherwise. Certain types of partnership have become recurrent pat­terns—for example, inviting a member of the opposite party to join the president’s cabinet. Others are likely in the future. In the place of the clockwork mechanism bequeathed to us by the Enlightenment thinking of the founders, there has emerged a more organic system of power sharing and power constraint that depends on shifting political alliances, currents of public opinion, and the particular exigencies that demand government action. It might seem that such a system requires more attention from the public than can reasonably be expected, but the old system of checks and balances always depended on public opinion as well. The centuries-old British parliamentary system, which operated in. just this way, should provide reason, for optimism. The British record on executive abuses, although hardly perfect, is no worse than the American record and arguably better, despite the lack of a Madisonian separation of legislative and executive powers

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#### The Executive Branch of the United States should issue an executive order stating the President’s intent to no longer invoke the political question doctrine as a legal defense and should create a national security court housed within the executive branch and “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; 2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government. Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected within the executive branch? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

#### A “national security court” improve oversight, accountability, and congressional review of targeted killing – comparatively better than external restraints

Katyal ’13, Neal Katyal, Professor of Law @ Georgetown, NW Times “Who Will Mind the Drones?” February 20, 2013, <http://www.nytimes.com/2013/02/21/opinion/an-executive-branch-drone-court.html?_r=0>

In the wake of revelations about the Obama administration’s drone program politicians from both parties have taken up the idea of creating a “drone court” within the federal judiciary, which would review executive decisions to target and kill individuals. But the drone court idea is a mistake. It is hard to think of something less suitable for a federal judge to rule on than the fast-moving and protean nature of targeting decisions. Fortunately, a better solution exists: a “national security court” housed within the executive branch itself. Experts, not generalists, would rule; pressing concerns about classified information would be minimized; and speedy decisions would be easier to reach. There is, of course, a role for federal courts in national security. In 2006, I argued and won Hamdan v. Rumsfeld, a Supreme Court case that struck down President George W. Bush’s use of military tribunals at Guantánamo Bay. But military trials are a far cry from wartime targeting decisions. And the Foreign Intelligence Surveillance Court, which reviews administration requests to collect intelligence involving foreign agents inside the country and which some have advocated as a model for the drone court, is likewise appropriately housed within the judicial system — it rules on surveillance operations that raise questions much like those in Fourth Amendment “search and seizure” cases, a subject federal judges know well. But there is no true precedent for interposing courts into military decisions about who, what and when to strike militarily. Putting aside the serious constitutional implications of such a proposal, courts are simply not institutionally equipped to play such a role. There are many reasons a drone court composed of generalist federal judges will not work. They lack national security expertise, they are not accustomed to ruling on lightning-fast timetables, they are used to being in absolute control, their primary work is on domestic matters and they usually rule on matters after the fact, not beforehand. Even the questions placed before the FISA Court aren’t comparable to what a drone court would face; they involve more traditional constitutional issues — not rapidly developing questions about whether to target an individual for assassination by a drone strike. Imagine instead that the president had an internal court, staffed by expert lawyers to represent both sides. Those lawyers, like the Judge Advocate General’s Corps in the military, would switch sides every few years, to develop both expertise as repeat players and the ability to understand the other point of view. The adjudicator would be a panel of the president’s most senior national security advisers, who would issue decisions in writing if at all possible. Those decisions would later be given to the Congressional intelligence committees for review. Crucially, the president would be able to overrule this court, and take whatever action he thought appropriate, but would have to explain himself afterward to Congress. Such a court would embed accountability and expertise into the drone program. With a federal drone court, it would simply be too easy for a president or other executive-branch official to point his finger at a federal judge for the failure to act. With an internal court, it would be impossible to avoid blame. It’s true that a court housed within the executive branch might sound nefarious in today’s “Homeland” culture — if Alexander Hamilton celebrated the executive, in Federalist No. 70, for its “decision, activity, secrecy and dispatch,” some now look at those same qualities with skepticism, if not fear. In contrast, advocates of a drone court say it would bring independent, constitutional values of reasoned decision making to a process that is inherently murky. But simply placing a drone court in the judicial branch is not a guaranteed check. The FISA Court’s record is instructive: between 1979 and 2011 it rejected only 11 out of more than 32,000 requests — making the odds of getting a request rejected, around 1 in 3,000, approximately the same as those of being struck by lightning in one’s lifetime. What reason does the FISA Court give us to think that judges are better than specialists at keeping executive power in check? The written decisions of an internal national security court, in contrast, would be products of an adversarial system (unlike the FISA Court), and later reviewed by Congressional intelligence committees. If members of Congress saw troublesome trends developing, it could push legislation to constrain the executive. That is something a federal judge cannot do. One of our Constitution’s greatest virtues is that it looks to judges as a source of reasoned, practical, rights-minded decision making. But judges should be left to what they know. A national security court inside the executive branch may not be a perfect solution, but it is a better way to balance the demands of secrecy and speed with those of liberty and justice.

#### Internal checks comparatively solve better and don’t link to politics

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. 76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. 77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. 78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. 79

### 1NC DA

#### NSA reforms will pass – former obstacles overcome

Hawkings, 3-25-’14 (David, “Hill’s Bipartisan Deadlock on Phone Records May Be Easing” Roll Call, blogs.rollcall.com/hawkings/obama-nsa-reform-plan-could-ease-congressional-deadlock-on-spying/2/)

Eight months ago, in one of its most important and fascinatingly nonpartisan votes of recent memory, the House came up just seven members short of eviscerating the government’s vast effort to keep tabs on American phone habits. The roll call revealed a profound divide in Congress on how assertively the intelligence community should be allowed to probe into the personal lives of private citizens in the cause of thwarting terrorism. It is a split that has stymied legislative efforts to revamp the National Security Agency’s bulk data collection programs. Until now, maybe. Senior members with jurisdiction over the surveillance efforts, in both parties and on both sides of the Hill, are signaling generalized and tentative but nonetheless clear support for the central elements of a proposed compromise that President Barack Obama previewed Tuesday and will formally unveil by week’s end. The president, in other words, may be close to finding the congressional sweet spot on one of the most vexing problems he’s faced — an issue that surged onto Washington’s agenda after the secret phone records collection efforts were disclosed by former NSA contractor Edward Snowden. If Obama can seal the deal, which he’s pledged to push for by the end of June, it would almost surely rank among his most important second-term victories at the Capitol. It also would create an exception that proves the rule about the improbability of bipartisan agreement on hot-button issues in an election season. “I recognize that people were concerned about what might happen in the future with that bulk data,” Obama said at a news conference in The Hague, where he’s been working to gain support for containing Russia from a group of European leaders who have their own complaints about U.S. spying on telephone calls. “This proposal that’s been presented to me would eliminate that concern.” The top two members of the House Intelligence Committee, GOP Chairman Mike Rogers of Michigan and ranking Democrat C.A. Dutch Ruppersberger of Maryland, introduced their own bill to revamp surveillance policy Tuesday — and declared they expect it would track very closely with the language coming from the administration. They said they had been negotiating with White House officials for several weeks and viewed the two proposals as compatible. At their core, both the Obama and House bills would end the NSA practice of sucking up and storing for five years the date and time, duration and destination of many millions of phone calls placed or received by Americans. Instead, the phone companies would be required to retain this so-called metadata (and comparable information about email and Internet use) for 18 months, their current practice. And the government would have to obtain something like a search warrant from the Foreign Intelligence Surveillance Court, meaning in each discreet case a judge would limit how deeply the telecom companies would have to query their databases in hopes of finding calling patterns that suggest national security threats. Since both Rogers and Ruppersberger have been prominent defenders of the bulk collection system, any agreement they reach that has Obama’s blessing can be expected to pass the House. It should garner support from a lopsided majority of the 217 House members (three-fifths of the Republicans and two-fifths of the Democrats) who voted to stick with the status quo last July. And it stands a chance to win over at least some on the other side — an unusual coalition of 94 mostly libertarian-leaning tea party Republicans and 111 liberal Democrats, who say NSA searches of the databases should be limited to information about existing targets of investigations. But one leader of that camp vowed to work for the defeat of any measure that looks like either the Obama or Intelligence panel plans. Republican Rep. Jim Sensenbrenner of Wisconsin, who as chairman of House Judiciary a decade ago was instrumental in writing the Patriot Act, believes that law has been grossly misapplied by the NSA to invade personal privacy much too easily. Sensenbrenner said he would continue to push his measure to almost entirely prevent the NSA from looking at telecommunications metadata. But the sponsor of the companion Senate bill, Judiciary Chairman Patrick J. Leahy, D-Vt., said he would remain open to finding the makings of a deal in the Obama plan. Leahy signaled the legislative negotiating would be much smoother if Obama suspended the bulk data collection during the talks. Much more enthusiastic was Calfornia’s Dianne Feinstein, the Democratic chairwoman of the Senate Intelligence Committee, who said she generally supports the House proposal and views Obama’s plan “a worthy effort.” Her committee’s top Republican, the retiring Saxby Chambliss of Georgia, was a bit more equivocal but gave a strong indication he was eager to cut a deal based on the ideas from the House and the White House.

#### Losers lose

Loomis 7 (Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>)

American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### NSA reforms key to credibility – absent that, they’ll lose the ability to do surveillance

Sasso, 3-25-’14 (Brendan, “Why Obama and His NSA Defenders Changed Their Minds” National Journal, www.nationaljournal.com/tech/why-obama-and-his-nsa-defenders-changed-their-minds-20140325)

It was only months ago that President Obama, with bipartisan backing from the heads of Congress's Intelligence committees, was insisting that the National Security Agency's mass surveillance program was key to keeping Americans safe from the next major terrorist attack. They were also dismissing privacy concerns, saying the program was perfectly legal and insisting the necessary safeguards were already in place. But now, Obama's full-speed ahead has turned into a hasty retreat: The president and the NSA's top supporters in Congress are all pushing proposals to end the NSA's bulk collection of phone records. And civil-liberties groups—awash in their newly won clout—are declaring victory. The question is no longer whether to change the program, but how dramatically to overhaul it. So what changed? It's not that Obama and his Hill allies suddenly saw the error of their ways and became born-again privacy advocates. Instead, with a critical section of the Patriot Act set to expire next year, they realized they had no choice but to negotiate. If Congress fails to reauthorize that provision—Section 215—by June 1, 2015, then the NSA's collection of U.S. records would have to end entirely. And the growing outrage prompted by the Snowden leaks means that the NSA's supporters would almost certainly lose an up-or-down vote on the program. Rep. Adam Schiff, a Democratic member of the House Intelligence Committee, said that looming sunset is what forced lawmakers to the bargaining table. "I think what has changed is the growing realization that the votes are simply not there for reauthorization," he said in an interview. "I think that more than anything else, that is galvanizing us into action." Obama and the House Intelligence Committee leaders believe their proposals are now the NSA's best bet to retain some power to mine U.S. phone records for possible terror plots. Senate Intelligence Committee Chairwoman Dianne Feinstein, another leading NSA defender, also indicated she is on board with the changes, saying the president's proposal is a "worthy effort." And though the Hill's NSA allies are now proposing reforms to the agency, they don't seem particularly excited about it. At a Capitol Hill press conference Tuesday, Rep. Mike Rogers, the Republican chairman of the House Intelligence Committee, and Rep. Dutch Ruppersberger, the panel's top Democrat, often sounded like they were arguing against their own bill that they were unveiling. "I passionately believe this program has saved American lives," Rogers said. Ruppersberger said if the program had been in place in 2001, it may have prevented the Sept. 11 attacks. But the lawmakers acknowledged there is broad "discomfort" with the program as it is currently structured. "We need to do something about bulk collection because of the perception of our constituents," Ruppersberger admitted. Under their legislation, the vast database of phone records would stay in the hands of the phone companies. The NSA could force the phone companies to turn over particular records, and the Foreign Intelligence Surveillance Court would review the NSA orders after the fact. But Rogers rejected a reporter's suggestion that the NSA should have never had control of the massive database of phone records in the first place. "There was no abuse, no illegality, no unconstitutionality," he said. For all their hesitance, however, Rogers and company much prefer their version to a competing proposal to change the way the government gathers information. That would be the USA Freedom Act, a proposal from Senate Judiciary Committee Chairman Patrick Leahy and Rep. Jim Sensenbrenner that Rogers and his ilk fear would go too far in hamstringing the NSA. The USA Freedom Act would require the NSA to meet a tougher standard for the data searches and would limit other NSA programs, such as Internet surveillance of people overseas. Additionally, President Obama is expected to unveil his own plan to reform the controversial phone data collection program this week. According to The New York Times, Obama's proposal would also keep the database in the hands of the phone companies. His plan would have tougher judicial oversight than the House bill by requiring pre-approval from the court for every targeted phone number, the newspaper reported. But though the momentum has shifted and officials seem to be coalescing around a framework for overhauling the NSA program, the question is far from settled. Leahy and Sensenbrenner are not backing off from their USA Freedom Act, and outside groups will continue their policy push as well.

#### Domestic wiretapping key to stopping terrorism – empirically successful

Hewitt 8 Michael, post graduate for Honors Program at Liberty university, Wiretapping: A Necessity for Effectively Combating Terrorism in the 21st Century, http://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1040&context=honors

In analyzing post 9-11 wiretapping, it is necessary to analyze the effects that its use has had on national security and domestic society in the realm of National Security, wiretapping has proven to be instrumental in the identification and prosecution of terrorists, effectively helping to diminish this threat. In the domestic realm, wiretapping has proven to be an effective means of preventing terrorist attacks in the U.S., and of putting Americans at ease. The most obvious evidence that the use of wiretapping has been successful in protecting American national security is the "fact that there has been no serious terrorist incident on American shores since its passage in 2001" (Spangler, 2005, para. 13). Senator Orrin Hatch, R-Utah, and a staunch defender of the Patriot Act and its wiretapping provisions, has pointed out that “because of necessary secrecy laws, we may never know the full positive effects the Patriot Act is having on terrorism” (Spangler, 2005, para. 13). Hatch did however note that the Justice Department has credited key provisions of the Patriot Act with playing a role in the terrorism-related convictions of hundreds of suspects. It has largely been the tools of wiretapping and other forms of electronic surveillance, which have received the credit for the success of hundreds of anti-terrorism operations since 2001. Most notable among these operations was the "recent apprehension in England of scores of suspects, who were charged with making plans to blow up as many as ten airliners traveling to the United States" (Criminal, 2006, para. 24). In this operation, electronic surveillance played an instrumental part in allowing British agents to monitor the activities of a terrorist cell. "'We have been looking at meetings, movement, travel, spending and the aspirations of a large group of people' said Peter Clarke, head of Scotland Yard's anti-terrorism branch" (ABCNews, 2006, para. 2). In this case, British agents substantially monitored the terrorist cell before making the arrests. (ABCNews, 2006, para. 24) Another such situation was the uncovering of "evidence indicating that a Pakistani charity was diverting funds originally contributed for earthquake relief to finance the planned terrorism attacks on these jumbo jets" (Criminal, 2006, para. 16). It is, however, difficult to attain the exact details of the results of these operations, because in these investigations, "details leading up to the filing of formal charges is not usually revealed" (Criminal, 2006, para. 16). It is known however, that since September 11, 2001 thousands of individuals classified as terrorists have been subjected to electronic surveillance procedures. The surveillance, specifically wiretapping, of individuals suspected of terrorist activities, has resulted in nearly a 20% conviction rate (Criminal 2006).

