# 1NC

### T – Not Ex Post

#### Restriction on authority must limit presidential discretion

Lobel, 8 - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### They don’t – president still gets to decide, the plan’s an after-the-fact correction.

#### Voting issue –

#### 1) Ground – all DAs and CPs like self-restraint, flexibility, and politics compete based off restrictions on the presidential decision-making process – skews the topic in favor of the aff.

#### 2) Limits – the plan amounts to deterrence of prez powers, not statutory limitations – that’s opens a floodgate of affs that just dissuade presidential expansion of power

### DA1

#### Immigration reform is top of the docket and has momentum

STEVE CASE, CHAIRMAN AND CEO, REVOLUTION, INTERVIEWED ON BLOOMBERG TV, Bloomberg TV, October 21, 2013, Lexis

CASE: Yeah. There actually were a lot of great conversations in the August timeframe, including both before and after the recess. And the sense was coming into September it was going to be a top priority. Then as we talked about, things kind of got off track because of other issues, particularly the budget-related issues. But now we've gotten a couple of months. The budget conference will not report back until the middle of December, so we've got a couple of months. Nothing is more important right now for the Congress to focus on than immigration reform. And the House Republican leaders have indicated they're going to take a different approach, pass independent pieces of legislation, and then that will have to get conference with the Senate. But I think the next few weeks you'll start seeing some momentum. I think we really need to see some momentum. There are a lot of people who have worked on this issue for more than a decade. I think we haven't had a better moment in a decade. I fear we won't have a better moment in the next decade. So the time is now to get immigration reform done and do it in a bipartisan way.

#### Fighting to defend his war power will sap Obama’s capital, trading off with rest of agenda—it’s empirically killed immigration reform

Kriner, 10 --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60

In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Obama’s focus and capital is key

MPR, Minnesota Public Radio, “Will Congress solve budget, farm bill, immigration reform before 2014?”, Oct 21st 2013, http://minnesota.publicradio.org/display/web/2013/10/21/daily-circuit-congress-budget

After averting a default on debt and reopening the government, Congress has some major issues to resolve. President Barack Obama is laying down a three-item to-do list for Congress that seems meager when compared with the bold, progressive agenda he envisioned at the start of his second term. But given the capital's partisanship, the complexities of the issues and the limited time left, even those items -- immigration, farm legislation and a budget -- amount to ambitious goals that will take political muscle, skill and ever-elusive compromise to execute.

#### Taking it to conference ensures a more comprehensive bill which is key to high-skilled visas

STEVE CASE, CHAIRMAN AND CEO, REVOLUTION, INTERVIEWED ON BLOOMBERG TV, Bloomberg TV, October 21, 2013, Lexis

LIU: Well Steve, it's also difficult because we've seen from this budget showdown the factions, right, the infighting, the fighting not just between the Democrats and the Republicans. That seems like old news now. There's fighting - there's fighting among Republicans. How do you talk to each of these groups to make sure they are all on the same page here to get that bipartisan support for immigration reform? CASE: Well I think - I think - I think that's correct. There are different - different factions, if you will. I think the reason there's momentum building aruond immigration is there are multiple facets. And instead of just dealing with the issue of high-skilled immigration or just dealing with the issue of border security or just dealing with the issue of the kids, the Dream Act, or just dealing with the issue of a path to citizenship, there's now a broader coalition, things like Bibles, Badges and Business that are focused on a broader solutions. That's what creates the political kind of -- LIU: But do you think - but Steve, do you think though that given what you've seen in this budget showdown you could still get a global resolution on immigration, or do you think it's really going to have to be more piecemeal? CASE: I think the House has indicated it will be more piecemeal in terms of specific legislation, but then it will go into conference with the Senate and I believe there will be a more comprehensive solution. It'll be a little different obviously than what the Senate did. The House will have their own ideas and their own ways to improve on things, but I expect that the only way to get high-skilled immigration passed, for example, is part of a more comprehensive solution for exactly the reason you mentioned. It creates that broader political coalition that's necessary to deal with it. There are many facets to immigration. It's very complicated, but I think we have to all focus on it and make sure that we really are taking every step we can as a country to make sure we're winning this battle for - for talent. And immigration reform is a a critical part of that.

***Immigration reform expands skilled labor --- key to India relations***

**L**os **A**ngeles **Times**, 11/9/20**12** (Other countries eagerly await U.S. immigration reform, p. <http://latimesblogs.latimes.com/world_now/2012/11/us-immigration-reform-eagerly-awaited-by-source-countries.html>)

"C**omprehensive** i**mmigration** r**eform will see expansion of skilled labor visas," predicted** B. Lindsay **Lowell, director of policy studies for the Institute for the Study of International Migration at Georgetown University**. A former research chief for the congressionally appointed Commission on Immigration Reform, **Lowell said he expects to see at least a fivefold increase in the number of highly skilled labor visas that would provide "a significant shot in the arm for India and China." There is widespread consensus among economists and academics that skilled migration fosters new trade and business relationships between countries and enhances links to the global economy, Lowell said. "Countries like India and China weigh the opportunities of business abroad** from their expats with the possibility of brain drain, **and** I think **they** still **see the immigration opportunity as a bigger plus than not," he said**.

***Relations check Indo Pak nuke war***

**Dugger, ’02** (Celia “Wider Military Ties With India Offer U.S. Diplomatic Leverage”, NYT, http://www.nytimes.com/2002/06/10/world/wider-military-ties-with-india-offer-us-diplomatic-leverage.html, 6/10)

Military cooperation between India and the United States has remarkably quickened since Sept. 11, with a burst of navy, air force and army joint exercises, the revival of American military sales to India and a blur of high-level visits by generals and admirals. The fledgling relationship between American and Indian military leaders will be important to Mr. Rumsfeld in talks intended to put to rest fears of war between India and Pakistan. ''We can hope this translates into some influence and trust, though I don't want to overstate it,'' a senior American defense official said in an interview on Thursday. ''I don't want to predict this guarantees success.'' The American diplomatic efforts yielded their first real gains on Saturday when India welcomed a pledge by Pakistan's military ruler to stop permanently the infiltration of militants into Kashmir. India indicated that it would soon take steps to reduce tensions, but a million troops are still fully mobilized along the border -- a situation likely to persist for months -- and the process of resolving the crisis has just begun. India has linked the killing of civilians in Kashmir to a Pakistan-backed insurgency there and has presented its confrontation with Pakistan as part of the global campaign against terrorism. India itself made an unstinting offer of support to the United States after Sept. 11, and Washington responded by ending the sanctions placed on India after its 1998 nuclear tests. With that, the estrangement that prevailed between the world's two largest democracies during the cold war, when India drew close to the Soviet Union and the United States allied with Pakistan, has eased. India, for decades a champion of nonalignment, seeks warmer ties with the United States in hopes of gaining access to sophisticated military technology and help in dealing with Pakistan. From the start of President Bush's term, some influential officials in his administration saw India as a potential counterweight to that other Asian behemoth, China, whose growing power was seen as a potential strategic threat. But since Sept. 11, the priority has been terrorism. The United States is hoping its deeper military and political ties with India will give it some measure of leverage to prevent a war between India and Pakistan that could lead to a nuclear ~~holocaust~~ and would play havoc with the hunt for Al Qaeda in Pakistan.

### 1NC – Transparency CP – vs. Drones

#### The President of the United States should:

#### Regularly report to congressional intelligence committees the number of targeted killing operations the Central Intelligence Agency and Department of Defense conduct within a given time period, along with any civilian casualties that happened as a result of these operations

#### Publish the criteria by which the government determines what individuals are subject to targeting by this program

#### Publish the financial cost of the targeted killing program

#### Clarify the legal justifications of the targeted killing program

#### Establish an independent congressional review board composed of individuals selected by the minority and majority leadership of the House and Senate responsible for publishing an annual report analyzing how well the government’s targeted killing program is performing

#### This specific transparency strategy solves

McNeal 4-23-’13, Gregory McNeal is a professor at Pepperdine University. He is a national security specialist focusing on the institutions and challenges associated with global security, with substantive expertise in national security law and policy, criminal law, and international law. He previously served as Assistant Director of the Institute for Global Security, co-directed a transnational counterterrorism grant program for the U.S. Department of Justice, and served as a legal consultant to the Chief Prosecutor of the Department of Defense Office of Military Commissions on matters related to the prosecution of suspected terrorists held in the detention facility in Guantanamo Bay, Cuba. 4-23-’13, Lawfare Blog, Five Ways to Reform the Targeted Killing Program, <http://www.lawfareblog.com/2013/04/five-ways-to-reform-the-targeted-killing-program/>, jj

My focus in this final post will be on transparency related reforms that Congress and the administration can likely come to agreement on (thus no recommendation for judicial review).