#### X apply High risk of nuke terror

### 1NC Solvency

#### Victims of drones don’t have access to the courts – the ACLU ain’t gonna go find villagers in the mountains of Afghanistan

Murphy and Radsan 9 Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law Afsheen John Radsan Prof William Mitchell College of Law Review 32 Cardozo L Rev

But as the dissenting judge in Arar noted, these special factors lose much of their force once one acknowledges that a Bivens style action needs to overcome formidable hurdles of fact and law. 210 As to practical hurdles, most people left alive by a Predator strike or other targeted killing would not turn to American courts for relief. Some would not sue because they are, in fact, the enemy - Osama bin Laden is not going to hire an American lawyer. 211 Others would not sue because doing so is beyond their means - a villager from the mountains of Afghanistan is not likely to hire an American lawyer either.

#### Executive won’t release info of wrong doing – no solvency

Hirsh and Roberts 13 [[MICHAEL HIRSH, chief correspondent for National Journal AND KRISTIN ROBERTS](http://www.theatlantic.com/michael-hirsh-and-kristin-roberts/), news editor for National Journal., Why the Drone Memos Are Still Secret, FEB 22 2013, <http://www.theatlantic.com/international/archive/2013/02/why-the-drone-memos-are-still-secret/273436/>]

Despite President Obama's pledge in his State of the Union address to make the drone program "even more transparent to the American people and to the world," his administration continues to resist efforts by Congress, even from fellow Democrats, to obtain the full range of classified legal memos justifying "targeted killing."¶ A key reason for that reticence, according to two sources who have read the memos or are aware of their contents, is that the documents contain secret protocols with foreign governments, including Pakistan and Yemen, as well as "case-specific" details of strikes.¶ A legal expert outside the government who is intimately familiar with the contents of the memos said the government-to-government accords on the conduct of drone strikes are an important element not contained in the Justice Department "white paper" [revealed recently by NBC News](http://openchannel.nbcnews.com/_news/2013/02/04/16843014-justice-department-memo-reveals-legal-case-for-drone-strikes-on-americans?lite). He said it is largely in order to protect this information that the targeted-killing memos drafted by Justice's Office of Legal Counsel are not being released, and that even the Senate and House Intelligence committees have been allowed to examine only four of the nine OLC memos. "That is what is missing from the white paper but forms a core part of the memos," the expert told National Journal, speaking on condition of anonymity because the information is classified. He said the administration believes that the protocols would almost certainly leak to the public if they were shared with Congress.

#### Damages no solve- allows continued gov action

Parry 7 John T. Parry, Associate Professor, Lewis & Clark Law School William & Mary Bill of Rights Journal February, 2007 15 Wm. & Mary Bill of Rts. J. 765 TERRORISM AND THE NEW CRIMINAL PROCESS, lexis

Moving beyond these roadblocks, even in successful cases, damages are often an incomplete remedy. The Supreme Court has said that the primary purpose of damages in such cases is to compensate, not to deter. n339 The resulting possibility, that damages [\*822] awards will be inadequate to deter constitutional violations, only highlights the ex post nature of the remedy. As with prosecutions, damages do not prevent harm. Indeed, one could argue that damages liability merely establishes the non-prohibitive cost of particular kinds of government action.

#### Courts will just rule in favor of the govt

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

But if the Arar case seems to paint a discouraging picture of the prospects for judicial review in relation to national security issues, an even clearer indication of the effective non-justiciability of extraterritorial [\*394] targeted killings in United States courts came with the 2010 decision in Al-Aulaqi v. Obama. n398 The case involved the alleged inclusion of Anwar Al-Aulaqi on a CIA/JSOC kill list, a fact neither confirmed nor denied by the government. Al-Aulaqi is a joint United States-Yemeni citizen, residing in Yemen, who is alleged to have been playing "an increasingly operational role" in a designated terrorist group, al Qaeda in the Arabian Peninsula (AQAP). As a result of his statements calling for jihad against the West and other activities, the U.S. Treasury Department has listed him as a "Specially Designated Global Terrorist." The U.S. District Court for the District of Columbia dismissed the case primarily on the grounds that there was no convincing basis upon which Al-Aulaqi's father could establish standing to bring the case on behalf of his son. But perhaps out of concern that some future targeted individual might be able to establish standing in different circumstances, Judge Bates also adduced strong arguments as to why the political question doctrine would in any event prevent the consideration of such cases.¶ While acknowledging powerful judicial and scholarly critiques of the way in which the doctrine has been interpreted and applied, Judge Bates nevertheless cited with approval earlier findings that the courts are ill-equipped "to assess the nature of battlefield decisions" n399 or "to define the standard for the government's use of covert operations in conjunction with political turmoil in another country." n400 In elaborating upon the reasons for the judiciary's lack of competence in such matters, he noted that judicially manageable standards are absent both in relation to an assessment of "the President's interpretation of military intelligence and his resulting decision--based on that intelligence--whether to use military force against a terrorist target overseas," and to a determination of "the nature and magnitude of the national security threat posed by a particular individual." n401 Turning to the case at hand, the judge asserted that responding to the plaintiff would require the court to decide:¶ (1) the precise nature and extent of Anwar Al-Aulaqi's affiliation with AQAP; (2) whether AQAP and al Qaeda are so closely linked that the defendants' targeted killing of [\*395] Anwar Al-Aulaqi in Yemen would come within the United States's current armed conflict with al Qaeda; (3) whether . . . Al-Aulaqi's alleged terrorist activity renders him a "concrete, specific, and imminent threat to life or physical safety," . . .; and (4) whether there are "means short of lethal force" that the United States could "reasonably" employ to address any threat that Anwar Al-Aulaqi poses to U.S. national security interests. n402¶ But this already lengthy and intimidating list of issues on which he claimed the court would have to decide was not to be the end of the matter. Instead, Judge Bates further ratcheted up the stakes by implicitly endorsing the government's claim that seeking to answer these questions would, in turn, require the court to understand and assess:¶ the capabilities of the [alleged] terrorist operative to carry out a threatened attack, what response would be sufficient to address that threat, possible diplomatic considerations that may bear on such responses, the vulnerability of potential targets that the [alleged] terrorist[] may strike, the availability of military and non-military options, and the risks to military and nonmilitary personnel in attempting application of non-lethal force. n403¶ But Judge Bates was still not quite finished. He went on to note that, in order to rule on the application, the court would also need "to elucidate the . . . standards that are to guide a President when he evaluates the veracity of military intelligence." n404¶ Any claim for judicial relief would surely stumble and collapse under the weight of such wide-ranging and demanding questions. If this case did not encapsulate judicial unmanageability, whatever could? The problem, however, is that the great majority of these questions were not [\*396] posed by the plaintiff n405 and nor would they need to be addressed, let alone resolved, if the court had been at all willing to engage with the core issue stated in the plaintiffs first prayer for relief, seeking a declaration that "outside of armed conflict, the Constitution prohibits Defendants from carrying out the targeted killing of U.S. citizens, . . . except in circumstances in which they present concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats." n406 It would have been entirely open to the court to take this question at face value which would, at a minimum, have required the Government to affirm that it considered Al-Aulaqi to be in a situation governed by IHL, thus rendering inapplicable the IHRL standard identified in the question posed to the court.¶ Unsurprisingly, it seems that the two organizations behind the suit--the Center for Constitutional Rights and the American Civil Liberties Union--concluded that it would be unwise to appeal the decision and risk locking in an interpretation that they characterized as affirming "the government's claim of unreviewable authority to carry out the targeted killing of any American, anywhere, whom the president deems to be a threat to the nation." n407

#### That increases prez power and TK

Adelsberg 12 Samuel, J.D. Candidate 2013, Yale Law School “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens” Symposium, Summer, 2012 Harvard Law & Policy Review 6 Harv. L. & Pol'y Rev. 437 lexis

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

#### CIA drones means targeted killing regulation is impossible – they’ll shift responsibility

Alston, professor – NYU Law, ‘11 (Philip, 2 Harv. Nat'l Sec. J. 283)

But the most significant problem by far with double-hatting is its impact in terms of accountability. Already in 2003, Colonel Kathryn Stone had noted that "[w]hen the CIA and SOF operate together on the battlefield, the legal distinctions regarding operating authorities and procedures, and accountability, can become blurred." n247 In Singer's view one of the motivations for the practice was to avoid accountability. He argues that the CIA was given operational responsibilities because "no one wanted to have a public debate about the use of force in a third country" and this could be avoided by secretly using the CIA instead. The result, he says, is to flout "the intent, if not the letter, of the most important legal codes that originally divided out roles in realms of policy and war." n248 A recent Congressional study also concludes that one of the actual objectives of the "unprecedented use of U.S. SOF in clandestine and covert roles as well as being assigned to the CIA" is precisely to blur the boundaries of responsibility and accountability. n249 This deliberate undermining of the distinction between intelligence gathering and operational activities has grave implications in terms of both domestic and international accountability. Domestically, DOD and especially JSOC foreign killing operations are subject to virtually no meaningful accountability, and the same applies to the CIA.

### 1NC PQD

#### US Navy already permanently deployed to Asia – solves deterrence and forward presence

Admiral Greenert, 30th Chief of Naval Operations, 12-’12 (Jonathan, “Sea Change” Foreign Policy, http://www.foreignpolicy.com/articles/2012/11/14/sea\_change)

Deploying more forces to the Asia-Pacific The most visible element of our rebalance toward the Asia-Pacific region will be an increase in day-to-day military presence. Although it is not the only way we are rebalancing, forces operating in the region show our commitment to the Asia-Pacific and provide a full-time capability to support our allies and partners. About half of the deployed fleet is in the Pacific -- 50 ships on any given day. These ships and their embarked Marines and aircraft train with our allies and partners, reinforce freedom of navigation, and deter conflict. They are also the "first responders" to large-scale crises such as the Great East Asian Earthquake and Tsunami in 2011. The long distance between the continental United States and Asia makes it inefficient to rotate ships and aircraft overseas for six to nine months at a time. To avoid this transit time and build greater ties with our partners and allies, more than 90 percent of our forces in the Asia-Pacific are there permanently or semi-permanently. For example, about half of our 50 deployed ships are permanently home-ported in Japan and Guam along with their crews and families. Our logistics and support ships use rotating civilian or military crews to obtain more presence for the same number of ships. Although we plan to reduce our future budgets, the Navy will continue to increase its presence in the Asia-Pacific region. The benchmark year of the Defense Strategic Guidance is 2020, and by then the Navy Fleet will grow to approximately 295 ships. This, combined with the impacts of our plans for operations and basing, will increase the day-to-day naval presence in the Asia-Pacific by about 20 percent, to 60 ships by 2020. In addition to growing the fleet, three factors will allow us to increase the number of ships in the Asia-Pacific by 2020: First, we will permanently base four destroyers in Rota, Spain over the next several years to help defend our European allies from ballistic missiles. Today we do this mission with 10 destroyers that travel in rotation to the Mediterranean from the United States. The six destroyers freed up in the process will then be able to rotationally deploy to the Asia-Pacific. Second, new Joint High Speed Vessels (JHSV) and Littoral Combat Ships (LCS) under construction today will enter the fleet and take on security cooperation and humanitarian assistance missions in South America and Africa, allowing the destroyers and amphibious ships we use today for those missions to deploy to the Asia-Pacific. These amphibious ships will begin deploying instead to the Asia-Pacific in the next few years to support Marine operations, including those from Darwin, Australia. Additionally, the new JHSV and LCS are also better suited to the needs of our partners in Africa and South America. Third, we will field more ships that spend the majority of their time forward by using rotating civilian or military crews. These include the JHSV, LCS, and our new Mobile Landing Platforms and Afloat Forward Staging Bases (AFSB). In addition to more ship presence in the Asia-Pacific, we will increase our deployments of aircraft there and expand cooperative air surveillance operations with regional partners. Today we fly cooperative missions from Australia, the Philippines, and Thailand, where we build our shared awareness of activities on the sea by either bringing partner personnel on board or sharing the surveillance information with them. We may expand these operations in the future to new partners concerned about threats from piracy, trafficking, and fisheries violations. To expand our surveillance capacity, the Navy version of the MQ-4 Global Hawk unmanned air vehicle will operate from Guam when it enters the fleet in the middle of this decade. Basing more ships and aircraft in the region To support our increased presence in the Asia-Pacific, we will grow the fraction of ships and aircraft based on the U.S. West Coast and in the Pacific from today's 55 percent to 60 percent by 2020. This distribution will allow us to continue to meet the needs of Europe, South America, and West Africa while more efficiently providing additional presence and capacity in the Asia-Pacific. Each ship that operates from an overseas port provides full-time presence and engagement in the region and delivers more options for Combatant Commanders and political leaders. It also frees up ships that would otherwise be needed to support a rotational deployment. Today, we have about two dozen ships home-ported in Guam and Japan. In 2013, with the USS Freedom, we will begin operating Littoral Combat Ships from Singapore, eventually growing to four ships by 2017. The LCS will conduct maritime security operations with partner navies throughout Southeast Asia and instead of rotationally deploying to the region, the ships will stay overseas and their crews will rotate in from the United States, increasing the presence delivered by each ship.

#### Won’t escalate – US won’t get involved

Logan, Director Foreign Policy at Cato, 2-20-’13 (Justin, “War over the Senkaku/Diaoyu Islands” China-US Focus, http://www.cato.org/publications/commentary/war-over-senkakudiaoyu-islands)

But would the United States really engage in a shooting war with China over the islands? There’s good reason to wonder. The biggest reason to doubt it is the stakes involved. Even if China acted aggressively, as it did when it apparently engaged a Japanese vessel and locked fire-control radar on it, the stakes are almost certainly lower than the costs of a war. America has littered the globe with a variety of security guarantees and promises, banking on the assumption that they will never be challenged but can depress security competition in peacetime. This reality can be seen in a 2007 statement from then-presidential candidate Hillary Clinton. In a conversation with a U.S. Asia scholar, Clinton remarked that it is absurd to think that Americans would support a war with China over Taiwan—a much more important strategic asset than the Senkakus/Diaoyus. (Apparently there was some miscommunication about who was on the record when, because the video containing the discussion was swiftly edited to remove the Taiwan comment.) Clinton’s remark about Taiwan points to a truth that is even greater in the case of the Senkaku/Diaoyu Islands: the game just isn’t worth the candle. Even if Washington dealt China a swift and decisive defeat, the consequences would be extremely costly in both economic terms and in terms of making a permanent enemy out of China without doing anything to moderate its future ambitions or capabilities.

### 1NC Yemen

#### Focus on high value targets now – no indiscriminate strikes proven by the absence of strikes for months

#### No modeling US military posture – the “copycat” argument is flawed

Boot 2011 (Max Boot, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations in New York, leading military historian and foreign-policy analyst, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, October 9, 2011, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/)>

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the [University of Pittsburgh](http://www.commentarymagazine.com/2011/10/09/drone-arms-race/) and author ofMissile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”¶ This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.¶ The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.¶ Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected [assassination](http://www.independent.co.uk/news/world/europe/former-chechen-rebel-boss-assassinated-in-dubai-1657758.html) of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

#### Litany of alt causes to terror – drones in general, anti-americanism, detention all cause blowback – no reverse causal solvency

#### Plan destroys the entire targeted killing program and operational chain of command—collapses military effectiveness

Richard Klingler, 7/25/12, Bivens and/as Immunity: Richard Klingler Responds on Al-Aulaqi–and I Reply, www.lawfareblog.com/2012/07/bivens-andas-immunity-richard-klingler-responds-on-al-aulaqi-and-i-reply/

Steve’s post arguing that courts should recognize Bivens actions seeking damages from military officials based on wartime operations, including the drone strikes at issue in al-Aulaqi v. Obama, seemed to omit some essential legal and policy points. The post leaves unexplained why any judge might decline to permit a Bivens action to proceed against military officials and policymakers, but a fuller account indicates that barring such Bivens actions is sensible as a matter of national security policy and the better view of the law. A Bivens action is a damages claim, directed against individual officials personally for an allegedly unconstitutional act, created by the judiciary rather than by Congress. The particular legal issue is whether a suit addressing military operations implicates “special factors” that “counsel hesitation” in recognizing such claims (injunctions and relief provided by statute or the Executive Branch are unaffected by this analysis). In arguing that the answer is ‘no,’ the post (i) bases its Bivens analysis on how the Supreme Court “has routinely relied on the existence of alternative remedial mechanisms” in limiting Bivens relief; (ii) argues that the Bivens Court “originally intended” that there be some remedy for all Constitutional wrongs in the absence of an express statutory bar to relief; (iii) invokes the policy interest in dissuading military officials from acting unlawfully, and (iv) argues that courts should ensure that a remedy exists if an officer has no defenses to liability (such as immunity). The post’s first point, which underpins the legal analysis, is simply not correct. United States v. Stanley, the Supreme Court’s most recent and important Bivens case in the military context, directly rejected that argument: “it is irrelevant to a ‘special factors’ analysis whether the laws currently on the books afford Stanley, or any other particular serviceman, an ‘adequate’ federal remedy for his injuries. The ‘special factor’ that ‘counsels hesitation’ is … the fact that congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.” Wilkie v. Robbins, too, expressly indicated that consideration of ‘special factors’ is distinct from consideration of alternative remedies and may bar a Bivens claim even where no remedy exists (and that in a Souter opinion for eight Justices). Similarly, the Bivens Court’s original intention is a poor basis for implying a damages claim in the military context. Justice Brennan in 1971 no doubt would have resisted the separation of powers principles reflected in cases that have since limited Bivens relief, especially for military matters. Instead, the relevant inquiry needs to address either first principles (did Congress intend a remedy and personal liability in this particular context? should judges imply one?) or the line of Supreme Court cases beginning with, but also authoritatively limiting, Bivens. There’s considerable support for denying a Bivens remedy under either of those analyses: for the former, support in the form of the presumptions deeply rooted in precedent and constitutional law that disfavor implied causes of action, as well as the legal and policy reasons that have traditionally shielded military officials from suit or personal liability; for the latter, Stanley, Chappell v. Wallace, Wilkie, the last thirty years of Supreme Court decisions that have all limited and declined to find a Bivens remedy, and various separation of powers cases pointing to a limited judicial role in military affairs. The post’s policy point regarding incentives that should be created for military officers to do no wrong is hardly as self-evident as the post claims. Congress has never accepted it in the decades since Stanley and has instead generally shielded military officials from personal financial liability for their service. Supreme Court and other cases from Johnson v. Eisentrager to Stanley to Ali v. Rumsfeld have elaborated the strong policy interest in not having military officials weigh the costs and prospects of litigation and thus fail to act decisively in the national interest. Many other Supreme Court cases have emphasized the potential adverse security consequences and limited judicial capabilities when military matters are litigated. The post criticizes Judge Wilkinson’s view of the adverse incentives that Bivens liability would create. That view is, however, supported by decades of Supreme Court and other precedent (and strong national security considerations) and was joined in that particular case, as in certain others, by a liberal jurist — while the post’s view is, well, popular in faculty lounges and among advocacy groups that would relish the opportunities to seek damages against military officers and policymakers. As for the post’s proposed test, it fails to account for either the Bivens case law addressed above or the separation of powers principles and litigation interests identified in the cases. It would simply require courts to determine facts and defenses, often in conditions of great legal uncertainty and following discovery, which begs the question whether Congress intended such litigation to proceed at all and fails to account for the costs of litigating military issues — to the chain of command, confidentiality, and operational effectiveness. As noted in Stanley, those harms arise whether the officer is eventually found liable or prevails. Those costs and the appropriate limits on the judicial role are recognized, too, in the separation of powers principles that run throughout national security cases – principles that jurists, even jurists sympathetic to the post’s perspective, should and will weigh as they resolve cases brought against military officials and policymakers.

#### It wrecks TK operations and broader military effectiveness

Stuart Delery, Principal Deputy Assistant Attorney General Civil Division, 12/14/12, DEFENDANTS’ MOTION TO DISMISS, http://www.lawfareblog.com/wp-content/uploads/2012/12/MTD-AAA.pdf

First, the D.C. Circuit has repeatedly held that where claims directly implicate matters involving national security and particularly war powers, special factors counsel hesitation. See Doe, 683 F.3d at 394-95 (discussing the “strength of the special factors of military and national security” in refusing to infer remedy for citizen detained by military in Iraq); Ali, 649 F.3d at 773 (explaining that “the danger of obstructing U.S. national security policy” is a special factor in refusing to infer remedy for aliens detained in Iraq and Afghanistan (internal quotation and citation omitted)); Rasul v. Myers, 563 F.3d 527, 532 n.5 (D.C. Cir. 2009) (same for aliens detained at Guantánamo Bay). These cases alone should control Plaintiffs’ claims here. Plaintiffs challenge the alleged targeting of and missile strikes against members of AQAP in Yemen. Few cases more clearly present “the danger of obstructing U.S. national security policy” than this one. Ali, 649 F.3d at 773. Accordingly, national security considerations bar inferring a remedy for Plaintiffs’ claims.19 Second, Plaintiffs’ claims implicate the effectiveness of the military. As with national security, the D.C. Circuit has consistently held that claims threatening to undermine the military’s command structure and effectiveness present special factors. See Doe, 683 F.3d at 396; Ali, 649 F.3d at 773. Allowing a damages suit brought by the estate of a leader of AQAP against officials who allegedly targeted and directed the strike against him would fly in the face of explicit circuit precedent. As the court in Ali explained: “It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.” 649 F.3d at 773 (quoting Eisentrager, 339 U.S. at 779). Moreover, allowing such suits to proceed “would diminish the prestige of our commanders, not only with enemies but with wavering neutrals.” Id.; see also Vance, 2012 WL 5416500 at \*5 (“The Supreme Court’s principal point was that civilian courts should not interfere with the military chain of command . . . .”); Lebron, 670 F.3d at 553 (barring on special factors grounds Bivens claims by detained terrorist because suit would “require members of the Armed Services and their civilian superiors to testify in court as to each other’s decisions and actions” (citation and internal quotation omitted)). Creating a new damages remedy in the context of alleged missile strikes against enemy forces in Yemen would have the same, if not greater, negative outcome on the military as in the military detention context that is now well-trodden territory in this and other circuits. These suits “would disrupt and hinder the ability of our armed forces to act decisively and without hesitation in defense of our liberty and national interests.” Ali, 649 F.3d at 773 (citation and internal quotation omitted). To infuse such hesitation into the real-time, active-war decision-making of military officers absent authorization to do so from Congress would have profound implications on military effectiveness. This too warrants barring this new species of litigation.

#### Nuclear war

Frederick Kagan and Michael O’Hanlon 7, Fred’s a resident scholar at AEI, Michael is a senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April, <http://www.aei.org/files/2007/04/24/20070424_Kagan20070424.pdf>

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, SinoTaiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### And turns terrorism

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties. Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership. If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature. Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

### 1NC Allies

#### Parker say it’s a legal problem not a political one – also cites detention and rendition as alt cause – means can’t solve NATO collapse

#### Also says it’s about ex ante killings lacking due process – post fact won’t solve extra-judicial killings

#### Also no warrant for NATO collapse – just a rhetorical question

#### Ex post doesn’t add legitimacy – damage’s already been done

Crandall 12 (Carla, Law Clerk – Supreme Court of Missouri, “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” Florida Journal of International Law, April, 24 Fla. J. Int'l L. 55, Lexis)

Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). n6 Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. n7 They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. n8 As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied ex post represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable. In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why resolving the legitimacy of their use is so critical. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld n9 and Boumediene v. Bush, n10 the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes.

#### Nato likes drones

Reittman, 9/19 (Andres, “NATO wants EU Coutnries to buy more drones” http://euobserver.com/defence/121506

BRUSSELS - Nato chief Anders Fogh Rasmussen wants EU countries to buy more drones, refuelling planes and naval radars.¶ The head of the military alliance is expected to call for the measures at a speech in the Carnegie Europe foundation in Brussels on Thursday (19 September).¶ "I believe that European nations can, and should, do more, to match America's commitment … [and] help to rebalance Nato," he aims to say.¶ "I would like to see European allies playing their part to acquire more drones to improve surveillance. More large transport and air-to-air refuelling aircraft to enhance their ability to deploy on operations. And more upgraded radars on their ships so they can be integrated into our Nato missile defence," he plans to add.¶

NATO is redundant—other international organizations solve—NATO only creates free-riding and lowers over-all security

Hartung 13 (Farina Hartung, Master Thesis International and European Relations, Linköping University, “Case-study of NATO: Is NATO a redundant international organization or not?”, http://www.liu.se/utbildning/pabyggnad/F7MME/student/courses/733a27masterthesis/filarkiv/spring-2013/theses-june/1.464731/MasterThesisFinalVersionFarinaHartung.pdf)

Just as mentioned above, NATO has gone through a process of changes since it was first established. It can be said that the changes where necessary or as a matter of fact that they were not - it always depends on the view one takes. The position of this paper has been stated before that it is going to investigate the question if NATO is redundant and to show proof that it is. As history has shown, it can be argued that the organization is redundant and has survived much longer passed its due time. From this point of view, it can be argued that this is what hurts the organization; they need to reform before they have a chance to act. It is quite difficult to claim that NATO is not redundant, but as mentioned before, this Thesis will take a look at the opposite side of this claim. Instead of trying to prove that NATO is needed, I will try to show that it is not needed and has long surpassed its duty. That has become clear over the past years. NATO has reformed itself in order to ensure that it will stay relevant enough in order to play an impacting role in politics and international relations. Although they have taken the initiative to stay relevant, they seem to have failed. There have been different voices, such as Theo Sommer and Kenneth Waltz, who claim and argue that NATO is as a matter of fact redundant. One could always ask what is redundancy and how can it be measured. Redundancy is not self-evident, and it also cannot really be defined. Neither can redundancy be measured. Redundancy is what one makes out of it and what others understand of redundancy is left open for discussion. But in regards to this paper, redundancy is just the fact that NATO is not really needed any longer. The task it is currently doing, such as the peacekeeping, can be done by other international organizations, such as the United Nations There is no longer the need for just one international organization to have its sole focus and propose on collective security. Security is something that is desired by so many countries and there is no need that NATO needs to be the one organization that will provide this to all the countries in the world. And as mentioned before, NATO already goes outside its territorial borders in order to provide security to the world (“NATO in the 21st Century). NATO is a redundant international organization simply because it has lost its endeavor. It strives to do so much in order to provide its member states with the necessary certainty that in case of a threat, there is a whole community that will act and protect each member state. But how should NATO really do that in reality? The member states have cut down their size of military they have. In time of great danger, one country might not want to act because there could be a conflict of interests. Currently, there is just not such a big threat as the Soviet Union was that there needs to be a military alliance. In case that such a great threat rises to the surface again, it is just simply as easy to create a new international military organization which can then function according to the actual needs, because it is always during the time of threat that new alliances are created. As mentioned above, the main purpose of NATO has vanished when the Cold War was over and the Soviet Union ceased to exist. Since the Cold War and the threat that the Soviet Union posed so close to European borders dissolved in the beginning of the 1990s, NATO just has lost its main function. According to Theo Sommer, NATO has ever since then been in a constant stage of “transformation”, never really knowing what it should achieve and what its goal is (17). In addition to that, one could argue that NATO is facing more problems that seem to have come along with the problem of the lacking threat. This Thesis argues that NATO is neither necessary to fulfill a defensive function or that of providing security for its members. NATO is an international organization that is in fact no longer permissible. It has surpassed its life expectancy by many years. Moreover, it can be said that since it has surpassed its reason of existence, it will step down from the position it holds in regards of an international security organization. It is no longer the main focus of the member states. NATO should also no longer be the main focus. Other organizations have emerged over the past decades that show that they are able to do the necessary work without having to go through a process of transformation. For example regional international organization, such as the European Union could take over this task, since most of the members are located on the European continent to begin with. Furthermore, it can be claimed that NATO should be able to see that they are no longer fit for modern times. Before NATO is able to act on any kind of problem or concern, it has to go through a process of transforming itself; otherwise, it might not be able to act. This point of view may seem a bit exaggerated; however, it is suitable for NATO since it is pragmatic. NATO is not the same since the end of the Cold War. It can be said that the main reason why the NATO was established was to be able to encounter the Soviet Union in a time of crisis. According to Lindley-French, NATO today is a strategic and defensive focal point that can project both military and partnership power worldwide (89). She continuous her argument by noting that the job the alliance has to done is the same as ever and has not changed (Ibid). The job of the alliance has always been to safeguard the freedom and security of its member nations through political and security needs, instituted by the values of “democracy, liberty, rule of law and the peaceful resolution to disputes” (Ibid). Yet another point he claims is that NATO provides a strategic forum for consultation between North Americans and Europeans on security issues of common concern and the facility for taking joint action to deal with them (Ibid). To repeat, NATO has lost its power and maybe even its standpoint in the modern day time politics. There are many different international organizations that all could take over the work of NATO or even could continue it in a better manner than NATO is currently doing. Claiming that NATO is not redundant just does not seem to follow the actual fact of the position that NATO is currently in. They have missed indeed the point where it was time to either dissolve the whole international organization or the time to reform which would have actually created positive outcomes. The latter point, however, seems impossible now. It just is impossible for NATO to change yet again. In the time of its existence, NATO has undergone so many different changes and reforms, altogether a total of six. There is just no logical reason why NATO is able to successfully undergo another process of changes and transformation. New reforms always bring changes and if they actually will help NATO is left in the open. As Theo Sommer puts it, NATO has served its time simply because the world has changed (9). The threats are no longer the same and to some extend may not even exist anymore. There are of course new threats, such as terrorism, piracy, and cyber-attacks, now that have emerged and rose to the surface of international politics. However, those are not really the same as they were when NATO was created. Hence, NATO is not suitable to tackle new issues and problems. They can try to reform, but it will never be the same because NATO itself will have to adjust to the new situation. But this is not what this once great military alliance was intended to do.