Reform 1: Defend the Process

At first blush this sounds like a silly reform recommendation, after all, the administration has given enough speeches on national security to fill a book. But that doesn’t mean they’ve fully described or defended the targeted killing process. In fact, in publishing these posts and the article I’ve been struck by how many people in government have emailed me to say things like: “I know my part of this, but I never knew the steps that came before and after me” or similar statements. The fact that leading human rights groups —many of whom are ideologically inclined to support this administration— have written a 9 page letter mostly calling for greater transparency also suggests that the message has not been received about the strategy, tactics, criteria, or procedure associated with America’s use of targeted killings. Sadly this isn’t a new phenomenon, in the article I cite a passage from Judge James E. Baker, Deputy Legal Adviser to the NSC under President Clinton, Baker wrote:

“In my experience, the United States does a better job at incorporating intelligence into its targeting decisions than it does in using intelligence to explain those decisions after the fact. This in part reflects the inherent difficulty in articulating a basis for targets derived from ongoing intelligence sources and methods. Moreover, it is hard to pause during ongoing operations to work through issues of disclosure…But articulation is an important part of the targeting process that must be incorporated into the decision cycle for that subset of targets raising the hardest issues…”

Of course it is understandable why an administration may not want to reveal information to defend the process, as doing so may subject them to political controls or even legal scrutiny, thus their caution is understandable (albeit self-serving). Nevertheless, publicly defending the process can strengthen executive power. It bolsters political support by providing information to voters and other external actors. It also bolsters bureaucratic and professional accountability by demonstrating to those within government that they are involved in activities that their government is willing to publicly describe and defend (subject to the limits of necessary national security secrecy). The administration should defend the process in at least as much detail as these blog posts have.

Reform 2: Use Performance Reporting to Encourage Good Behavior

Another transparency related reform that could engender greater accountability would be to report performance data. Specifically, the government could report the number of strikes the CIA and the Department of Defense conducted in a given time period. A possible performance metric might ask: 1) Was there collateral damage resulting from the military action? 2) If so, was the collateral damage excessive in relation to the military advantage anticipated? Variable 1 lends itself to tracking and reporting (subject to the difficulties of BDA), Variable 2 only arises if collateral damage occurred, and the questions that should flow from it are A) Was the collateral damage expected? If it was, then the commander must have engaged in some analysis as to whether the anticipated harm was excessive in relation to the military advantage anticipated and that assessment could be documented, and B) If the collateral damage was not expected, why not? Some causes of potentially unexpected collateral harm may be an intelligence failure, a failure to follow procedures, changes in the operational circumstances, inadequate procedures, among others. Each of these variables can be tracked as part of an accountability and performance metric. If tracked and aggregated over time, the causes of errors or a record of success could be publicly communicated in a way that does not jeopardize operational security. Moreover, such tracking and reporting could contribute to mission accomplishment by identifying the circumstances under which strikes did not go as planned.

As an example, in the paper I describe how CENTCOM data indicates that less than 1% of targeted killing operations resulted in harm to civilians, whereas outside observers estimate that 8%-47% of CIA strikes in Pakistan inflicted harm to civilians. Let’s make a big leap and just imagine for a moment that these data were official numbers, tracking the same thing, and were published by the Department of Defense and CIA respectively. In a hypothetical world where those numbers are accurate, it’s safe to assume that such reports showing that the CIA was inflicting civilian harm at a rate far exceeding that of DoD would force a serious reexamination of CIA bureaucratic practices, extensive political oversight, professional embarrassment and perhaps even the prospect of judicial intervention. The publication of such data may even have the salutary effect of causing bureaucratic competition between the Department of Defense and CIA over which agency could be better at protecting civilians, while still accomplishing their mission. Of course there are costs associated with such reporting. The tracking requirements would be extensive and may impose an operational burden on attacking forces — however, an administrative burden is not a sufficient reason to not reform the process, especially when innocent lives are on the line. Another cost may be the cost to security of revealing information that even has the slightest possibility of aiding the enemy in developing countermeasures against American operations.

Reform 3: Publish Targeting Criteria

Related to defending the process is the possibility that the U.S. government could publish the targeting criteria it follows. That criteria need not be comprehensive, but it could be sufficiently detailed as to give outside observers an idea about who the individuals singled out for killing are and what they are alleged to have done to merit their killing. As Bobby has noted, “Congress could specify a statutory standard which the executive branch could then bring to bear in light of the latest intelligence, with frequent reporting to Congress as to the results of its determinations.” What might the published standards entail? First, Congress could clarify the meaning of associated forces. In the alternative, again as Bobby has noted, it could do away with the associated forces criteria altogether, and instead name each organization against which force is being authorized. Such an approach would be similar to the one followed by the Office of Foreign Assets Control in their Specially Designated Nationals process.

The challenge with such a reporting and designation strategy is that it doesn’t fit neatly into the network based targeting strategy the U.S. government follows (as outlined in prior posts and in the article). If the U.S. is seeking to disrupt networks, then how can there be reporting that explains the networked based targeting techniques without revealing all of the links and nodes that have been identified by analysts? Furthermore, for ally targets, the diplomatic secrecy challenges remain. For example, at the time of the strike, the U.S. government could not disclose the fact that it was responsible for killing Nek Mohammed. There simply may be no way the U.S. can publicly reveal that it is targeting networks or persons that are attacking allied governments. These problems are less apparent when identifying the broad networks the U.S. believes are directly attacking American interests, however publication of actual names of targets will be nearly impossible (at least ex ante) under the current network based targeting practices.

While publishing targeting criteria has its challenges it may still be worth it as it may clear up potential misconceptions grounded in the use of different definitions. For example, the U.S. government and outside observers may simply be using different benchmarks to measure success. Some observers are looking to short term gains from a killing while others look to the long term consequences of the targeted killing policy. Some may be counting members of enemy groups as direct participants in hostilities, while others may be only counting those with a continuous combat function as direct participants. These definitions matter and the U.S. should be more transparent about what definitions it feels bound by.

While definitions should be transparent, all of the metrics and criteria associated with how the U.S. measures short term and long term success need not be revealed. However, the U.S. should articulate what strategic level goals it is hoping to achieve through its targeted killing program. Those goals certainly include disrupting specified networks. But what other goals is America seeking to achieve? Articulating those goals, and the specific networks the U.S. is targeting may place the U.S. on better diplomatic footing, and would certainly engender a sense that there is greater accountability domestically. It won’t please all of the critics, but pleasing all of them shouldn’t be the goal, the goal should be to firmly ground the program by providing sufficient details to ensure that mistakes are being tracked and that agencies aren’t running amok.

Reform 4: Publish costs (in dollars)

Some Americans may not care about innocent children in far away lands, but they care about their taxes. That fact suggests that targeted killings may be a worthwhile case for proving that publishing the financial costs of strikes can impose a degree of accountability on the process. This is the case because unlike a traditional war where the American people understand victories like the storming of the beaches at Normandy, the expulsion of Iraqi troops from Kuwait, or even (in a non-hot war context) the fall of the Berlin wall – this conflict against non-state actors is much harder to assess. As such, the American people may understand the targeted killing of a key al Qaeda leader like Anwar al Aulaqi, and they may be willing to pay any price to eliminate him. But what about less well known targets such as Taliban leaders? Take the example of Abdul Qayam, a Taliban commander in Afghanistan’s Zabul Province who was killed in an airstrike in October of 2011. Do the American people even know who he is, let alone the money spent to kill him? According to a report, the Navy spends $20,000 per hour on strikes like the one that killed Qayam, and each sortie generally lasts eight hours. While the American people may be generally supportive of targeted killings, they are likely unaware of the financial costs associated with the killings. Publishing the aggregate cost of strikes, along with the number of strikes would not reveal any classified information, but would go a long way towards ensuring political accountability for the targeted killing program. Such an accountability reform might also appeal to individuals across the ideological spectrum, from progressives who are opposed to strikes on moral grounds to fiscal conservatives who may oppose the strikes on the basis of financial cost. In fact, according to the 9/11 Commission Report, during the 1990’s one of the most effective critiques of the cruise missile strikes against al Qaeda training camps was cost. Specifically, some officials questioned whether “hitting inexpensive and rudimentary training camps with costly missiles would not do much good and might even help al Qaeda if the strikes failed to kill Bin Ladin.”

Reform 5: Establish an Independent Review Board

The transparency related accountability reforms specified above have the ability to expose wrongdoing; however that’s not the only goal of accountability. Accountability is also designed to deter wrongdoing. By exposing governmental activity, transparency oriented reforms can influence the behavior of all future public officials—to convince them to live up to public expectations. The challenge associated with the reforms articulated above is a bias towards the status quo. Very few incentives exist for elected officials to exercise greater oversight over targeted killings and interest group advocacy is not as strong in matters of national security and foreign affairs as it is in domestic politics. To overcome the bias towards the status quo, Congress should consider creating an independent review board composed of individuals selected by the minority and majority leadership of the House and Senate, thus ensuring bi-partisan representation. The individuals on the review board should be drawn from the ranks of former intelligence and military officers, lending their report enhanced credibility. These individuals should be responsible for publishing an annual report analyzing how well the government’s targeted killing program is performing. The goal would be a strategic assessment of costs and benefits, including the fiscal costs, potential blowback, collateral damage and other details that are currently held deep within the files of the targeting bureaucracy.

This board, like many prior commissions can be successful because they signal the executive’s interest in maintaining credibility and winning the support of the public. It also shows his willingness to give up control of information that allows others to subject the executive branch to critiques. Similarly, Congress may prefer this solution because it allows them to claim they are holding the executive branch accountable while at the same time shifting the blame for poor accountability decisions to others. The board could review the program in its entirety, or could conduct audits on specified areas of the program.

The challenge associated with such an approach is similar to the oversight challenges we see today. Will the agencies provide information to the board members? Maybe not. However, the dynamic here is a bit different, and it suggests that that agencies may cooperate. First, for the board to be successful it will require the president to publicly support it from the outset. A failure on his part to do so may impose political costs on him by suggesting he has something to hide. That cost may be more than he wants to bear. Second, once the president publicly binds himself to the commission, he will need to ensure it is successful or he will again suffer political costs. Those costs may turn into an ongoing political drama, drawing attention away from his other public policy objectives. Third, the board members themselves, once appointed, may operate as independent investigators who will have an interest in ensuring that they are not stonewalled. Fourth, because these members will be appointed by partisan leaders in Congress, the individuals chosen are likely to have impressive credentials, lending them a platform for lodging their critiques.

#### The CP’s the best middle ground---preserves the vital counter-terror role of targeted killings while resolving all their downsides

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

Despite President Barack Obama's recent call to reduce the United States' reliance on drones, they will likely remain his administration's weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused.

Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage.

So drone warfare is here to stay, and it is likely to expand in the years to come as other countries' capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid.

## Case

### 1NC – Courts Solvency

#### Deference and circumvention inevitable – the best they can achieve is inconsistent application of precedent.

Posner and Vermeule, 10- \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.

Legality and Legitimacy

At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal, or of dubious legality, they may nonetheless be politically legitimate, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns.

When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

#### They can’t solve but the interference still undermines executive decision-making

Posner and Vermeule, 7– \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 30-31)

As a matter of fact, this baseline picture is almost certainly incorrect. Government does not always act rationally; sometimes government officials enjoy agency slack and use it to engage in self-dealing, opportunism, or other welfare-reducing actions; sometimes government officials act as tightly constrained agents for the majority and enact policies that oppress minorities. But the baseline picture helps us to clarify the position we will defend: government is not more likely to do these things during emergencies than during normal times, whereas courts are less able to police such behavior during emergencies than during normal times. This is an empirical and institutional claim, which we shall support in every succeeding chapter, not a conceptual claim. If courts were perfectly informed and well motivated, then they might weed out bad emergency policies chosen by irrational or ill-motivated governments. But we just do not have courts of that sort. In particular cases, judges may do better than government at assessing the relative likelihood of threats to security and liberty or the overall costs of particular policies. But this will be wholly fortuitous, and judges who think they have guessed better than government may guess worse instead. Judges are generalists, and the political insulation that protects them from current politics also deprives them of information,33 especially information about novel security threats and necessary responses to those threats. If government can make mistakes and adopt unjustified security measures, then judges can make mistakes as well, sometimes invalidating justified security measures.

On this comparative institutional view, there is no general reason to think that judges can do better than government at balancing security and liberty during emergencies. Constitutional rules do no good, and some harm, if they block government’s attempts to adjust the balance as threats wax and wane. When judges or academic commentators say that government has wrongly assessed the net benefits or costs of some security policy or other, they are amateurs playing at security policy, and there is no reason to expect that courts can improve upon government’s emergency policies in any systematic way.

#### Even an extremely broad and definitive Court ruling won’t be enforced by lower courts on appeal

Wietse Buijs, lecturer in the section of Jurisprudence at the Erasmus School of Law (ESL) in Rotterdam, “WHY IT WASN’T A GREAT VICTORY AFTER ALL”, Amsterdam Law Forum, Vol. 4, No. 1, pp. 93-100, 2012, Feb (BJN)

The accumulation of the turf war came, as I discussed in the beginning in this paragraph, in 2008 with Boumediene. The Court held in a narrow 5-4 decision that the detainees had a right to a writ of habeas corpus under the Constitution and that the MCA was an unconstitutional suspension of that right. Because of the fact that the United States have complete and utter control and jurisdiction, and thereby ‘de facto’ sovereignty over GITMO, detainees held there have the right to protection under the Constitution. On these grounds Boumediene should have been ‘a great victory.’19 It was meant as a definitive answer from the Supreme Court on how to interpret the Constitution in detainee cases. It looked like a definitive case, except for the fact that it was not. Boumediene of course was sent for remand to the Court of Appeals of the D.C. Circuit Court. It is this Court that would turn out to be the Court in control of the detainee cases. The DTA and the MCA both appointed the D.C. Circuit Court as the only Court allowed to review any of the detainee cases. But contrary to the slim, progressive left wing majority in the Supreme Court (only in the instance of Boumediene by the way), the D.C. Circuit Judges were and are mostly conservative. And in some cases extremely conservative. It is fair to say that these judges weren’t really keen on implementing the new precedent. Some judges were not even very subtle in their criticism towards the Supreme Court. Senior D.C. Circuit judge Randolph even held public speeches called ‘The Guantanamo mess’ referring to the Boumediene precedent.20 So after Boumediene most detainees sought their way, again, to the Courts in order to obtain a release order for their detention. But they eventually would reach the D.C. Circuit Court of Appeals in their appeal. The Court of Appeals for their part refused to release a detainee in every single detainee case that reached it. In their quest to overturn the Boumediene precedent they used a remarkable method, they used another Supreme Court ruling against the Boumediene precedent. As faith would have it, it was a case that was decided on the same day as Boumediene. Munaf v. Geren was a case where the court unanimously concluded that habeas corpus extends to U.S. citizens held overseas by American forces subject to an American chain of command, even if acting as part of a multinational coalition. It did not differ much from the view set out in Boumediene. But the Court also found that habeas corpus provided the petitioners with no relief holding that "Habeas corpus does not require the United States to shelter such fugitives from the criminal justice system of the sovereign with authority to prosecute them."21 So the Boumediene case, dividing the Court 5-4, gave GITMO detainees, for the first time, a constitutional right to go to court to challenge their detention. But the unanimous Munaf decision, which had nothing in it explicitly about GITMO, held that federal courts could not control the U.S. military’s decision, in Iraq, to hand over to the Iraqi government American citizens who had allegedly committed crimes in that country. What the judges so cleverly did was use the broad interpretation of the Munaf decision to increase the executive power of the, by now Obama, Administration and diminish the precedent set out in the Boumediene case. The Circuit Court flatly ordered the District judges not to ‘second-guess’ the Executive’s call on what to do with detainees, even those who had won release orders. So the result of this decision was that the Circuit Court of Appeals in no case approved an actual release. The logical step to take for the numerous defence lawyers of the detainees was to appeal to the Supreme Court for its consideration in these matters. And so they did. Just last year alone eight cases, for the most part consolidated cases regarding more than one detainee, reached the Court asking a writ of certiorari.22 All eight were dismissed. The Supreme Court did in all instances discuss the case but, in majority at least, did not see the need to grant certiorari. In consideration of the reason why the Court sees no need for further review of these cases, the Justices provide no definitive answer. There is certainly a great need to further explain the Court’s view in both Boumediene and Munaf, notwithstanding the fact that the D.C. Circuit Court has created a remarkable way of interpreting both precedents. It seems that a major reason or perhaps the only reason that the Supreme Court did not grant certiorari to any of the detainee cases is that there was, and still is, no majority for a coherent decision to be found. During Obama’s first term in office, two justices retired. Justices Souter and Stevens were replaced by Sotomayor and Kagan. As both Justices Souter and Stevens were fairly liberal justices and so are Sotomayor and Kagan, no change in balance in detainee matters would have been expected, except for the fact that justice Kagan was a Solicitor General of the United States prior to her appointment to the bench. As a Solicitor General she was directly involved in some of the cases she now had to judge. The consequence of course was that she had to recuse herself on all those cases. With justice Kagan out of the picture in detainee cases, the 5-4 split in Boumediene in favour of detainee rights would then be a 4-4 stalemate. In case of a 4-4 split, no decision is made and the initial ruling by the D.C. Circuit Court of Appeals stands, therefore the Supreme Court grants no certiorari in any of the detainee cases. Because of that, the D.C. Circuit Court of Appeals is in control over all detainee matters, a control that, for the moment, translates in ever diminishing rights for the persons held in indefinite detention.