# 2nc

### 2NC Link – Targeted Killing

#### The executive cannot be constrained – they assert national emergencies to create an exception and give congress the middle finger, or they resort to secrecy and title switching – also, future presidents ignore the plan

#### Obama asserts rights based on the AUMF and ignores constraints—the president hides drone programs by switching titles to make it CIA based and secret and denies information because of “security concerns”—they’ll just shift to detention, signature strikes, or Article II authority

### ---Courts

#### Courts are ineffective – appointees ideologically agree because they are selected by Trumanites and rubber stamp the executive agenda – they also dismiss cases because of political question doctrine, state secrets, political immunity, or that cases aren’t justiciable

#### The executive also controls information access to the courts – so they defer to Trumanite threat assessment

### 2NC Overview

#### Internal separation of powers solves the case – bureaucratic checks through civil service protections, agency friction, mandatory review, and reporting requirements create accountability and better executive decision making. Executive deference and veto power means external restraints will fail. Only the CP solves – that’s Katyal

#### NONE OF THEIR CARDS ASSUME THE CP – THEY ASSUME INTERNAL REVIEW IN THE SQ BEING BAD – that’s not the CP

#### The CP is binding and solves the whole aff

Graham Dodds, Ph.D., Concordia professor of political science, 2013, Take Up Your Pen: Unilateral Presidential Directives in American Politics, p. 10

If executive orders, proclamations, memoranda, and other unilateral presidential directives merely expressed the president's view, then they would be important but not necessarily determinative. However, these directives are not mere statements of presidential preferences; rather, they establish binding policies and have the force of law, ultimately backed by the full coercive power of the state. In Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1871), the Supreme Court considered the legal status of a proclamation and decided that such directives are public acts to which courts must “give effect.” In other words, in the eyes of the judiciary, unilateral presidential directives are just as binding as laws. In 1960, Senator Robert Byrd (D-WV) advised his colleagues, “Keep in mind that an executive order is not statutory law.” 46 Politically, that may be true, as unilateral presidential directives represent the will only of the chief executive and lack the direct endorsement of congressional majorities. But constitutionally and legally, a unilateral presidential directive is as authoritative and compulsory as a regular law, at least until such time as it is done away with by Congress, courts, or by a future unilateral presidential directive.

### 2NC Prerequisite

#### Counterplan is a prerequisite – key to effective legislative and judicial oversight

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Equally important, the relationship between internal and external separation of powers is reciprocal: Internal and external checks reinforce and operate in conjunction with one another. Congress needs information to conduct meaningful oversight of the Executive Branch. 94 Internal agency experts and watchdogs are important sources of that information, whether in the guise of [\*445] formal reports, studies, and testimony or informal conversations and leaks. 95 Procedural constraints within agencies can serve a similar function, alerting Congress to agency activities. 96 Internal mechanisms also reinforce congressional mandates by creating bodies of personnel within the Executive Branch who are committed to enforcing the governing statutory regime that sets out the parameters of their authority and regulatory responsibilities - and on whose expertise the functioning of these regulatory regimes often depends. 97 Courts equally depend on information and evidence compiled by agency personnel to review agency actions, and they have invoked this dependence to justify the requirement that agencies disclose underlying information and offer detailed explanations of their decisions. 98 Moreover, despite courts regularly intoning that "it [is] not the function of the court to probe the mental processes of Secretaries in reaching [their] conclusions," 99 judicial review of agency actions often appears to turn on judges' perceptions of the role politics played in decisionmaking by agency officials. 100 Evidence that decisions were made over the objections of career staff and agency professionals often triggers more rigorous review. 101 A particularly striking [\*446] suggestion of how internal checks can effect judicial review came in the recent Boumediene litigation. Just a few months after refusing to grant certiorari in order to allow the Combatant Status Review Tribunal process to proceed, the Court reversed course and granted review, apparently influenced by the concerns of military lawyers about how the tribunals were functioning. 102

### 2NC Accountability

#### Reporting requirements and strategic leaks solve –

#### The aff reduces the incentive for leaks and whistleblowers internally because we believe in judicial review and the ACLU has got it – they pay more attention to internal leaks – Manning, Snowden, and Wikileaks prove

#### For example: It will come out that we didn't have enough evidence against future al-Awlaki’s - maybe we didn't have to kill him, we could have captured him

### 2NC A2 Credibility

#### Counterplan solves US credibility and soft power

Margulies 8 Peter, Professor of Law, Roger Williams University School of Law, Maryland Law Review, 68 Md. L. Rev. 1

This model rests on two elements: transparency and tailoring. Transparency calls for dialog between the branches, within the executive branch, and with the public, to develop a sense of stake and optimize the quality of decisions. Tailoring, like the equitable tailoring that courts do to take into account the interests of parties and the [\*68] public interest, 307 requires that the lawyer seek to accommodate both the rationale and content of proposed executive action within the constitutional scheme of overlapping authority among the branches. The role conception that drives the dialogic equipoise model stems not only from the logic of the separation of powers but also from the lawyer's function in representing collective entities and the historical function of the Attorney General. Under the Model Rules, lawyers representing collective entities such as corporations must act in the best interests of the organization. 308 On significant occasions, such as when a person, like a CEO, that the lawyer would ordinarily look to for direction on the organization's behalf acts against the entity's interests, the lawyer has an obligation to uphold those interests. This institutional obligation reduces the agency costs that flow from the self-dealing or myopia of particular managers, and promotes continuity within the organization. 309 The sense of institutional obligation within the dialogic equipoise model also echoes the background understanding that existed at the founding of the function of the Attorney General, derived from English law. 310 A minimum of objectivity was part and parcel of this understanding. 311 Edmund Randolph, the first Attorney General of the United States, set the tone with opinions on the establishment of the Bank of the United States that were measured, taking into account the most cogent arguments for and against the proposal. 312 Because the model seeks to reduce the agency costs of executive overreaching, it also preserves the long-term perspective that emergencies can sometimes obscure. Transparency can help prevent the loss of executive power and credibility that can follow in the wake of executive overreaching. Transparency also preserves the legitimacy and international reputation of the United States by displaying the executive's confidence that it can rally others to its cause and respond [\*69] to their concerns. This is what the drafters of the Declaration of Independence had in mind when they claimed "a decent Respect [for] the Opinions of Mankind." 313 Maintaining reputation allows the United States to exercise "soft power" 314 that will often be more effective than brute force. 315 In this fashion, a dialogic equipoise model enhances long-term stability and aids in refining current policies. Moreover, transparency does not necessarily frustrate timely action, including the use of force when that is necessary. In the Cuban Missile Crisis, for example, the Administration engaged in a wide and vigorous internal debate and subsequently consulted with foreign capitals and international organizations. 316 The destroyer deal between the United States and Britain featured a robust internal debate. Most recently, dialog with Congress and the United Nations preceded the decision by the United States to intervene militarily in Afghanistan after September 11. Government attorneys should urge dialog and advise the President of the adverse consequences attending a lack of transparency. Just as dialog yields results that preserve American leverage, tailoring an executive response will have similar benefits. Courts use tailoring to ensure that extraordinary remedies such as injunctions serve the public interest and respect the rights of the parties.

### 2NC A2 Precedent

#### Legal norms fail and are not unique to congress – the WPR proves. Executive compliance with international norms SETS A LEGAL PRECEDENT

Twomey 13, Trinity College Dublin, (Laura, Setting a Global Precedent: President Obama's Codification of Drone Warfare, Cambridge Journal of International and Comparative Law, 14 March 2013, http://www.cjicl.org.uk/index.php/cjicl-blog/setting-a-global-precedent-president-obamas-codification-of-drone-warfare, da 7-31-13) PC

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology. On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns. Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology. It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

#### Nations respond to behavior and usage -- not legal standards

Roberts 13 (Kristin, When the Whole World Has Drones, National Journal, 21 March 2013, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, da 8-1-13) PC

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses.

#### Restraint on constitutional grounds captures the precedent—comparative ev

Atkinson ‘13 – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch **limits its own** conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be unprompted by judicial command or legislative action, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

### 2NC Politics NB

#### Counterplan doesn’t link to politics – external checks inherently take an adversarial form, but internal checks gain executive credibility and face less resistance – that’s Metzger

#### Executive action avoids politics

Sovacool 9 Dr. Benjamin K. Sovacool 2009 is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of SingaporeArticle: Preventing National Electricity-Water Crisis Areas in the United States, Columbia Journal of Environmental Law 2009 34 Colum. J. Envtl. L. 333,

¶ Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save ¶ ¶ presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails.¶ ¶ 292¶ ¶ Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September ¶ ¶ 11, 2001 attacks on the Pentagon and World Trade Center, for ¶ ¶ instance, the Bush Administration almost immediately passed ¶ ¶ Executive Orders forcing airlines to reinforce cockpit doors and ¶ ¶ freezing the U.S. based assets of individuals and organizations ¶ ¶ involved with terrorist groups.¶ ¶ 293¶ ¶ These actions took Congress ¶ ¶ nearly four months to debate and subsequently endorse with ¶ ¶ legislation. Executive Orders therefore enable presidents to ¶ ¶ rapidly change law without having to wait for congressional action ¶ ¶ or agency regulatory rulemaking.

### ---2NC CIA

#### That means no norms

Alston 11 (Philip, John Norton Pomeroy Professor of Law, New York University School of Law, Harvard National Security Journal, “The CIA and Targeted Killings Beyond Borders”, 2 Harv. Nat'l Sec. J. 283, Lexis Law)

The combination of high levels of secrecy, combined with poor accountability, mean that it is impossible to verify the extent to which applicable international standards are respected in practice. Because these covert forces often operate as self-described killing machines, n4 their existence and continuing rapid expansion have grave consequences for the twin regimes of international human rights law ("IHRL") and international humanitarian law ("IHL") which aim to uphold the value of human life and minimize the brutalities of warfare.

#### Circumvention

Batarargs 2/10 Lina, writer, “Government Debates Using Drone Strike To Kill U.S. Citizen Abroad” http://www.opposingviews.com/i/politics/government-debates-using-drone-strike-kill-us-citizen-abroad

Although a series of stops exist in this scenario’s execution of a drone strike, a source has said that Obama “could make an exception to his policy and authorize the CIA to strike on a onetime basis or authorize the Pentagon to act despite the possible objections of the country in question.” Hina Shamsi, irector of the American Civil Liberties Union’s National Security Project, issued a statement on the “inherent danger of a killing program based on vague and shifting legal standards.” Shamsi described the system as one in which it is “disturbingly easy for the government to operate outside the law.”