#### Obama is winning appointment battles for the DC Court now – key to climate change

Juliet Eilperin, Washington Post, Obama seeks to shift conservative tilt of key court, April 2nd 2013, http://articles.washingtonpost.com/2013-04-02/politics/38220167\_1\_president-obama-caitlin-halligan-second-term-agenda/2

President Obama has pressed senators from both parties in recent weeks to confirm a new federal judge for one of the country’s most powerful courts, using an aggressive strategy to campaign for a judicial nominee whom White House officials consider a potentially crucial figure in boosting the president’s second-term agenda. The effort reflects a new White House effort to tilt in its favor the conservative-dominated U.S. Court of Appeals for the District of Columbia Circuit, which is one notch below the Supreme Court and considers many challenges to executive actions. The push to win approval for Sri Srinivasan, the principal deputy solicitor general, has taken on greater urgency because Obama was forced late last month to withdraw his initial nominee to fill one of the court’s vacancies, New York City prosecutor Caitlin Halligan, in the face of a Republican filibuster. Giving liberals a greater say on the D.C. Circuit is important for Obama as he looks for ways to circumvent the Republican-led House and a polarized Senate on a number of policy fronts through executive order and other administrative procedures. The D.C. Circuit, with four Republican and three Democratic appointees, has four vacancies. It proved an obstacle for Obama during his first term — blocking proposed rules, for instance, to curb interstate air pollution and enhance cigarette labeling. The court also has put on hold dozens of cases relating to rules on workers’ rights, and it has challenged the president’s authority to name recess appointees. In recent days, Obama has intervened in the push for Srinivasan, said a White House official who spoke on the condition of anonymity because the confirmation process is not complete. The president has used meetings with Republican and Democratic senators to make a case for swift confirmation, the official said. The president mentioned the issue of judicial nominations during a recent Google Plus video chat, and the White House has spread the message online about the D.C. Circuit’s vacancies. One case the White House is making privately is that Srinivasan, who worked in President George W. Bush’s solicitor general’s office for five years before returning there under Obama in 2011, holds bipartisan appeal. Underscoring that point, 12 former solicitors general and principal deputy solicitors general — six Democrats and six Republicans — issued a letter Monday urging the nominee’s confirmation. “There are few things more vital on the president’s second-term agenda,” said Constitutional Accountability Center President Doug Kendall, who co-wrote an upcoming Environmental Forum article on the subject with his group’s senior counsel, Simon Lazarus. “With legislative priorities gridlocked in Congress, the president’s best hope for advancing his agenda is through executive action, and that runs through the D.C. Circuit.” Born in India and raised in Lawrence, Kan., Srinivasan, 46, has the backing of the country’s South Asian community, which voted overwhelmingly for Obama but has been an increasingly important donor base for both parties. Activist groups have mobilized to boost the White House campaign, with one organization, the Indian American Leadership Initiative, reaching out to Indian Americans in key states whose senators sit on the Judiciary Committee and lining up help from GOP donors. “This, for us, is a real groundbreaking nomination,” said Anurag Varma, vice president of the group. “It’s great to see Indian Americans who vote Republican also see Sri as a great candidate.” White House press secretary Jay Carney made a point during his news briefing Monday of extolling the credentials of Srinivasan, whose nomination will come before the Senate Judiciary Committee on April 11. Carney noted that Srinivasan has argued two dozen cases before the Supreme Court and has served “on behalf of the United States for both Democratic and Republican administrations. “Sri’s confirmation will be an important first step to filling this court’s four vacancies, and he will be, when confirmed, the first South Asian circuit court judge in history,” Carney said, adding that the D.C. Circuit “is often considered the nation’s second-highest court, but it has twice as many vacancies as any other court of appeals.” Although a number of Obama’s judicial nominees are awaiting confirmation — 15 are awaiting Senate floor votes, including 13 who won unanimous approval from the judiciary panel — the D.C. Circuit has taken on outsize importance because of its conservative tilt and its role overseeing Obama’s executive authority. In January, the court threw out a decision by the National Labor Relations Board on grounds that the recess appointments Obama made to the board were invalid. Since then, the court has put dozens of NLRB cases on hold, prompting concern in organized labor, a key Obama base. “It’s no exaggeration to say the workers’ rights agenda is either on hold or blowing up at the D.C. Circuit, in the hands of a few conservative judges,” said Lynn Rhinehart, general counsel for the AFL-CIO. The court is just as influential when it comes to environmental cases. It has exclusive jurisdiction over national rules issued under the Clean Air Act and the Safe Drinking Water Act, among other laws. It will have the power to block Obama’s efforts to regulate greenhouse gas emissions. “D.C. Circuit litigation will ensure these programs pass legal muster,” said Joseph Stanko, who heads government relations at the law firm Hunton & Williams and represents several coal-fired utilities that oppose rules governing greenhouse gas emissions. The White House effort, which includes pinning the blame on Republican senators for rampant federal court vacancies, has led to some additional bickering over who is at fault.

#### A liberal ruling causes Congressional backlash

Ku & Yoo ’06 Julian Ku, Hofstra University - School of Law, John Yoo, University of California at Berkeley School of Law, Hamdan V. Rumsfeld: The Functional Case for Foreign Affairs Deference to the Executive Branch. Constitutional Commentary, Vol. 23, p. 179, 2006; Hofstra University Legal Studies Research Paper No. 06-32; UC Berkeley Public Law Research Paper No. 945454. Available at SSRN: [http://ssrn.com/abstract=945454](http://ssrn.com/abstract%3D945454), jj

Most importantly, congressional reaction to Hamdan went far¶ beyond reversing the Court’s substantive result. Instead, Congress¶ took unusually aggressive measures to ensure that the Court would no¶ longer interfere with executive-legislative cooperation in the administration¶ of military commissions. Thus, in addition to delegating to¶ the President broad and exclusive authority to define non-grave¶ breaches of Common Article 3, the MCA prohibits the use of the Geneva¶ Conventions as a source of rights for alien enemy combatants in¶ a military commission trial. The MCA further prohibits courts from¶ using “foreign or international law” as a rule of decision in the interpretation¶ of the Geneva Convention obligations.144 Finally, in the¶ MCA’s most controversial provision, Congress removed the jurisdiction¶ of federal courts to “hear or consider an application for a writ of¶ habeas corpus filed by or on behalf of an alien detained by the United¶ States who has been determined by the United States to have been¶ properly detained as an enemy combatant or is awaiting such determination.”¶ 145¶ This last provision is almost certainly going to be subject to¶ extended litigation to the extent it purports to suspend the writ of habeas¶ corpus for aliens detained as enemy combatants within the territorial¶ United States.146 But whether or not it is ultimately upheld, it¶ reflects Congress’ strong desire to eliminate judicial interference in¶ the administration of wartime laws and policies. It is hard to imagine¶ such an aggressive effort to remove federal court jurisdiction and to¶ limit judicial interpretive powers would have occurred had the Hamdan¶ Court not departed so dramatically from the traditional doctrines¶ of judicial deference to executive-legislative wartime policies.

#### They’ll block the new appointments

Geyh, Chair of Law Department @ Indiana, 06

(Charles Gardner. When courts & congress collide: the struggle for control of America’s Judicial System. P. 208)

The rise of customary judicial independence has been accompanied by a corresponding decline in judicial accountability, which resulted from the gradual rejection of various means of congressional control over judicial decision making—such as impeachment, court packing and unpacking, and jurisdictional manipulation. The appointments process, by virtue of its highly partisan tradition, its unique interbranch dynamic, and the relative ease with which partisan, ideologically motivated rejections can be accomplished, has evolved separately, unencumbered by the same judicial independent norms. As more draconian methods for controlling the courts - their decisions fell into disrepute, the confirmation process became the last best hope for legislators seeking to preserve some measure judicial accountability. Moreover, as the movement toward holding judges prospect' accountable for their decisions by means of the confirmation process took root, it may have diminished further still the perceived need hold judges accountable in other ways. To the extent that appointments process is calculated to select mainstream justices think, more or less, like those who appoint them (and to reject Tiers who do not), the occasions in which the decisions of those justices will so alienate the political branches and their constituencies to prompt retaliation may be fewer. And regardless of the extent which presidents and senators can in fact reduce the future incidence of unacceptable decisions via the appointments process, the emerging perception that they can do so has meant that when unacceptable decisions occur, the political response of first resort is increasingly address the problem with new appointments rather than by other, discredited means of court control.

#### DC Circuit Court key to environmental regulation

PFAW, “America's Progress at Risk: Restoring Balance to the D.C. Circuit Court of Appeals”, 2013, http://www.pfaw.org/media-center/publications/america-s-progress-risk-restoring-balance-dc-circuit-court-appeals

While the Supreme Court attracts the lion’s share of attention from the press and the public, it hears only a tiny fraction of the appeals filed each year. The nine Justices, who generally get to pick which appeals they will consider, heard only 79 cases during the 2011-2012 term. Only a tiny number of those cases were appealed from the D.C. Circuit. In contrast, the D.C. Circuit cannot simply choose not to hear an appeal. In the year that ended in September 2012, nearly 1,200 appeals were filed before the court. This means that when the D.C. Circuit makes a ruling, it is almost guaranteed to have the last word. And because of the D.C. Circuit’s jurisdiction it has the last word on a wide range of federal laws, including congressional enactments and regulations adopted by federal agencies and departments. By virtue of the types of cases it hears, the court has a unique ability to put its stamp on an enormous array of the nation’s laws in a way that other circuits simply do not. Congress requires the D.C. Circuit to be the immediate and exclusive court to consider appeals of a breathtaking array of agency regulations and decisions. Moreover, even when parties appealing agency decisions have a choice of venues, they often choose to have their cases heard by the D.C. Circuit, sometimes due to its expertise in complex administrative matters and sometimes to take advantage of the court’s ideological imbalance. For the same reason, the D.C. Circuit is also a prime choice for those challenging congressionally passed statutes or presidential actions. Much of the machinery of United States administrative law (the rules adopted by federal agencies that affect so many aspects of our society) runs through the D.C. Circuit. According to a September 2012 report by the Administrative Office of U.S. Courts, 43 percent of the appeals filed at the D.C. Circuit in the past year were related to administrative actions. For circuit courts overall, that number is only 15 percent. Every facet of our lives is affected by some aspect of federal law. Clean air rules, gun safety measures, telecom regulations, investor protection rules, securities fraud laws, labor law, banking regulations, food safety requirements, credit card regulations and election laws can be appealed to a federal court, and that court is often the D.C. Circuit. While many Americans haven’t heard of the D.C. Circuit, we’ve all lived with the results of its rulings. For instance, anyone who was swamped in campaign commercials paid for by super PACs last year can thank the D.C. Circuit. In the 2010 SpeechNow v. Federal Election Commission case, the D.C. Circuit ruled that since, under Citizens United, independent expenditures do not cause real or perceived corruption, an individual’s giving contributions to groups that make only independent expenditures also cannot create real or perceived corruption and so cannot be limited. The result was the creation of “super PACs,” which gave the super wealthy, including moguls like Sheldon Adelson and Foster Friess, an outsized influence on the 2012 elections. For those who seek to block a progressive, smart-government agenda, the D.C. Circuit is an important vehicle.

#### Regulations prevent extinction from runaway warming---now’s key

Lester R. Brown 11, Founder of the Worldwatch Institute and the Earth Policy Institute, June 28, 2011, “The Good News About Coal,” online: http://globalgeopolitics.net/wordpress/2011/06/28/op-ed-the-good-news-about-coal/

During the years when governments and the media were focused on preparations for the 2009 Copenhagen climate negotiations, a powerful climate movement was emerging in the United States: the movement opposing the construction of new coal-fired power plants.¶ Environmental groups, both national and local, are opposing coal plants because they are the primary driver of climate change. Emissions from coal plants are also responsible for 13,200 U.S. deaths annually – a number that dwarfs the U.S. lives lost in Iraq and Afghanistan combined.¶ What began as a few local ripples of resistance quickly evolved into a national tidal wave of grassroots opposition from environmental, health, farm, and community organisations. Despite a heavily funded industry campaign to promote "clean coal", the American public is turning against coal.¶ In a national poll that asked which electricity source people would prefer, only three percent chose coal. The Sierra Club, which has kept a tally of proposed coal-fired power plants and their fates since 2000, reports that 152 plants in the United States have been defeated or abandoned.¶ An early turning point in the coal war came in June 2007, when Florida’s Public Service Commission refused to license a huge 5.7- billion-dollar, 1,960-megawatt coal plant because the utility proposing it could not prove that building the plant would be cheaper than investing in conservation, efficiency, or renewable energy.¶ This point, frequently made by lawyers from Earthjustice, a nonprofit environmental legal group, combined with widely expressed public opposition to any more coal-fired power plants in Florida, led to the quiet withdrawal of four other coal plant proposals in the state.¶ Coal’s future also suffered as Wall Street, pressured by the Rainforest Action Network, turned its back on the industry. In February 2008, investment banks Morgan Stanley, Citi, J.P. Morgan Chase, and Bank of America announced that any future lending for coal- fired power would be contingent on the utilities demonstrating that the plants would be economically viable with the higher costs associated with future federal restrictions on carbon emissions.¶ One of the unresolved questions haunting the coal sector is what to do with the coal ash – the remnant of burning coal – that is accumulating in 194 landfills and 161 holding ponds in 47 states. This ash is not an easy material to dispose of since it is laced with arsenic, lead, mercury, and other toxic materials.¶ A coal ash spill in Tennessee in December 2008 released a billion gallons of toxic brew and is costing the Tennessee Valley Authority (TVA) 1.2 billion dollars to clean up.¶ An August 2010 joint study by the Environmental Integrity Project, Earthjustice, and the Sierra Club reported that 39 coal ash dump sites in 21 states have contaminated local drinking water or surface water with arsenic, lead, and other heavy metals at levels that exceed federal safe drinking water standards. The U.S. Environmental Protection Agency (EPA) had already identified 98 other water- polluting sites.¶ In response to these and other threats, new regulations are in the making to require better management of coal ash storage facilities to avoid contaminating local groundwater supplies. In addition, EPA is issuing more stringent regulations on coal plant emissions to reduce chronic respiratory illnesses and deaths caused by coal-fired power plant emissions.¶ The coal industry practice of blasting off mountaintops to get at coal seams is also under fire. In August 2010, the Rainforest Action Network announced that several leading U.S. investment banks, including Bank of America, J.P. Morgan, Citi, Morgan Stanley, and Wells Fargo, had ceased lending to companies involved in mountaintop removal coal mining.¶ Massey Energy, a large coal mining company notorious for its violations of environmental and safety regulations and the owner of the West Virginia mine where 29 miners died in 2010, lost all funding from three of the banks.¶ Now that the United States has, in effect, a near de facto moratorium on the licensing of new coal-fired power plants, several environmental groups, including the Sierra Club and Greenpeace, are starting to focus on closing existing coal plants.¶ Utilities are beginning to recognise that coal is not a viable long- term option. TVA announced in August 2010 that it was planning to close nine of its 59 coal-generating units. Duke Energy, another major southeastern utility, followed with an announcement that it was considering the closure of seven coal-fired units in North and South Carolina alone.¶ Progress Energy, also in the Carolinas, is planning to close 11 units at four sites. In Pennsylvania, Exelon Power is preparing to close four coal units at two sites. Xcel Energy, the dominant utility in Colorado, announced it was closing seven coal units. And in April 2011, TVA agreed to close another nine units as part of a legal settlement with EPA.¶ In an analysis of the future of coal, Wood Mackenzie, a leading energy consulting and research firm, describes these closings as a harbinger of things to come for the coal industry.¶ The chairman of the powerful U.S. Federal Energy Regulatory Commission, Jon Wellinghoff, observed in early 2009 that the United States may no longer need any additional coal plants. Regulators, investment banks, and political leaders are now beginning to see what has been obvious for some time to climate scientists such as James Hansen: that it makes no sense to build coal-fired power plants only to have to bulldoze them in a few years.¶ Closing coal plants in the United States may be much easier than it appears. If the efficiency level of the other 49 states were raised to that of New York, the most energy-efficient state, the energy saved would be sufficient to close 80 percent of the country’s coal-fired power plants. The remaining plants could be shut down by turning to wind, solar, and geothermal energy.¶ The U.S. transition from coal to renewables is under way. Between 2007 and 2010, U.S. coal use dropped eight percent. During the same period, and despite the recession, 300 new wind farms came online, adding some 23,000 megawatts of wind-generating capacity.¶ With the likelihood that few, if any, new coal-fired power plants will be approved in the United States, this moratorium sends a message to the world. Denmark and New Zealand have already banned new coal-fired power plants. As of late 2010, Hungary was on the verge of closing its one remaining coal plant.¶ Ontario Province, where 39 percent of Canadians live, plans to phase out coal entirely by 2014. Scotland announced in September 2010 that it plans to get 100 percent of its electricity from renewables by 2025, backing out coal entirely. In May 2011, that target date was pushed up to 2020.¶ Even China is surging ahead with renewable energy and now leads the world in new wind farm installations. These and other developments suggest that the Plan B goal of cutting carbon emissions 80 percent by 2020 may be much more attainable than many would have thought a few years ago.¶ The restructuring of the energy economy will not only dramatically drop carbon emissions, helping to stabilise climate, it will also eliminate much of the air pollution that we know today. The idea of a pollution-free environment is difficult for us even to imagine, simply because none of us has ever known an energy economy that was not highly polluting.¶ Working in coal mines will be history. Black lung disease will eventually disappear. So too will ‘code red’ alerts warning us to avoid strenuous exercise because of dangerous levels of air pollution.¶ And, finally, in contrast to investments in oil fields and coal mines, where depletion and abandonment are inevitable, the new energy sources are inexhaustible. While wind turbines, solar cells, and solar thermal systems will all need repair and occasional replacement, investing in these new energy sources means investing in energy systems that can last forever.¶ Although some of the prospects look good for moving away from coal, timing is key. Can we close coal-fired power plants fast enough to save the Greenland ice sheet? If not, sea level will rise 23 feet. Hundreds of coastal cities will be abandoned. The rice-growing river deltas of Asia will be underwater. And there will be hundreds of millions of rising-sea refugees.¶ If we cannot mobilise to save the Greenland ice sheet, we probably cannot save civilisation as we know it.

### Judicial Review

***McCormack is neg evidence***

**McCormack 13** (Wayne McCormack is the E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, U.S. Judicial Independence: Victim in the “War on Terror”, Aug 20, <https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/>)

**One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary**. ***Time and again***, **challenges to assertedly illegal conduct on the part of government officials have been turned aside**, either **because of overt deference** to the Government **or** because of **special doctrines such as** state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But **a *long pattern* of threats and intimidation to depart from established law *undermines judicial independence***. That has been the course of the U.S. “war on terror” for over a decade now.

Here are some of the governmental actions that have been **challenged** and a brief statement of how the Courts responded to Government demands for deference.

**====KENTUCKY’S UNDERLINING STOPS====**

***1. Guantanamo***.

**In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists”** under unstated standards to be developed **by the lower courts** with “deference” to Executive determinations. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.”

***2. Detention and Torture***

Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP)

Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities.

Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity.

Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP.

1 553 U.S. 723 (2008).

2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007).

3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009).

4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012).

5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP.