#### Obama can circumvent restrictions to CIA drones whenever he wants

NYT 2/10 “U.S. Debates Drone Strike on American Terrorism Suspect in Pakistan” http://www.nytimes.com/2014/02/11/world/asia/us-debates-drone-strike-on-american-terror-suspect-in-pakistan.html?hp&\_r=0

The Obama administration is debating whether to authorize a lethal strike against an American citizen living in Pakistan who some believe is actively plotting terrorist attacks, according to current and former government officials. It is the first time American officials have actively discussed killing an American citizen overseas since President Obama imposed new restrictions on drone operations last May. The officials would not confirm the identity of the suspect, or provide any information about what evidence they have amassed about the suspect’s involvement in attacks against Americans. The debate about whether to put the individual on a kill list was first reported on Monday by The Associated Press. The first time the Obama administration carried out a targeted killing operation against an American citizen was in September 2011, when a C.I.A. drone killed the radical preacher Anwar al-Awlaki in Yemen; officials said little publicly about the operation. The White House acknowledged last year that four American citizens had been killed in drone strikes during Mr. Obama’s time in office. According to the White House, only Mr. Awlaki had been intentionally targeted. During a speech last May, Mr. Obama said he intended to gradually shift drone operations from the C.I.A. to the Pentagon, partly to make them more transparent. American officials said then that drone strikes in Pakistan would continue to be launched by the C.I.A. because Pakistan refuses to allow open American military operations on its soil. However, under a classified policy issued by Mr. Obama, there is a strong preference for the Pentagon — not the C.I.A. — to carry out drone strikes against American citizens, though the policy is said to allow exceptions if necessary. American officials said that the new discussions about whether to strike the American in Pakistan had been going on since the middle of last year. The public got a glimpse of the debate last week when Representative Mike Rogers of Michigan, the chairman of the Intelligence Committee, spoke angrily about the drone restrictions imposed by Mr. Obama. “Individuals who would have been previously removed from the battlefield by U.S. counterterrorism operations for attacking or plotting to attack against U.S. interests remain free because of self-imposed red tape,” Mr. Rogers, a Republican, said during a congressional hearing. The new rules, he said, are “endangering the lives of Americans at home and our military overseas in a way that is frustrating to our allies and frustrating to those of us who engage in the oversight of our classified activities.” Still, several senior officials in both the executive branch and Congress confirmed that even though the policy establishes a baseline rule that only the Pentagon is to conduct drone strikes against American citizens, a clause makes an exception that would in theory allow the administration to use the C.I.A. to carry out a strike if circumstances justified it. “This was Brennan’s brainchild,” said a senior congressional aide, who spoke on the condition of anonymity because of the continuing policy debate over the matter, referring to John O. Brennan, the C.I.A. director. “They wanted to be able to talk about it, disclose it and provide the legal footing for it.” Details about the deliberations — including the identity of the proposed target, what he is accused of doing and the quality of any evidence against him — remain murky. It is not clear how much reluctance by the administration to approve a strike is based on whether he meets the standard — a continuing, imminent threat against Americans — and how much other factors, like the complications raised by the military preference, are playing a role. Despite Mr. Obama’s efforts to reform the rules governing the use of drones, they remain controversial. “So little has changed since last year when it comes to government secrecy over killings,” said Naureen Shah, advocacy adviser at Amnesty International U.S.A. “The public and most members of Congress are still completely in the dark about where the U.S. claims authority to strike, the legal rules and the identity of those already killed.” “The policy is still the stuff of official secrecy and speculation when it should be a matter of open debate and explicit constraints,” Ms. Shah said. Spokesmen at the Pentagon, C.I.A. and White House declined on Monday to comment on the matter. The administration’s ambivalence on this case has infuriated Mr. Rogers. “The chairman is fired up about this,” the congressional aide said. The aide also confirmed that the Defense Department was initially reluctant to place the individual on the targeting list, questioning whether he met the new standards that Mr. Obama laid out in May. But eventually the Pentagon came around, said the aide, who added that the C.I.A. had supported a lethal strike from the beginning.

### ---2NC Circumvention

#### executive won’t release info because a. has info from other countries like Germany that don’t it to get released and b. releases national security intel to the public that would be comprising means they don’t care – that’s hirsh and roberts

#### The administration will use caselaw to deny judicial review

Rosen 13 Jeffrey, professor of law at The George Washington University and the legal affairs editor of The New Republic, "Courting disaster: A new idea to limit drones could actually legitimize them,” The New Republic, 2-11, http://www.newrepublic.com/article/112392/drone-courts-congress-should-exercise-oversight-instead#

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

#### This is *particularly* true of obama who refused to disclose the info about tk *when getting sued*

Washington Post 13 “Judge backs Obama administration on secrecy of targeted killings of terrorism suspects” January 2 http://articles.washingtonpost.com/2013-01-02/world/36323633\_1\_drone-program-samir-khan-killings

The Obama administration acted lawfully in refusing to disclose information about its targeted killings of terrorism suspects, including the 2011 drone strikes that killed three U.S. citizens in Yemen, a federal judge ruled Wednesday. But the judge also described a “veritable Catch-22” of security rules that allow the executive branch to declare legal “actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for their conclusion a secret.” “The Alice-in-Wonderland nature of this pronouncement is not lost on me,” Judge Colleen McMahon of the U.S. District Court for the Southern District of New York wrote in her ruling. The case combined separate challenges from the American Civil Liberties Union and the New York Times to the administration’s refusal to release documents about targeted killings under the Freedom of Information Act. “It’s a disappointing decision, but I think it’s important that the judge spent so much space discussing the substantive concerns with the authority the government has claimed,” said Jameel Jaffer, deputy legal director of the ACLU. The ACLU lawsuit, filed last February, said the Justice and Defense departments and the CIA were illegally using secrecy claims to deny requests in 2010 for information about the legal basis for the killings and the selection process for targets. The suit cited public comments made by President Obama, Defense Secretary Leon E. Panetta and other officials about the drone program in arguing that the government could not credibly claim a secrecy defense. Earlier, the Times had requested opinions written by the Justice Department’s Office of Legal Counsel on the legality of killing U.S. citizens following reports that New Mexico-born Anwar al-Awlaki had been placed on the government’s “kill list” of authorized targets. Awlaki and another U.S. citizen, Samir Khan, were killed in a September 2011 attack in Yemen. Obama described Alwaki as chief of external operations for al- Qaeda in the Arabian Peninsula. Awlaki’s 16-year-old son was killed two weeks later in a drone strike that a senior administration official said was a “mistake” because someone else had been targeted. After the ACLU suit was filed, the administration changed its initial refusal even to acknowledge the existence of the targeted killing program. Last year, it agreed that some documents pertinent to the requests existed, but said they were exempt from release under various FOIA exemptions for secret operations, attorney-client privilege and “deliberative process” within government organizations. Government briefs in the case argued that public statements made by Obama and others had referred only to the broad outlines of their legal rationale, including international covenants on armed combat and a 2001 congressional resolution authorizing the use of force against al-Qaeda and associated organizations, but had not referred to any specific operations or documents. In her ruling, McMahon found those arguments legally compelling and granted the government request for summary judgment against the ACLU and the Times. But, she wrote in an introduction to the opinion, the case raised constitutional questions about executive power and “whether we are indeed a nation of laws, not of men. The administration has engaged in public discussion of the legality of targeted killing, even of citizens, but in cryptic and imprecise ways.” “More fulsome disclosure” of the administration’s legal reasoning “would allow for intelligent discussion and assessment of a tactic that (like torture before it) remains hotly debated,” McMahon wrote. “It might also help the public understand the scope of the ill-defined yet vast and seemingly ever-growing exercise in well over a decade, at great cost in lives, treasure and (at least in the minds of some) personal liberty.” “However, this Court is constrained by law,” she wrote, and the government “cannot be compelled . . . to explain in detail the reasons why its actions do not violate the constitution and laws of the United States.”

#### *Even if* actions violate the law, they get dismissed --- prefer *comparative* ev

Parry 7 John T. Parry, Associate Professor, Lewis & Clark Law School William & Mary Bill of Rights Journal February, 2007 15 Wm. & Mary Bill of Rts. J. 765 TERRORISM AND THE NEW CRIMINAL PROCESS, lexis

The remaining judicial remedy is a civil suit for damages against state officials under 42 U.S.C. § 1983 or against federal officials under the Bivens doctrine. n331 Damages claims raise a host of problems of their own. First is the possibility that, in the context of a suit involving torture or related mistreatment by federal officials, national security concerns would lead to dismissal of the suit-a defense which has, in fact, succeeded in at least two recent cases. n332 Second, claims against individuals confront [\*821] doctrines of absolute or qualified immunity. Absolute immunity, which applies primarily to judges, legislators, and prosecutors while they are performing those roles, prevents any suit for damages, no matter how egregious the conduct. n333 Qualified immunity requires a court to dismiss the claim even if it concludes that a defendant's conduct violated the Constitution, if, at the time the defendant acted, the conduct did not "'violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" n334 That is to say, recovery is available only for violations of "clearly established" rights, and a right is not clearly established with respect to a specific claim unless "'[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right. . . . [I]n the light of pre-existing law the unlawfulness must be apparent.'" n335¶ For a damages claim for violation of the Fourth Amendment, a court applying the qualified immunity standard would ask whether an official reasonably believed that his actions amounted to a reasonable use of force under the circumstances, which includes the potential threat posed by the victim/plaintiff. n336 For a substantive due process claim, the court would likely ask whether the official reasonably could have believed that his actions were serving "'any government interest.'" n337 In neither case will it be easy simply to say that the conduct was not only unlawful, but also that the unlawfulness was "apparent." n338

#### There arguments about why the case would happen but the executive would lose are *silly* --- the plaintiff *cannot bring forward a case* without *any evidence that the govt was responsible for an action* that the executive would *just ignore* because they have the *authority under state secret privellege* lets think about this logically now..

US Court of Appeals 9 BINYAM MOHAMED; ABOU ELKASSIM BRITEL; AHMED AGIZA; MOHAMED FARAG AHMAD BASHMILAH; BISHER AL-RAWI, Plaintiffs-Appellants, v. JEPPESEN DATAPLAN, INC., Defendant-Appellee, UNITED STATES OF AMERICA, Intervenor-Appellee. No. 08-15693 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT 614 F.3d 1070; 2010 U.S. App. LEXIS 18746 December 15, 2009, Argued and Submitted En Banc, San Francisco, California September 8, 2010, Filed

In addition to the Totten bar, HN5Go to this Headnote in the case.the state secrets doctrine encompasses a "privilege against revealing military [or state] secrets, a privilege which is well established in the law of evidence." Reynolds, 345 U.S. at 6-7. 5 A successful assertion of privilege under Reynolds will remove the privileged evidence from the litigation. Unlike the Totten bar, a valid claim of privilege under Reynolds does not automatically require dismissal of the case. In some instances, however, the assertion of privilege will require dismissal because it will become apparent during the Reynolds analysis that the case cannot proceed without privileged evidence, or that litigating the case to a judgment on the merits would present an unacceptable risk of disclosing state secrets.

#### The executive will fight back – doubling down on drones

Margulies 10 \* Peter, Professor of Law, Roger Williams University. Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law, 96 IOWA L. REV. 195

While judicial correctives for both myopia and hindsight bias vindicate values like due process and the separation of powers, they also reduce volatility. Myopia and hindsight bias hold the rule of law hostage to wide political oscillations. These occur because people facing losses are risk-prone. n12 Behavioral substitutions that adjust to changes in the law n13 may [\*200] entail risk-seeking that undermines the potential for deliberation among divergent stakeholders. For example, when political dissenters lose faith in the prospects for a peaceful transition from myopic policies, they may substitute revolutionary action for reformist speech. n14 Having staged a revolution, some erstwhile rebels learn the wrong lesson, using the machinery of the state to police the purity of adherents. n15 Remnants of the former regime recoup, citing the rebels' excesses. In each phase of the cycle, differentiation from the previous phase becomes a proxy for soundness on the merits. A carefully crafted damages remedy restrains official myopia and thereby curbs this counterproductive cycle. Viewed in that light, judicial solicitude for free speech is not only an expression of constitutional principle; it is also an institutional mechanism for safely containing the sometimes volatile "experiment" of popular governance. n16 Hindsight bias's role in the promotion of volatility compounds the challenges that judicial review must confront. Theorists have observed that subjects of regulation who fear regulators' hindsight bias become alienated [\*201] from the entire legal regime. n17 They view the status quo as intolerable and take unwise risks that undermine compliance. Since defendants in Bivens actions are subject to regulation by judges and juries, fear of hindsight bias can make them unduly risk-prone. Officials who fear future retaliation may cling stubbornly to power, doubling down on repressive measures because they view the status quo as trending in the wrong direction. n18 This risk-prone behavior exacerbates the cycling that the Boumediene v. Bush Court sought to curb. To reduce cycling and enhance deliberation, courts must strive for an equilibrium that corrects for both myopia and hindsight bias.

#### Courts will defer because of SSP and qualified immunity – only the most egregious cases will succeed

Murphy and Radsan 9 Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law. Afsheen John Radsan is a Professor, William Mitchell College of Law. Cardozo Law Review, 32 Cardozo L. Rev. 405

The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security. 217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence. 218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods. 219 In addition, the doctrine of qualified immunity requires dismissal of actions against officials if a court determines they reasonably believed they were acting within the scope of their legal authority. 220 Defendants would satisfy this requirement so long as they reasonably [\*444] claimed they had authority under the laws of war (assuming their applicability). These standards are hazy, and a court applying them would tend to defer to the executive on matters of military judgment. 221 In view of so many practical and legal hurdles, some courts and commentators might be inclined to categorically reject all Bivens-style challenges to targeted killings. In essence, they might view lawsuits related to targeted killing as a political question left to the executive. 222 This view parallels Justice Thomas's that courts should not second-guess executive judgments as to who is an enemy combatant. 223 Contrary to Justice Thomas's view, the potency of the government's threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct - for example, killing an unarmed Jose Padilla at O'Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary.

### 2NC Deference – Courts

#### Courts always defer to the executive

Driesen 9 \* David M. University Professor, Syracuse University; Fordham Law Review, October, 78 Fordham L. Rev. 71

The executive branch often interprets the vast body of law it administers unilaterally. In some areas, courts have no opportunity to review its decisions. 217 Even when reviewable, the courts usually approach executive branch decisions deferentially and often correct errors in ways that leave continuing latitude for executive branch shaping of the law. 218 Because of the awkwardness of impeachment and funding cutoffs, congressional oversight provides only a very limited remedy for executive excess, and executive decisions to withhold information can further weaken oversight's effectiveness. 219 Because modern Presidents are so profoundly political, a danger exists that they will interpret the law opportunistically, to increase their own power and advance their faction's political agenda, rather than faithfully execute the laws Congress has publicly passed. 220 The opportunities for abuse have recently multiplied, because of the specter of terrorism, which tends to drive the executive toward secret policy making of his own largely unrestrained by law. 221

#### They acquiesce responsibility

Glennon, 8 **–**  (Michael, Professor of international law at the Fletcher School of Law & Diplomacy, “A Conveniently Unlawful War”, http://www.hoover.org/publications/policyreview/26119169.html)

John marshall is famous for having fathered a system of judicial supremacy, reflected in his ringing assertion in Marbury v. Madison, 5 U.S. 137 (1803) that it is

“emphatically the province and duty of the judicial department to say what the law is. ” As Bas v. Tingy, Talbot v. Seeman, and Little v. Barreme all reveal, Marshall and his colleagues did not hesitate to decide cases bearing upon war and peace. But American courts today say little on such matters, strikingly less than did their Federalist predecessors, whose power was more recently claimed and more precariously held. The courts today routinely decline to hear war powers cases for three doctrinal reasons, any one of which would likely prove fatal to an effort to achieve judicial redress in the war in Iraq. The first is the political question doctrine. The reach of the doctrine was summarized by the Supreme Court in the 1962 reapportionment case of Baker v. Carr. It said: Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court ’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.21 A dispute that falls into one of more of those categories will be dismissed in the belief the courts should leave its resolution to the political branches. In recent decades, the courts have not reached the merits in any war powers controversy, and the political question doctrine has been a frequent rationale for abstaining. This is lamentable, because it undercuts the American commitment to a rule of law enforced by independent courts against all law violators, high or low. John Marshall well knew that some cases present political questions not appropriate for adjudication, something he noted explicitly (and only in passing) in Marbury. Yet his Court decided Bas, Talbot, and Little without ever noting that any of these cases might have presented a political question; the possibility was not even worth addressing. And with good reason: In such cases, arguments for the political question doctrine are in fact arguments for unfettered executive hegemony. The executive always wins when it can present Congress and the country with a fait accompli, using force free of judicial review. Such abstention, it is true, keeps the courts out of the political hot-seat and in a sense protects their legitimacy. But it is worth remembering that political legitimacy is a double-edged sword: Not deciding a case that presents a manifest constitutional violation can undermine public respect for the courts even more than deciding it. When the political system is incapable of righting itself and re-establishing an equilibrium of power, the courts ’ legitimacy is enhanced by intervening.

### NATO – Drones

#### No European or NATO drone opposition---recent shifts

Elsa Rassbach 11-8, Drones Campaign, 11/8/13, “How Europeans Are Opposing Drone and Robot Warfare: An Overview of the Anti-Drone Movement in Europe,” http://truth-out.org/news/item/19904-how-europeans-are-opposing-drone-and-robot-warfare-an-overview-of-the-anti-drone-movement-in-europe

So far only three countries are known to have used armed combat drones to carry out attacks: Israel, the US, and the UK. But this could soon change. Analysts see demand for military UAVs (unmanned aerial vehicles, also known as drones) quadrupling over the next decade. Global spending on drone technology is expected to jump from an estimated $6.6 billion this year to $11.4 billion in 2022. Israeli weapons manufacturers have long been actively marketing military drones to other countries, and in the fall of 2012, the US announced that as many as 66 countries would be eligible to buy US drones under new Defense Department guidelines. However, the US Congress and State Department have final approval of drone exports on a case-by- case basis and have denied the request of NATO-partner Turkey to purchase Predator drones because of ongoing tensions between Turkey and Israel. Soon, however, countries that cannot obtain US or Israeli drones may be able to purchase them from weapons manufacturers in other countries such as China and South Africa. European weapons manufacturers also seek a share of the drone market, not only for European military use, but also for export to other countries. Though it will likely be many years before a European-made combat drone will be operable, defense departments of several European countries are seeking to acquire for their arsenals US or Israeli combat drones capable of carrying weapons for targeted killing. Italy requested US permission to weaponize the Italian fleet of six US Reaper two years ago. In May 2012, the Obama administration announced that it would soon notify the US Congress of plans to sell Italy "weaponization" kits, a move that, according to the Wall Street Journal, "could open the door for sales of advanced hunter-killer drone technology to other allies." But so far there have been no reports that approval to Italy has yet been granted. In May 2013, France announced the purchase two unarmed US Reaper drones for the intervention in Mali, and the drones could later be armed. Holland is already using drones extensively for domestic police surveillance and is reportedly considering purchase of US Reaper drones for military purposes. And the German Bundeswehr, which some years ago leased three Israeli Heron drones for surveillance in Afghanistan, is now negotiating with the US and Israel to acquire armed combat drones. Europe, Targeted Killing, and the International Rule of Law By offering combat drones to European allies, the US seeks not only military "burden-sharing" in Afghanistan and elsewhere, but also undoubtedly hopes to gain more international acceptance and legitimacy for drone warfare. European drone opponents hope to instead bring European governments solidly behind international efforts to ban weaponized combat drones and to stop the threat of drone warfare to the international rule of law.

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### Allies –

#### No impact to NATO

### PQD

#### Extend the Boot evidence – no modeling of US military posture

#### Greenert – 50 ships in Asia on any given DAY

#### Bitzinger – closest they come is to Taiwan, but no assume other warrant – organizations like Asia-Pacific Economic Cooperation (APEC) forum, the Proliferation Security Initiative and the Shanghai Co-operation Organisation.

#### Logan evidence – not about Taiwan – says it is so unlikely we would get involved in Senkaku islands that it’s more likely we would fight over Taiwan

#### Fravel evidence- FOREIGN POLICY institutional shift in China that prevents them from lashing out and instead they choose to embrace cooperation -

#### Multiple checks prevent the use of force in Asia even when tensions rise

Alagappa Director East-West Center ‘9

(Muthiah-, The Long Shadow: Nuclear Weapons and Security in 21st Century Asia, P. 70-71)

Despite this, the role of force in Asian international politics is becoming more limited due to a number of developments. First, the traditional need for force to protect the territorial integrity of states has declined in importance. With few exceptions (Taiwan. North Korea, and South Korea) state survival is not problematic. The Asian political map is for the most part internationally accepted, although some boundaries arc still in dispute. Such disputes are being settled through negotiations or shelved in the interest of promoting better bilateral relations (Wang 2003).

Second, the political, diplomatic, strategic, military, and economic cost of using force has increased dramatically. Over the past several decades, a normative framework has developed in Asia that delegitimizes the use of force to invade and occupy another country or to annex territory that is internationally recognized as belonging to another state. The use of force to invade and occupy another country or to annex territory will incur high costs. For example, if China were to invade Taiwan without serious provocation, it can expect civil and military resistance in Taiwan, U.S. military intervention, international condemnation, and a setback to its image as a responsible power. Such action would also incur huge economic costs resulting from international and domestic disruptions. Unless military action were swift and surgical, it would also result in substantial physical damage that would only increase as Asian countries continued to modernize and urbanize. Further, military action that is not successful can have negative domestic political consequences as well.

Third, most Asian countries benefit from participation in the regional and global capitalist marketplace. The 1997-98 financial crisis sensitized Asian countries to the vagaries and negative consequences of globalization but did not turn them away from liberalization and participation in the global economy. Preserving international stability has become a key goal of major powers. Economic growth, modernization, and growing economic interdependence have increased the cost of the force option and restrained the behavior of states even when major political issues are at stake, as for example in cross-Strait relations. Economic interdependence does not close the force option in all cases, but the high costs of economic disruption can restrain military action. Further, force is no longer relevant for the attainment of economic goals such as access to resources, labor, and markets. Energy security, for example, is sought through the market, national stockpiling, and sourcing arrangements.

Finally, resolution of existing disputes through the use of force is not practical. Except for the United States, none of the Asian states can marshal the necessary military power to impose a settlement by force. The experience in Iraq and Afghanistan suggests that even the United States suffers limitations and that the use of force carries much risk. These considerations explain the reluctance of the United States to undertake preventive action against North Korea, the reluctance of China to carry out its threat of using force to unify Taiwan with the PRC, and the continuing stalemate in the India-Pakistan conflict over Kashmir. Force may still be used in these cases, but the attendant strategic, political, diplomatic, and economic costs and risks are high.

### Climate Change Add On

#### “Global effort”

#### No LEGISLATION

#### Warming already past the tipping point – new studies prove

Gillis and Broder, New York Times, 12-2-’12 (Justin and John, “With Carbon Dioxide Emissions at Record High, Worries on How to Slow Warming” http://www.nytimes.com/2012/12/03/world/emissions-of-carbon-dioxide-hit-record-in-2011-researchers-say.html)

Global emissions of carbon dioxide were at a record high in 2011 and are likely to take a similar jump in 2012, scientists reported Sunday — the latest indication that efforts to limit such emissions are failing. Emissions continue to grow so rapidly that an international goal of limiting the ultimate warming of the planet to 3.6 degrees Fahrenheit, established three years ago, is on the verge of becoming unattainable, said researchers affiliated with the Global Carbon Project. Josep G. Canadell, a scientist in Australia who leads that tracking program, said Sunday in a statement that salvaging the goal, if it can be done at all, “requires an immediate, large and sustained global mitigation effort.” Yet nations around the world, despite a formal treaty pledging to limit warming — and 20 years of negotiations aimed at putting it into effect — have shown little appetite for the kinds of controls required to accomplish those stated aims. Delegates from nearly 200 nations are meeting in Doha, Qatar, for the latest round of talks under the treaty, the United Nations Framework Convention on Climate Change. Their agenda is modest this year, with no new emissions targets and little progress expected on a protocol that is supposed to be concluded in 2015 and take effect in 2020. Christiana Figueres, the executive secretary of the climate convention, said the global negotiations were necessary, but were not sufficient. “We won’t get an international agreement until enough domestic legislation and action are in place to begin to have an effect,” she said in an interview. “Governments have to find ways in which action on the ground can be accelerated and taken to a higher level, because that is absolutely needed.” The new figures show that emissions are falling, slowly, in some of the most advanced countries, including the United States. That apparently reflects a combination of economic weakness, the transfer of some manufacturing to developing countries and conscious efforts to limit emissions, like the renewable power targets that many American states have set. The boom in the natural gas supply from hydraulic fracturing is also a factor, since natural gas is supplanting coal at many power stations, leading to lower emissions. But the decline of emissions in the developed countries is more than matched by continued growth in developing countries like China and India, the new figures show. Coal, the dirtiest and most carbon-intensive fossil fuel, is growing fastest, with coal-related emissions leaping more than 5 percent in 2011, compared with the previous year. “If we’re going to run the world on coal, we’re in deep trouble,” said Gregg H. Marland, a scientist at Appalachian State University who has tracked emissions for decades. Over all, global emissions jumped 3 percent in 2011 and are expected to jump 2.6 percent in 2012, researchers reported in two papers released by scientific journals on Sunday. It has become routine to set new emissions records each year, although the global economic crisis led to a brief decline in 2009. The level of carbon dioxide, the most important heat-trapping gas in the atmosphere, has increased about 41 percent since the beginning of the Industrial Revolution, and scientists fear it could double or triple before emissions are brought under control. The temperature of the planet has already increased about 1.5 degrees Fahrenheit since 1850. Further increases in carbon dioxide are likely to have a profound effect on climate, scientists say, leading to higher seas and greater coastal flooding, more intense weather disasters like droughts and heat waves, and an extreme acidification of the ocean. Many experts believe the effects are already being seen, but they are projected to worsen

#### New studies prove warming already past the tipping point – global negotiations aren’t sufficient and declining emissions is offset by growth in developing countries. Coal and CO2 are rising – warming effects are already seen. That’s Gillis and Broder

#### Warming inevitable – technology can’t achieve negative emissions\*\*\*

Urpelainen, Professor PolSci Columbia, ’12 (Johannes, November, “Global Warming, Irreversibility, and Uncertainty: A Political Analysis” Global Environmental Politics, Vol 12 No 4, ProjectMuse)

Literature and Contribution

Carbon emissions are irreversible to the degree that technologies that can reduce atmospheric concentrations remain unavailable. Since carbon dioxide remains in the atmosphere for hundreds of years, current emissions will warm the planet for centuries. As Schneider demonstrates, rapid global warming may trigger various positive feedbacks that may cause abrupt global warming and destabilize the atmosphere.8 From the release of seabed methane clathrates to the melting of Siberian permafrost and the disappearance of the Amazonian rain-forests, the magnitude of the threat posed by these positive feedbacks underscores the dangers of rapid and irreversible increases in the atmospheric concentration of carbon. Irreversibility undermines a wait-and-see strategy.9 If it was easy to rapidly achieve negative emissions (i.e., to reduce atmospheric concentrations), then it might be reasonable to refrain from mitigation until climate scientists can estimate the sensitivity of average temperatures to changes in greenhouse gas concentrations. [End Page 69] But, rapid reductions in carbon emissions are very costly. For numerous reasons, achieving negative emissions quickly is probably impossible. Unless societies enact mitigation policies now, they cannot prevent large increases in the atmospheric concentration of carbon.

### Overview

#### Reform is sufficient - Reforms solves surveillance credibility

Weigel, 3-25-’14 (David, “Turning Off the Vacuum Cleaner” Slate, www.slate.com/articles/news\_and\_politics/politics/2014/03/nsa\_bulk\_metadata\_collection\_rand\_paul\_ron\_wyden\_support\_obama\_s\_plan\_to.html

If it was a “turning point,” as Snowden suggested, it was one that the administration and its critics both needed. The congressional and civic outcry against the NSA started and basically ended with the revelations of domestic snooping. That wasn’t where the Snowden revelations ended. Day after week after month, newspapers were using the Snowden documents to detail American spying in foreign countries. This was costing the American tech industry billions of dollars, maybe as much as $180 billion. Rogers and Ruppersberger, and the administration, wanted to restore American credibility. Domestic surveillance reform was the only attainable idea, even if it barely addressed most of Snowden’s leaks. The reform, said Ruppersberger, would “set an example,” while “at least a year’s” worth of Snowden revelations continued to trickle out. The world outside would see that America was doing something about surveillance, and their own governments weren’t. Hey, it could work. “The French, just recently, passed a measure so that you don’t even need a court order to get personal data stored on their systems in France,” said Rogers. “Espionage is a French word, after all.” That line got a couple of laughs, but Rogers meant it. “We should get over the shock and awe of all of this and have an honest dialogue about what is exactly happening,” he said. “Europeans spy on the United States of America, sorry, every single day.” Multiple times, when reporters asked Rogers why Congress wasn’t reforming any of the programs that worried foreigners, the congressman accused the press of overhyping stories and possibly being suckered by bad intelligence. Snowden, who Rogers only referred to as “the former NSA contractor,” had created “confusion on legal programs he had no understanding of,” and then fallen into Russia’s grip. “There’s a lot of intelligence officials today who have to go back and, [with] every new revelation, knowing he’s under the influence of Russian intelligence, scrutinize it 10 times more than they did,” said Rogers. “A lot of people take it as gospel. I assure you, it’s not.” “I would love to have Russia’s Snowden come over here and give us all the data he found,” said Ruppersberger. These were the congressmen who were now backing the end of bulk metadata collection. The civil libertarians could accept that, because they knew what to go after next. Paul, who had just returned from a well-received and widely-covered anti-spying speech in Berkeley, Calif., openly derided the arguments he expected to hear next. “They will say, we have these privacy controls that da-da-da-da,” said Paul, replacing the intelligence community’s jargon with nonsense syllables. “We’re going to do da-da-da-da. But the records are not protected by the Fourth Amendment. This is still a big question. I think it will still have to be decided by the Supreme Court.” But that sets up a sort of détente. The civil libertarian campaign would continue. The campaigners would give their blessing to incremental reform. The skeptics would go along with the reform, because they know how quickly the conversation can shift.