***3. Unlawful Detentions***

Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant.

Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7

Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security.

Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute

***4. Unlawful Surveillance***

Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others.

***5. Targeted Killing***

Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes.

***6. Asset Forfeiture***

6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009).

7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007).

8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)

9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002).

10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013).

**====KENTUCKY’S UNDERLINING BEGINS AGAIN====**

**11 Al-Aulaqi v. Obama**, 727 F. Supp. 2d 1 (D.D.C. 2010)

Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge.

***CMR is secure***

**Shanker, 9/13/13** (Thom, New York Times, “Pentagon in Back Seat as Kerry Leads Charge”

<http://www.nytimes.com/2013/09/14/us/politics/syria-crisis-underlines-pentagons-move-to-the-back-seat.html?pagewanted=all&_r=2&>

WASHINGTON — In the weeks of sometimes bewildering debate in Washington about what to do in Syria, one truth has emerged: President **Obama has transformed his relationship with the Pentagon and the military.**

**The civilian policy makers and generals** who led Mr. Obama toward a troop escalation in Afghanistan **during his first year** in office, a decision that left him deeply distrustful of senior military leaders, **have been replaced by a handpicked leadership that** includes Defense Secretary Chuck **Hagel and** Gen. Martin E. **Dempsey**, the chairman of the Joint Chiefs of Staff.

Through battlefield experience — Mr. Hagel as an infantryman in 1967 and 1968 in Vietnam, and General Dempsey as a commander during some of the most violent years in Iraq — **both men share** Mr. **Obama’s reluctance to use American military might overseas**. **A dozen years after the Pentagon under** Donald H. **Rumsfeld began aggressively driving national security policy,** **the two have wholeheartedly endorsed a more restricted Pentagon role**.

“Hagel was not hired to be a ‘secretary of war,’ ” said one senior Defense Department official. “That is not a mantle the president wants him to wear.”

The crisis **in Syria** is the most recent and most powerful example of how Mr. Obama, elected twice on a promise to disengage the United States from overseas conflicts, has moved the Pentagon to a back seat. In this case, it is Secretary of State John **Kerry** who **is leading the charge**, not the far less vocal Mr. Hagel and General Dempsey.

“Whether you call it a reset of the Pentagon or a reflection of what our overall policy is,” the Pentagon official said, “**the military instrument is not going to be the dominant instrument of our policy,** particularly **in an instance like Syria**, where we are not looking at military force to solve the underlying civil war.”

#### No modeling

Law & Versteeg 12—Professor of Comparative Constitutional Law @ Washington University & Professor of Comparative Constitutional Law @ University of Virginia [David S. Law & Mila Versteeg, “The Declining Influence of the United States Constitution,” New York University Law Review, Vol. 87, 2012

The appeal of American constitutionalism as a model for other countries appears to be waning in more ways than one. Scholarly attention has thus far focused on global judicial practice: There is a growing sense, backed by more than purely anecdotal observation, that foreign courts cite the constitutional jurisprudence of the U.S. Supreme Court less frequently than before.267 But the behavior of those who draft and revise actual constitutions exhibits a similar pattern. Our empirical analysis shows that the content of the U.S. Constitution is¶ becoming increasingly atypical by global standards. Over the last three decades, other countries have become less likely to model the rights-related provisions of¶ their own constitutions upon those found in the Constitution. Meanwhile, global adoption of key structural features of the Constitution, such as federalism, presidentialism, and a decentralized model of judicial review, is at best stable and at worst declining. In sum, rather than leading the way for global¶ constitutionalism, the U.S. Constitution appears instead to be losing its appeal as¶ a model for constitutional drafters elsewhere. The idea of adopting a constitution may still trace its inspiration to the United States, but the manner in which constitutions are written increasingly does not.

If the U.S. Constitution is indeed losing popularity as a model for other countries, what—or who—is to blame? At this point, one can only speculate as to the actual causes of this decline, but four possible hypotheses suggest themselves: (1) the advent of a superior or more attractive competitor; (2) a general decline in American hegemony; (3) judicial parochialism; (4) constitutional obsolescence; and (5) a creed of American exceptionalism.

With respect to the first hypothesis, there is little indication that the U.S. Constitution has been displaced by any specific competitor. Instead, the notion that a particular constitution can serve as a dominant model for other countries may itself be obsolete. There is an increasingly clear and broad consensus on the types of rights that a constitution should include, to the point that one can articulate the content of a generic bill of rights with considerable precision.269 Yet it is difficult to pinpoint a specific constitution—or regional or international human rights instrument—that is clearly the driving force behind this emerging paradigm. We find only limited evidence that global constitutionalism is following the lead of either newer national constitutions that are often cited as influential, such as those of Canada and South Africa, or leading international and regional human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Although Canada in particular does appear to exercise a quantifiable degree of constitutional influence or leadership, that influence is not uniform and global but more likely reflects the emergence and evolution of a shared practice of constitutionalism among common law countries.270 Our findings suggest instead that the development of global constitutionalism is a polycentric and multipolar¶ process that is not dominated by any particular country.271 The result might be likened to a global language of constitutional rights, but one that has been collectively forged rather than modeled upon a specific constitution.

Another possibility is that America’s capacity for constitutional leadership is at least partly a function of American “soft power” more generally.272 It is reasonable to suspect that the overall influence and appeal of the United States and its institutions have a powerful spillover effect into the constitutional arena. The popularity of American culture, the prestige of American universities, and the efficacy of American diplomacy can all be expected to affect the appeal of American constitutionalism, and vice versa. All are elements of an overall American brand, and the strength of that brand helps to determine the strength of each of its elements. Thus, any erosion of the American brand may also diminish the appeal of the Constitution for reasons that have little or nothing to do with the Constitution itself. Likewise, a decline in American constitutional influence of the type documented in this Article is potentially indicative of a broader decline in American soft power.

There are also factors specific to American constitutionalism that may be¶ reducing its appeal to foreign audiences. Critics suggest that the Supreme Court has undermined the global appeal of its own jurisprudence by failing to acknowledge the relevant intellectual contributions of foreign courts on questions of common concern,273 and by pursuing interpretive approaches that lack acceptance elsewhere.274 On this view, the Court may bear some responsibility for the declining influence of not only its own jurisprudence, but also the actual U.S. Constitution: one might argue that the Court’s approach to constitutional issues has undermined the appeal of American constitutionalism more generally, to the point that other countries have become unwilling to look either to American constitutional jurisprudence or to the U.S. Constitution itself for inspiration.275

It is equally plausible, however, that responsibility for the declining appeal of American constitutionalism lies with the idiosyncrasies of the Constitution itself rather than the proclivities of the Supreme Court. As the oldest formal constitution still in force, and one of the most rarely amended constitutions in the world,276 the U.S. Constitution contains relatively few of the rights that have become popular in recent decades,277 while some of the provisions that it does contain may appear increasingly problematic, unnecessary, or even undesirable with the benefit of two hundred years of hindsight.278 It should therefore come as little surprise if the U.S. Constitution¶ strikes those in other countries–or, indeed, members of the U.S. Supreme Court279–as out of date and out of line with global practice.280 Moreover, even if the Court were committed to interpreting the Constitution in tune with global fashion, it would still lack the power to update the actual text of the document.

Indeed, efforts by the Court to update the Constitution via interpretation may actually reduce the likelihood of formal amendment by rendering such amendment unnecessary as a practical matter.281 As a result, there is only so much that the U.S. Supreme Court can do to make the U.S. Constitution an¶ attractive formal template for other countries. The obsolescence of the Constitution, in turn, may undermine the appeal of American constitutional jurisprudence: foreign courts have little reason to follow the Supreme Court’s lead on constitutional issues if the Supreme Court is saddled with the interpretation of an unusual and obsolete constitution.282 No amount of ingenuity or solicitude for foreign law on the part of the Court can entirely divert attention from the fact that the Constitution itself is an increasingly atypical document.

One way to put a more positive spin upon the U.S. Constitution’s status as a global outlier is to emphasize its role in articulating and defining what is unique about American national identity. Many scholars have opined that formal constitutions serve an expressive function as statements of national identity.283 This view finds little support in our own empirical findings, which suggest instead that constitutions tend to contain relatively standardized packages of rights.284 Nevertheless, to the extent that constitutions do serve such a function, the distinctiveness of the U.S. Constitution may simply reflect the uniqueness of America’s national identity. In this vein, various scholars have argued that the U.S. Constitution lies at the very heart of an “American creed of exceptionalism,” which combines a belief that the United States occupies a unique position in the world with a commitment to the qualities that set the United States apart from other countries.285 From this perspective, the Supreme Court’s reluctance to make use of foreign and international law in constitutional cases amounts not to parochialism, but rather to respect for the exceptional character of the nation and its constitution.286

Unfortunately, it is clear that the reasons for the declining influence of American constitutionalism cannot be reduced to anything as simple or attractive as a longstanding American creed of exceptionalism. Historically, American exceptionalism has not prevented other countries from following the example set by American constitutionalism. The global turn away from the American model is a relatively recent development that postdates the Cold War. If the U.S. Constitution does in fact capture something profoundly unique about the United States, it has surely been doing so for longer than the last thirty years. A complete explanation of the declining influence of American constitutionalism in other countries must instead be sought in more recent history, such as the wave of constitution-making that followed the end of the Cold War.287 During this period, America’s newfound position as lone superpower might have been expected to create opportunities for the spread of American constitutionalism. But this did not come to pass.