#### Turns modeling and NATO - Nuclear taboo now means interstate conflict won’t go nuclear – only nuclear terror breaks the taboo

Bin ‘9 (5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin. )

The nuclear taboo is a kind of international norm and this type of norm is supported by the promotion of the norm through international social exchange. But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used. China and the United States have a broad common interest in combating nuclear terrorism. Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also strengthen people’s confidence in the nuclear taboo**,** and in this way preserve an international environment beneficial to both China and the United States. In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce thedanger of a nuclear war.

**Also creates an alt cause to leadership -fear would also would cause public acquiescence to rights-violations and government crackdowns that outweigh the case by an order of magnitude**

Peter **Beinart 8**, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 110-1

Indeed, while the Bush administration bears the blame for these hor- rors, White House officials exploited a shift in public values after 9/11. When asked by Princeton Survey Research Associates in 1997 whether stopping terrorism required citizens to cede some civil liberties, less than one-t hird of Americans said yes. By the spring of 2002, that had grown to almost three- quarters. Public support for the government’s right to wire- tap phones and read people’s mail also grew exponentially. In fact, polling in the months after the attack showed Americans less concerned that the Bush administration was violating civil liberties than that **it wasn’t violating them enough**. What will happen the next time? It is, of course, impossible to predict the reaction to any particular attack. But in 2003, the Center for Public Integrity got a draft of something called the Domestic Security Enhance- ment Act, quickly dubbed Patriot II. According to the center’s executive director, Charles Lewis, **it expanded government power** five or **ten times as much as its predecessor**. One provision permitted the government to strip native-born Americans of their citizenship, allowing them to be indefinitely imprisoned without legal recourse if they were deemed to have provided any support—even nonviolent support—to groups designated as terrorist. After an outcry, the bill was shelved. But it offers a hint of what this administration—or any administration—might do if the United States were hit again. ¶ When the CIA recently tried to imagine how the world might look in 2020, it conjured four potential scenarios. One was called the “cycle of fear,” and it drastically inverted the assumption of security that C. Vann Woodward called central to America’s national character. The United States has been attacked again and the government has responded with “large- scale intrusive security measures.” In this dystopian future, two arms dealers, one with jihadist ties, text- message about a potential nuclear deal. One notes that terrorist networks have “turned into mini-s tates.” The other jokes about the global recession sparked by the latest attacks. And he muses about how terrorism has changed American life. “That new Patriot Act,” he writes, “went **way beyond anything imagined after 9/11**.” “The fear cycle generated by an increasing spread of WMD and terrorist attacks,” comments the CIA report, “once under way, would be one of the **hardest to break**.” And the more entrenched that fear cycle grows, the less free America will become. Which is why a new generation of American liberals must make the fight against this new totalitarianism their own.

#### Turns Political question doctrine

#### a) infighting between the branches means the link alone is sufficient

#### causes authoritarianism and lashout

Etzioni, Professor Sociology George Washington, ‘7 (Amitai, “Security First: For a Muscular, Moral Foreign Policy” p 219-220)

A few academics have questioned the weight that I and others attach to a nuclear attack, by terrorists or by rogue states. They see no "existential" threat to the United States from such attacks; bin Laden, they say, may make life "unpleasant," but will not finish the United States off the way Hitler tried to finish off Britain,IK not even cause a regime change, and surely not win the global war of ideas.'9 Some even conclude that terrorists should nor be treated differently from garden variety criminals and that providing security should be turned over to the police and the courts, (There terrorists would have the same rights of all U.S. persons, including the right to face their accuser and see all documents relevant to their case.) Can one count the ways to disagree? Herman Kahn. the "Dr. Strange-love" of the think tanks, argued in his book On Thernxonuclear War that we should "think" the "unthinkable." What he meant was that Americans naively shied away from considering nuclear war an option. He set out to break this taboo, to make nuclear attacks acceptable. His main reason was that even if one hundred million Americans died, America would survive and regenerate. I argued with him, face to face and in print, that the America rising from the ashes of the nation as we have known it—and rise again it well might—would be a radically different nation, a garrison state. Security would trump all other considerations; civil rights and economic efficiencies would have been cast aside. There thus would have been a real regime change; a change in American culture, morality, and polity. It would also be a nation ready to strike out at true and imagined enemies with little forethought or deliberation. In short, such an attack would have horrible consequences not merely for America but for most if not all other states. The same holds true if the terrorists took out most of New York, Washington, or even "merely" Chicago. America would survive the same way someone whose eyes have been gouged out and ears severed and leg amputated would continue to exist. But it would be a nation at least as vengeful as Germany was after World War I, and one that would look to strong-armed leaders to take the helm. It would not be the same America. It would continue to exist but would have a radically different existence.

#### Turns Yemen advantage – reform is a bigger internal link – wiretapping is bigger and is a disincentive for attacks growing LARGER in size- for terrorism to reach the nuclear level, there has to be intense forms of coordination that can only be mitigated through wiretapping

### A2 DC Court

They don’t get their modeling advantages BUT still link to our disads to court precedent.

Alstine ‘12

Michael, Professor of Law, University of Maryland School of Law, “STARE DECISIS AND FOREIGN AFFAIRS,” Duke Law Journal VOLUME 61 FEBRUARY 2012 NUMBER 5

It is curious that the Framers structured the Constitution to protect against divergent interpretations of the nation’s international legal obligations by the disparate state courts380 but that, in practice, the vast bulk of this work is done by independent and geographically segmented lower federal courts.381 The Supreme Court has repeatedly emphasized the demand for national uniformity in this field.382 But as Justice Scalia caustically observed in 2004 in specific reference to international law, **“[T]he lower federal courts [are] the principal actors; we review but a tiny fraction of their decisions**.”383 The facts richly bear out this observation: Over 99 percent of the appellate treaty cases in the first decade of the 2000s were decided by the federal circuit courts.384 A broader study by Professor David Sloss finds a similar percentage in the period from 1970 through 2006.385 The principal cause of this phenomenon is the fact that in nearly all matters of federal law, litigants have an appeal as of right to the federal circuits.386 By contrast, since the Judiciary Act of 1925387 eliminated appeals as of right from the circuit courts, even on treaty issues,388 effectively all appellate judgments are subject only to discretionary review by the Supreme Court.389 **The practical effect** of this system is that the independent, geographically dispersed courts of appeals provide the final judicial voice on nearly all matters of international law.390 **Few would argue** that these regional appellate courts represent an effective medium for ensuring uniform fidelity to the international legal obligations of the United States. The problem, however, is even more acute than it might seem. Nearly all of the precedents in the federal circuit courts come from panels—not from the entire circuit court sitting en banc. The reason for this fact is the so-called law-of thecircuit doctrine.391 Under this doctrine, which controls in every federal circuit,392 a precedent created by a single, randomly assigned three-judge panel is **immediately and absolutely binding** **throughout the circuit**. In the rare case in which a subsequent panel misses the message, **later panels are obligated to follow the first precedent**.393 This doctrine is severe indeed. It prohibits reexamination of the first panel’s precedent even in light of subsequent insights from other circuits.394 The Eleventh Circuit declared this point bluntly in 2000: “The fact that other circuits disagree with [our] analysis is irrelevant.”395 To be sure, the possibility of en banc review remains; but even this option by rule is “not favored and ordinarily will not be ordered.”396 To present the point starkly, consider a hypothetical case in the Ninth Circuit. A panel majority may create a precedent on the international legal obligations of the United States that is binding on the entire circuit. This scenario would mean that a decision by two judges would control a circuit of **over sixty million people**—nearly 20 percent of the country’s entire population. The precedent would be impervious to subsequent review within the circuit—except through en banc review—**and impervious to subsequent analyses by other circuits**. The law-of-the-circuit doctrine thus effectively precludes the resolution of intercircuit conflicts on international law except in the rare circumstance of en banc review or the even rarer event of Supreme Court review. The result is a **very real possibility** of a localized patchwork of judicial declarations on the nation’s rights or obligations under **international law**. The drama of the directly conflicting pronouncements of the federal circuit courts over whether corporations may be held liable for international human-rights violations bluntly proves this point.397 To put it mildly, such a system is discordant with the “‘concern for uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s allocation of the foreign relations power to the National Government in the first place.”398 The rigid stare decisis practice of the federal circuit courts also precludes consideration of the exogenous forces of change that are of special significance for international-law precedents.399 And the overlay of divergent decisions of other appellate courts may make these forces even more potent. In spite of this difficulty, the law-of thecircuit principle operates as a **nearly absolute bar to examination of subsequent developments in fact and law,** the factors that the Supreme Court deems to be “[o]f most relevance”400 for reexamining a precedent. Moreover, the great bulk of lower court precedent is generated without the expertise of, and beyond the attention of, national institutions. It is no slight to observe that with their large, mandatory dockets, these courts may lack the necessary **resources**, **expertise**, and **international perspectives** to appreciate fully their special responsibilities when they first confront a difficult issue of international law.401 **Unlike the Supreme Court,** the sheer volume of cases in the circuit courts constrains access to **executive**-branch **expertise**, except on rare issues of national significance.402 And unlike the certiorari filter for the Supreme Court, the federal courts of appeals may not defer decisions on sensitive issues to await higherquality information, better lawyers, or increased attention by national experts.403 These challenges counsel against overconfidence in a first judicial attempt at a solution and thus recommend an increased openness to reexamining the factual and legal foundations of initial judicial impressions on matters of international law. And given the significance of judicial declarations on the international legal obligations of the United States, lower federal courts should not content themselves with the quality of arguments, factual and legal, presented by the lawyers who happen to appear before them the first time. Unfortunately, ample evidence suggests that the federal appellate courts in fact **are not fully sensitive to the “responsibility of [their] stations”404 on such matters.** As I have explained elsewhere, for example, it is not uncommon for lower courts to retreat to familiar local—andoften idiosyncratic—interpretive techniques and substantive concepts **to construe international treaties**.405 This categorical error has led to the misguided observation by some circuit courts that “[t]reaties are construed in much the same manner as statutes.”406 Another example comes from the courts’ widespread failure to honor the Supreme Court’s directive that domestic courts should give “considerable weight” to the judicial opinions of treaty partners.407 Of the nearly 1400 appellate treaty cases in the first decade of the twenty-first century, only 12 even mentioned the views of the courts of “sister signatories.”408 Nonetheless, the consequences of regional precedents on international law may be as significant as a Supreme Court decision would be; the consequences are certainly as significant within the affected circuit itself. And whether it recognizes or rejects a binding norm of international law, an appellate court is formally participating in the definition of international law. For this reason, the constitutions of some countries have reserved the power to make binding declarations on such subjects to a supreme court. A special jurisdictional provision in the German Grundgesetz, for example, requires lower courts to refer issues of customary international law to the German Constitutional Court if they are unsure about the legal issues.409

#### The Plan is MASSIVELY unpopular – Obama loses EVERY SINGLE TIME HE WANTS TO DRONE SOMEONE because they create an OUTSIDE agency OR ALLOW outside agencies to SUE OBAMA

### A2 Court Shield

#### Pacelle is TOO OLD and says quote “use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them”

#### which means the plan is STILL A LOSS

### 2NC Uniqueness

#### The Brown evidence only says the conflicts between the bills won’t be resolved by the time authorization expires, but it concedes Obama will solve it by extending the program – this takes out their arg but not the DA - a bill is still key to uphold CREDIBILITY and wiretapping from challenges which means a reform bill is STILL KEY

#### Key legislators predict we’re close

Thai News Service, 3-28-’14 (“United States: Obama, Legislators Propose Plans to Stop Massive NSA Phone Data Collection” Factiva)

Both U.S. President Barack Obama and key committee leaders in Congress are proposing legislation that would end the National Security Agency's collection and storage of massive amounts of Americans' phone records. The proposed changes come in response to a wave of privacy concerns at home and abroad triggered by revelations last year from former NSA contractor Edward Snowden. Tuesday brought two major announcements on proposed changes to surveillance operations of the National Security Agency, or NSA. Speaking at a nuclear summit in The Hague, President Obama said that revelations about U.S. surveillance have made it necessary to win back the trust of governments, and more importantly, of ordinary citizens. "And so it's going to be necessary for us - the step we took that was announced today I think is an example of us slowly, systematically putting in more checks, balances, legal processes. The good news is that I'm very confident that it can be achieved," said President Obama. Under the president's proposal, which has not been formally released, the government would have to obtain permission from the Foreign Intelligence Surveillance Court to obtain data from phone companies on calls connected to suspected terrorists. The phone companies would be required to provide the NSA with updated information if any new phone calls are made to or from that number. Phone companies would not be required to maintain the phone call records for any longer than they do now. In the U.S. House of Representatives, House Intelligence Committee leaders introduced similar legislation, crafted by the committee's Republican chairman and its ranking Democrat. That bill also bars the NSA from the bulk collection of phone records, but does not require the government to obtain a court order before it asks phone companies for the data. House Intelligence Committee Chairman Mike Rogers: We think that we have found a way to end the government's bulk collection of telephone metadata, and still provide a mechanism to protect the United States," said Rogers. The ranking Democratic member on the committee, Dutch Ruppersberger, said he believes the House proposal is not that different from the White House proposal, and that agreement can be reached. I believe we are very, very close. The White House understands that we need to do something to deal with the issue of holding bulk collection because of the perception of our constituents. That is number one," said Ruppersberger.

NSA reform is pass now, but it’s close – that’s key to surveillance

Siobhan Gorman, WSJ, 3/25/14, Consensus Nears to Overhaul NSA Phone Surveillance, online.wsj.com/news/articles/SB10001424052702304679404579461293671732298?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304679404579461293671732298.html

The White House and congressional leaders have settled on comparable proposals for ending the government's mass collection of telephone records, signaling the eventual end of a practice that critics said had come to epitomize U.S. surveillance overreach in the post-9/11 era.

The proposals, offered in separate announcements on Tuesday, signified a rapidly expanding consensus among lawmakers, intelligence agencies and civil-liberties groups on how to overhaul the National Security Agency program.

But the developments didn't offer assurance of quick congressional passage, which would require support from lawmakers who favor more limitations on surveillance. Moving any legislation through Congress in an election year will be challenging, particularly highly sensitive bills.

Yet, the clock is ticking. If Congress doesn't approve a revamped version of the program, the current one is likely to end when the law that authorizes it expires next year, lawmakers say.

The emerging agreement, coming nine months after revelations by former NSA contractor Edward Snowden last year stoked international anger over U.S. spying practices, represents the most significant development in the debate to date. The proposals from the White House and House intelligence committee both would replace a system reliant on daily data feeds to the NSA with one that directs phone companies to conduct individual searches of their data on the NSA's behalf.