Once global constitutionalism is understood as the product of a polycentric evolutionary process, it is not difficult to see why the U.S. Constitution is playing an increasingly peripheral role in that process. No evolutionary process favors a specimen that is frozen in time. At least some of the responsibility for the declining global appeal of American constitutionalism lies not with the Supreme Court, or with a broader penchant for exceptionalism, but rather with the static character of the Constitution itself. If the United States were to revise the Bill of Rights today—with the benefit of over two centuries of experience, and in a manner that addresses contemporary challenges while remaining faithful to the nation’s best traditions—there is no guarantee that other countries would follow its lead. But the world would surely pay close attention. Pg. 78-83

#### Latin America models Europe not America

Schor 9 Miguel Schor Associate Professor of Law, Suffolk University Law School, “Designing a Judiciary: The Strange Cases of Marbury and Lochner in the Constitutional Imagination” 87 Tex. L. Rev. 1463 2009

Polities abroad generally adopted judicial review after the Second World War n133 and had the opportunity, therefore, to learn from our experience with Lochner. The calculus of modern constitution makers and the stock of ideas they have to draw from are quite different from those that animated the framers of the American Constitution. There are two principal competitors to the American model of judicial review. The political-court model of judicial review, which relies on a specialized constitutional court, was first adopted in Europe n134 and then spread to East Asia n135 and Latin America. n136 The politicized-rights model, which provides legislatures with significant constitutional interpretive authority, was first adopted in Canada and then spread to New Zealand and the United Kingdom. n137 Both the political-court and the politicized-rights models of judicial review reject the American assumption that a constitution is a species of law and consequently adopt stronger mechanisms of political accountability for courts. n138 The political-court model relies chiefly on ex ante mechanisms of accountability such as appointment mechanisms; the politicized-rights model relies primarily on ex post mechanisms as parliament retains the power to trump courts in construing rights. Both the political-court n139 and the politicized-rights [\*1481] models do a better job than the American model of resolving the tensions that arise between democracy and constitutionalism.

#### No prolif, no spillover, no impact

Kahl et. al 13 (Colin H., Senior Fellow at the Center for a New American Security and an associate professor in the Security Studies Program at Georgetown University’s Edmund A. Walsh School of Foreign Service, Melissa G. Dalton, Visiting Fellow at the Center for a New American Security, Matthew Irvine, Research Associate at the Center for a New American Security, February, “If Iran Builds the Bomb, Will Saudi Arabia Be Next?” <http://www.cnas.org/files/documents/publications/CNAS_AtomicKingdom_Kahl.pdf>, 2013)

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

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

#### No Latin America impact—their author

**Sanchez 11** (Alex, Research Fellow – Council on Hemispheric Affairs, “The Unlikely Success: Latin America and Nuclear Weapons,” 11-15, http://wasanchez.blogspot.com/2011/11/unlikely-success-latin-america-and.html)

When analyzing the historical tensions between India and Pakistan, Rauf explains that “given the entrenched differences between [them] over Jammu and Kashmir, and a history of three conventional wars and continuing hostilities in the Indian-administered part of Kashmir, the development of nuclear weapons as well as ballistic missiles by the two countries has heightened international concerns about peace and stability in that region.” (14) Regarding Latin America, the region has undergone an arms race in recent years, (15) but even that, combined with inter-state tensions and occasional incidents are still not enough to make regional states desire nuclear weapons as a means of self-defense. Pakistan and India should learn from Latin America about (nuclear) arm races, inter-state tensions and effective confidence building. What can the World Learn from the Latinos? There is no such thing as a one-size-fits-all model for improving interstate relations and achieving non-proliferation; this is particularly relevant for nuclear security relations between global powers like the US and Russia, which operate on a level of their own due to the amount of WMDs they possess. However, lessons can be learned by moderate nuclear powers like the UK, France, Israel, Pakistan and India, as well as countries that may have or seem to be working towards acquiring such weapons, like Iran. The cases of Argentina and Brazil regarding nuclear cooperation shows that it is possible for states to allow their nuclear energy programs to be supervised by some type of supranational organism (in this case the ABACC is a bi-national one, not an international agency like the IAEA). If we analyze the situation in Latin America vis-à-vis Europe, while it’s true that Argentina and Brazil do not possess nuclear weapons, unlike the British and French, if some kind of bi-national nuclear energy command can be achieved in South America, then it could occur between these two European powers. This would set a huge precedent towards nuclear confidence around the globe. A nuclear military relationship between Paris and London presents the most promising possibility at promoting nuclear cooperation and integration. There have been already some promising initial steps that this could happen as in March 2010, Paris offered to forces with London’s nuclear submarine fleet. (16) In addition, the lack of nuclear weapons programs in Latin America, in spite of ongoing tensions is an important case study. For example, regarding India and Pakistan, their violent history over the past decades, including state-sponsored terrorism in each other’s country, has created a culture of mistrust and a continuous quest for more devastating weaponry so each military can feel they have a successful nuclear deterrent. In Latin America, the 1960’s to 1980’s saw a number of military governments come to power, and distrust was a key factor that brought about the nuclear weapons programs in Brazil and Argentina. Today, despite tensions and occasional incidents, the situation in the region is one of generally acceptable inter-state trust. Another example of this regional inter-state confidence is the planned nuclear-powered submarine that Brazil is currently constructing with French aid. (17) When it becomes operational, the submarine will arguably be the most advanced and deadly naval weapon in any Latin America naval arsenal. Nevertheless, regional states have not displayed concerns about this new development. This is not simply because the Brazilian government has stated that it wants the submarine for naval protection (as it recently discovered underwater oil reserves in its sea). There are several confidence building mechanisms at play here, like the creation of UNASUR (Union de Naciones Sudamericanas – South American Nations Union), a South American political bloc, regular multi-national military exercises, as well as initiatives like economic integration and good diplomatic relations; all of these factors help make the Brazilian submarine not a concern for regional militaries. In talks with this essay’s author, military officials explained that the positive relations between the Brazilian government and the governments and militaries of other states are currently excellent, (18) which acts as a great confidence booster and decreases suspicions, that could include Brasilia using a nuclear-powered submarine against a militarily-weak neighbor like Uruguay.

Conclusions

Nuclear proliferation is a worldwide security problem, but these nuclear weapons are localized, thankfully, in less than a handful of states and there are a several NWFZs, including Latin America and the Caribbean. This positive development has not occurred just due to the signing of the Treaty of Tlatelolco, but because of the decision by the signatories to adhere to it for decades. In spite of tensions, like ongoing inter-state border disputes and occasional incidents, which include short-lived wars and an ongoing arms race, regional governments do not feel the desire to pursue an active nuclear weapons program to achieve nuclear deterrence. Furthermore, Brazil, a regional military power, is building a nuclear-powered submarine which, if it’s ever commissioned, will be the most powerful submarine in the Western Hemisphere that does not belong to the U.S. or, arguably, Canada, however this is not a major source of concern. From Latin America’s success, nuclear states can learn that confidence building mechanisms and a sense of trust are critical for non-proliferation to succeed, as are the cases of Brazil and Argentina in the 1970’s to 1990’s.These tactics are currently working to prevent inter-state wars in Latin America, but it takes time to successfully implement them. The Pakistan-India situation, as well as Israel’s security issues, are two areas that can profit from learning about Latin America’s nuclear success, as they too are volatile hotspots. In addition, nuclear cooperation can unite countries, like Brazil and Argentina; this could be a lesson for France and the United Kingdom that no longer seeing each other as a security threat and can decide to further decrease their weapons of mass destruction by creating a bi-national nuclear command. While far from being a peaceful area, as demonstrated by ongoing asymmetric violence and occasional inter-state flare ups, Latin America is one of the lesser well-known, but more important, success stories of nuclear non-proliferation.

#### Judicial independence impossible

Lydia Brashear Tiede ‘06\*, The Journal of Contemporary Legal Issues, 2006, 15 J. Contemp. Legal Issues 129, Positive Political Theory and the Law: Judicial Independence: Often Cited, Rarely Understood, Lexis, jj

The term "independent" is even more troubling. It is difficult to conceive of anything in this universe that is truly independent. Even a child who reaches the age of maturity is not entirely independent from his parents, and in adulthood, may rely on her parents for financial and psychological support, comfort, and validation. Likewise, courts are never entirely independent. Judges' salaries depend on congressional appropriations. Judges' powers depend on the Constitution and the laws of the land. Furthermore, certain judges, such as some state court judges, are dependent on the electorate for votes. Therefore, to truly understand the concept of independence, it must be defined in relation to something else. In the political context, this generally means independence from such things as the legislature, the executive, higher courts, individual litigants, and corruption, to name just a few examples.