#### Rogers retirement earlier today creates momentum for passage

The Hill, 3-28-’14 (“Coveted spy gavel is up for grabs in House” http://itk.thehill.com/blogs/hillicon-valley/technology/202020-rogers-exit-could-ease-nsa-reforms)

Rep. Mike Rogers’s (R-Mich.) surprise retirement has put up for grabs a powerful job overseeing the country’s spy agencies. Rogers has led the House Intelligence Committee since Republicans won the House majority in 2011, but on Friday said he will leave Congress at the end of the year to begin a career in talk radio. The top slot on the secretive panel brings prestige and power, as its leaders are among the few members of Congress who are routinely briefed on classified information. With Republicans expected to hold the House majority in the midterm elections, Rogers's retirement likely means there will be a new GOP chairman come January. Rep. Mac Thornberry (R-Texas) is the most senior member of the panel and next in line for the slot, but he confirmed on Friday that he will pass on the job to seek the House Armed Services Committee gavel once Chairman Buck McKeon (R-Calif.) retires at the end of the year. “While chairing the House Intelligence Committee is an important job, my focus for the future is strictly on the House Armed Services Committee, where I hope to follow Buck McKeon as Chairman,” he said in a statement to The Hill. Rep. Jeff Miller (R-Fla.), who would be next in line after Thornberry — is emerging as the early favorite to replace Rogers, but other Republicans could throw their names into the mix in the coming days. Another contender for the gavel is Rep. Devin Nunes (R-Calif.), a seven-term congressman who has served on the committee since 2011. Nunes told The Hill that he plans to seek the top spot on the committee after Rogers retires at the end of the year. "This is something that came as a surprise to everybody so suddenly," Nunes said. "My plan always was after the chairman was finished that I would go for it. It just came a little sooner than what we thought." Intelligence Committee leaders are appointed by the Speaker, so seniority could play a major role in the selection. The panel, formally known as the House Permanent Select Committee on Intelligence, oversees intelligence activities of 17 different elements of the U.S. government. The chairmanship sometimes comes with controversy, and the chairman is often the target of criticism from opponents of federal spy agencies like the National Security Agency (NSA). Defense sources have said that Miller would be the front-runner for the chairmanship, should he choose to seek it. A person close to Miller, who currently chairs the House Veterans Affairs Committee, said he is “definitely interested” in the post. Rep. Pete King (R-N.Y.), the former chairman of the House Homeland Security Committee, could also be a contender for the chairmanship, although he has less seniority on the panel than Thornberry or Miller. King told The Hill on Friday he would be interested in taking over the gavel next year. “This is entirely a decision for the Speaker, and it’s certainly early on, but it would be an honor to be considered,” King said. “Intelligence, homeland security, that’s where I focus all of my time.” King said he was taken by surprise at the news that Rogers was retiring. “I had no idea at all,” he said. Rogers’s announcement comes at a critical time in the fight over changes to the NSA. One analyst said his retirement could give him a freer hand to push proposals sought by President Obama. “I do think Mr. Rogers found himself defending programs that became increasing unpopular,” said Marc Rotenberg, executive director of the Electronic Privacy Information Center. “I also sense, looking at the shift in public opinion and the shift in the White House and the shift in Congress, that his view was increasingly in the minority, and I think it will have implications for necessary reforms of the [Foreign Intelligence Surveillance Act] and the NSA programs.” Both Rogers and the White House have urged the NSA to end its mass collection of records about people's phone calls. But Rogers has resisted one of Obama’s central proposals, which would require that the NSA or any other government agency obtain a court order before being able to search the phone records, except in specific emergency cases. That requirement would make it too difficult for analysts to connect the dots between terrorists quickly, he has said, and “would give terrorists greater protections than those given to us citizens in criminal investigations every day in this country.” Rogers and Intelligence Committee ranking member Dutch Ruppersberger (D-Md.) have introduced legislation, which Miller and King both co-sponsored, to end the government’s collection of records about people’s phone calls, days before the White House formally unveiled its proposal. The twin plans set up a fight in Congress in coming months.

### Link – Losers Lose

#### Link alone turns case, especially PQD – causes infighting between the Congress and the president that limit the pereption that the President has effective war powers

#### We did not read the Kriner evidence

#### Only uncontroversial items – this doesn’t take out floor time OR losers lose

NYT, 3-27-’14 (“Congress Approves $1 Billion in Aid for Ukraine” http://www.nytimes.com/2014/03/28/world/europe/senate-approves-1-billion-in-aid-for-ukraine.html)

The House and Senate voted overwhelmingly on Thursday to approve a billion-dollar aid package for Ukraine, two days after Senate Democrats relented to Republican demands that they drop a provision backed by the White House that would have authorized an overhaul of the International Monetary Fund. The bills, which were nearly identical, passed by 399 to 19 in the House and by 98 to 2 in the Senate. President Obama has said he will sign the legislation, which includes new sanctions against Russians and Ukrainians who provided support to Russia to annex the Crimea region of Ukraine. “This bill is a first step toward supporting the Ukrainians and our Central and Eastern European partners, and imposing truly significant costs on Moscow,” the House majority leader, Eric Cantor, said in a floor speech as his chamber considered its bill. Senator Robert Menendez of New Jersey, the chairman of the Senate Foreign Relations Committee, said after the vote that a path had been cleared to get the bill to the president before the end of the week. To match the two bills, the Senate will pass a House bill to authorize the broadcast of Western news programs into Ukraine and the region, and the House will then take up the Senate bill and pass it. In addition to providing aid money to Ukraine, the bills would formalize sanctions authorized recently by Mr. Obama and expand the list of individuals and entities targeted for sanctions. Unlike the president’s executive order last week, the Senate’s sanctions are mandatory and do not grant Mr. Obama latitude to choose which penalties to apply. The bill also makes mandatory the application of sanctions on any Russian official found to have engaged in corruption in Ukraine, a broader category than any applied by the administration. The Senate measure would give the administration more flexibility to apply economic sanctions to any Russian official engaged in corrupt activity and anyone who assists such activities. Earlier on Thursday, the I.M.F. announced a preliminary agreement to provide Ukraine up to $18 billion in loans over two years. In all, with additional funds provided by the United States and the European Union, Ukraine stands to receive up to $27 billion to help it avoid default and to carry it through emergency presidential elections in May. The combined aid would replace a $15 billion aid package that Russia had promised to Ukraine and then rescinded after its pro-Russian president, Viktor F. Yanukovych, was ousted in February. House Republicans had objected to the I.M.F. language because, they said, it would diminish the United States’ power at the fund while elevating the roles of emerging economic powers – including Russia. Among the countries that control the I.M.F., the United States is the only one that has not approved the structural changes to the fund, which would move billions of dollars out of its emergency account and into its general account. That would increase the amount of money that developing countries including Ukraine could borrow. Mr. Obama himself negotiated those changes, and European allies conferring with him on Ukraine have been pressing for American action. The Obama administration, which had previously tried and failed to attach the monetary fund language to a trillion-dollar spending measure, said the changes were vital to a Ukraine aid package, but House Republicans balked. Mr. Obama is traveling in Europe this week, meeting with Western leaders to devise a comprehensive response to Russia’s actions in Crimea and to reassure Eastern European allies nervous about Russia’s advance. The administration said on Wednesday that Mr. Obama had decided to modestly increase military deployments in Eastern Europe and encourage NATO allies to upgrade their military capabilities. “The United States and our allies will continue to support the government of Ukraine as they chart a democratic course,” Mr. Obama said in a speech in Brussels on Wednesday. “Together, we are going to provide a significant package of assistance that can help stabilize the Ukrainian economy and meet the basic needs of the people. “Make no mistake,” he continued. “Neither the United States nor Europe has any interest in controlling

#### Court action causes Congress to backlash against Obama

Calabresi 2008(Massimo Calabresi, June 26, 2008, “Obama's Supreme Move to the Center Washington” TIME Magazine, http://www.time.com/time/politics/article/0,8599,1818334,00.html)

When the Supreme Court issues rulings on hot-button issues like gun control and the death penalty in the middle of a presidential campaign, Republicans could be excused for thinking they'll have the perfect opportunity to paint their Democratic opponent as an out-of-touch social liberal. But while Barack Obama may be ranked as one of the Senate's most liberal members, his reactions to this week's controversial court decisions showed yet again how he is carefully moving to the center ahead of the fall campaign. On Wednesday, after the Supreme Court ruled that the death penalty was unconstitutional in cases of child rape, Obama surprised some observers by siding with the hardline minority of Justices Scalia, Thomas, Roberts and Alito. At a press conference after the decision, Obama said, "I think that the rape of a small child, six or eight years old, is a heinous crime and if a state makes a decision that under narrow, limited, well-defined circumstances the death penalty is at least potentially applicable, that that does not violate our Constitution." Then Thursday, after Justice Scalia released his majority opinion knocking down the city of Washington's ban on handguns, Obama said in a statement, "I have always believed that the Second Amendment protects the right of individuals to bear arms, but I also identify with the need for crime-ravaged communities to save their children from the violence that plagues our streets through common-sense, effective safety measures. The Supreme Court has now endorsed that view." John McCain's camp wasted no time in attacking, with one surrogate, conservative Senator Sam Brownback of Kansas, calling Obama's gun control statement "incredible flip-flopping." McCain advisor Randy Scheunemann was even tougher in a conference call Thursday. "What's becoming clear in this campaign," Scheunemann said, is "that for Senator Obama the most important issue in the election is the political fortunes of Senator Obama. He has demonstrated that there really is no position he holds that isn't negotiable or isn't subject to change depending on how he calculates it will affect his political fortunes." Politicians are always happy to get a chance to accuse opponents of flip-flopping, but McCain's team may be more afraid of Obama's shift to the center than their words betray. Obama has some centrist positions to highlight in the general election campaign on foreign policy and national security, social issues and economics. His position on the child rape death penalty case, for example, is in line with his record in Illinois of supporting the death penalty. He is on less solid ground on the gun ban as his campaign said during the primary that he believed the D.C. law was constitutional. A top legal adviser to Obama says both cases are consistent with his previous positions. "I don't see him as moving in his statements on the death penalty or the gun case," says Cass Sunstein, a former colleague of Obama's at the University of Chicago. Sunstein says Obama is "not easily characterized" on social issues, and says the Senator's support for allowing government use of the Ten Commandments in public, in some cases, is another example of his unpredictability on such issues. On the issue of gun control, he says Obama has always expressed a belief that the Second Amendment guarantees a private right to bear arms, as the court found Thursday. But Obama's sudden social centrism would sound more convincing in a different context. Since he wrapped up the primary earlier this month and began to concentrate on the independent and moderate swing voters so key in a general election, Obama has consistently moved to the middle. He hired centrist economist Jason Furman, known for defending the benefits of globalization and private Social Security accounts, to the displeasure of liberal economists. On Father's Day, Obama gave a speech about the problem of absentee fathers and the negative effects it has on society, in particular scolding some fathers for failing to "realize that what makes you a man is not the ability to have a child — it's the courage to raise one." Last week, after the House passed a compromise bill on domestic spying that enraged liberals and civil libertarians, Obama announced that though he was against other eavesdropping compromises in the past, this time he was going to vote for it. Whether Obama's new centrist sheen is the result of flip-flopping or reemphasizing moderate positions, the Supreme Court decisions have focused attention again on the role of the court in the campaign season. McCain himself is vulnerable to charges of using the Supreme Court for political purposes. Earlier this month, when the court granted habeas corpus rights to accused terrorist prisoners at Guantanamo Bay, McCain attacked the opinion in particularly harsh language, though advisers say closing the prison there is high on his list of actions to rehabilitate America's image around the world. Liberals are hoping that despite Obama's moderate response to the Supreme Court decisions, the issues alone will rally supporters to him. "What both of these decisions say to me is that the Supreme Court really is an election-year issue," says Kathryn Kolbert, president of People For the American Way. "We're still only one justice away from a range of really negative decisions that would take away rights that most Americans take for granted," she says. And Obama's run to the center surely won't stop conservatives from using the specter of a Democratic-appointed Supreme Court to try to rally support. "Its pretty clear that if he's elected and Justice Scalia or Kennedy retires that he's going to appoint someone who's very likely to reverse [the gun control decision]," says Eugene Volokh, a professor at the UCLA School of Law. Given how Obama has been responding to the recent Supreme Court decisions, however, you're not likely to hear him talking about appointing liberal justices much between now and November.

#### Health care proves—Republicans will lash out against unpopular Supreme Court decisions:

Stephen Manual 12, 2012 (6/28/2012, staff writer, “Will Supreme Court judgment help Obama win presidential election?” Accessed 7/26/2012 at <http://www.allvoices.com/contributed-news/12483143-will-supreme-court-judgment-help-obama-win-presidential-election>, rwg)

Finally, President Barack Obama has carried the day. He stood winner as the Supreme Court ruled on Thursday to uphold the Affordable Care Act. However, the president remained humble during his speech following the decision. He said that it was a victory for the American people and his administration would continue to work for betterment of the people. The Supreme Court judgment is clearly against the anticipation of Republicans, as they were predicting a contrary decision on the issue. The judgment can be called one of the biggest victories of the Obama administration in years. However, the question arises whether the Obama administration will be able to translate the victory into successful election campaign or not. Observers believe the administration would definitely exploit the judgment in its favor and try its best to convince electorates to cast vote for Obama in the upcoming presidential election. The visionary abilities of Obama would be highlighted and people would be told about revolutionary plans of Obama for the people and that all these plans would be implemented only if he is reelected into the office in November’s election. The judgment would also help the Obama administration to undermine capabilities of Republican presidential candidate Mitt Romney. Observers opine the judgment dealt a heavy blow to the Republicans, as they believed the court would strike down the individual mandate – at the very least. They were planning to celebrate the judgment and shaming the Obama administration once the verdict was out, but they were shocked after the judgment was released. Observers believe that the Obama administration has got a fresh opportunity to set the house in order and focus more on public-related issues so that they could bag maximum votes in the upcoming presidential election. It is the best opportunity for Obama to sell his Health-Care law to the masses. Mitt Romney, while giving his reaction on the Supreme Court judgment, said that he would repeal the law if elected to the presidency in the November election. He even said that there was a need to get rid of Obama if people want to get rid of Obama-care. Definitely, Republicans would lash out at the law in their public meetings and try to invoke public anger on the issue. Republicans believe the ruling of the Supreme Court can hamper their campaign against Obama.