#### No Russia collapse

PARTICIPANTS: Moderator: DAVID **IGNATIUS et. al**, Columnist, The Washington Post

Panelists: JOHN IKENBERRY, Professor, Princeton University, ROBERT KAGAN, Senior Fellow, The Brookings Institution

CHARLES KUPCHAN, Professor, Georgetown University, Whitney Shepardson Senior Fellow, Council on Foreign Relations

**3-15-12**, THE BROOKINGS INSTITUTION, THE FUTURE OF THE INTERNATIONAL ORDER: AMERICA’S WORLD, EVERYONE’S WORLD OR NO ONE’S WORLD?, transcript, <http://www.brookings.edu/~/media/Files/events/2012/0315_international_order/20120315_international_order.pdf>, jj

And so, you know, **as long as Putin is around, and I think we’re talking** about at least 12 more years**, Russia is going to be** another one of these -- another power that is outside in some respect -- I mean, **both inside and outside this liberal world order but pushing against major elements of it.**

#### No risk of civil war – opposition divided, Putin is inev

Hugh **Cortazzi** served as Britain's ambassador to Japan from 1980 to 1984, **3-21-12**, the Japan Times,

Nearing the end of tyranny?, <http://www.japantimes.co.jp/text/eo20120321hc.html>, jj

LONDON — President Vladimir Putin in Russia, President Bashar Assad in Syria and President Robert Mugabe in Zimbabwe are detested by many of their fellow countrymen who would like to see them overthrown and tried for human rights abuses. They depend on a close coterie of guards and aides who have to be kept happy. If they ride roughshod over their entourage there is the possibility of assassination by the "Praetorian Guard." Commentators suggest that all three are doomed to fall in the end and that we are seeing the beginning of the end of their power. But **the end could still be quite a long way off and we should beware of wishful thinking.** Putin's majority in the recent election was boosted by some dubious electoral practices including multiple voting and strong arm tactics against opponents and critics. Corruption in modern Russia is so extensive and violence against critics so endemic that the correspondent in Moscow of The Guardian, an English newspaper known for its independent views, titled his book about his terrifying years in Moscow as "The Mafia State." Russia' inclusion in the quartet of major emerging powers (Brazil, Russia, China and India) is questioned by some observers. But Russia is a nuclear weapons state and has significant armed forces, although these still depend on conscription and the treatment of the rank and file is brutal. The economy remains too dependent on oil and gas. Expectation of life is significantly lower than in Western Europe and the population is aging and declining. But all pervading corruption and the absence of an independent judicial system threaten long-term political and economic stability. The Russian middle class has grown significantly in recent years and recent demonstrations in Moscow show that many are thoroughly disgruntled with the present state of their country. But **Putin has cleverly ensured that the opposition is weak and divided. The media generally does his bidding. There is unfortunately at present no credible alternative**. Gorbachev is too old and weak. Medvedev has been shown up as a puppet and leading oligarchs are either in jail, abroad or see it as being in their best interests to be subservient to Putin. **Putin is still relatively young and boasts of his physique. He is well guarded. He could remain president of Russia and continue to wield power for many years. It would be unwise to predict that his end is nigh.**

***Russian nukes and fissile material safe – CTR, security, detection***

**Tobey, 10/19**/12 (William, senior fellow at Harvard's Belfer Center for Science and International Affairs and a deputy administrator of the National Nuclear Security Administration from 2006-2009, “Boost Phase,” http://www.foreignpolicy.com/articles/2012/10/19/boost\_phase, bgm)

**The CTR Agreement was conceived and implemented in a very different time**. The Soviet Union had disintegrated and Russia was financially supine. U.S. assistance was necessary to keep body and soul together for Russian nuclear weapons scientists, and to remove the temptation for them to sell their knowledge and wares to other nations or terrorists. In the absence of Soviet oppression, **the Russian nuclear archipelago was a security nightmare, with fallen fences, crumbling buildings, poor procedures, and a demoralized (and all too often drunken) guard force**. Championed by Senators Sam Nunn and Richard Lugar, and signed by President George H. W. Bush, **the** **C**ooperative **T**hreat **R**eduction legislation **created programs to detect, secure, and dispose of dangerous nuclear material in Russia and the former Soviet Union, as well as to facilitate the destruction of missiles and chemical weapons.** **Today, Russia is more prosperous and its nuclear weapons, materials, and facilities are much more secure**. **Work under the Bratislava Initiative**, agreed to by Presidents George W. Bush and Vladimir Putin in 2005, **essentially completed physical security upgrades at nuclear weapons facilities in Russia**. **Fissile material production** reactors at Seversk and Zheleznogorsk **were shut down and replaced with coal-fired plants. Hundreds of Russian ports, airports, and border crossings are now equipped with nuclear detection equipment.** **Over 400 metric tons of Russian highly enriched uranium has been down-blended to fuel reactors that now provide 10 percent of American electricity**. **Nuclear weapons in Kazakhstan, Ukraine, and Belarus have been removed to Russia, and the former Soviet nuclear test site at Degelen Mountain in Kazakhstan has been secured from scavengers**. **Moscow and Washington**, among others, **should be proud of these signal achievements**.

## warfighting

### Terror

#### The aff has zero solvency – plan text says “the federal judiciary should review targeted killings” – but they don’t fiat Congress gives them jurisdiction by passing a statute

Epps ’13, Garrett Epps, a former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore and lives in Washington, D.C. His new book is Wrong and Dangerous: Ten Right Wing Myths About Our Constitution. 2-16-13, The Atlantic, Why a Secret Court Won't Solve the Drone-Strike Problem, <http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/>, jj

Professor Stephen I. Vladeck of American University has offered a remedy to this problem. He proposes a statute in which Congress assigns jurisdiction to a specific judicial district, probably the District Court for the District of Columbia. Congress in the statute would strip the executive of such defenses as "state secrets" and "political question." Survivors of someone killed in a drone attack could bring a wrongful-death suit. The secret evidence would be reviewed by the judge, government lawyers, and the lawyers for the plaintiff. Those lawyers would have to have security clearance; the evidence would not be shown to the plaintiffs themselves, or to the public. After review of the evidence, the court would rule. If the plaintiffs won, they would receive only symbolic damages--but they'd also get a judgment that the dead person had been killed illegally. It's an elegant plan, and the only one I've seen that would permit us to involve the Article III courts in adjudicating drone attacks. Executive-power hawks would object that courts have no business looking into the president's use of the war power. But Vladeck points out that such after-the-fact review has taken place since at least the Adams administration. "I don't think there's any case that says that how the president uses military force--especially against a U.S. citizen--is not subject to judicial review," he said in an interview. "He may be entitled to some deference and discretion, but not complete immunity."

***Plan Kills warfighting – psychology and intel***

**Radsan & Murphy ’09**, Afsheen John Radsan, William Mitchell College of Law, Richard W. Murphy, Texas Tech University School of Law, Due Process and Targeted Killing of Terrorists (March 1, 2009). Cardozo Law Review, Vol. 31, p. 405, 2009; William Mitchell Legal Studies Research Paper No. 126; Texas Tech Law School Research Paper No. 2010-06. Available at SSRN: [http://ssrn.com/abstract=1349357](http://ssrn.com/abstract%3D1349357), jj

In terms of a Mathews balancing, **the question becomes whether the benefits of Bivens actions on targeted killings of terrorists outweigh the harms**. **The potential harm is to the CIA‘s sources and methods on the Predator program**. **Lawsuits might harm national security by forcing the disclosure of sensitive information**. The states-secrets privilege should block this result, however. ***Lawsuits might also harm national security by causing executive officials to become risk-averse about actions needed to counter terrorist activities***. Qualified immunity, however, should ensure that liability exists only where an official lacks any justification for his action. On the benefit side, allowing lawsuits to proceed would, in truly exceptional cases, serve the private interest of the plaintiff in seeking compensation and, perhaps more to the point given the incommensurability of death and money, would provide accountability. Still more important, all people have an interest in casting light on the government‘s use of the power to kill in a world-wide war in which combatants and targets are not easily identified.

#### Ex Post fails – no lawsuits will happen

Chong ’12, JANE Y. CHONG, Yale Law School, J.D. 2014; Duke University, B.A. 2009, December, 2012, Yale Law Journal, 122 Yale L.J. 724, NOTE: Targeting the Twenty-First-Century Outlaw, Lexis, jj

1. Civil Action In 2009, Professors Murphy and Radsan used the due process model that emerged from the Court's detainment decisions as a basis for arguing that Bivens-style private civil actions could enable targets to challenge the legality of their placement on the kill list after an attack. n46 The proposal conceded that the role for the courts under such a schema would be "vanishingly small," but deserves mention for offering a form of limited judicial scrutiny designed to establish executive accountability with minimal harm to national security. n47 Yet in the wake of Awlaki's killing, ex post review of the Executive's targeting determinations is unsatisfactory for obvious reasons. The strategy assumes that the target would be alive to bring such a challenge or that a next friend would be able to bring an unmooted claim. n48 Certainly, the adequacy of an ex ante approach has been directly called into question by Nasser al-Aulaqi's failure to obtain standing to challenge his son's targeting in 2010. Although whether the approach proves entirely unavailing ex post, in the wake of the target's death, remains to be seen, n49 under Judge Bates's interpretation of the political question doctrine, the "vanishingly small" role that civil action offers the judiciary appears to vanish to nothing.

#### The aff’s illogical – victims won’t turn the government that attacked them for relief

Radsan & Murphy ’09, Afsheen John Radsan, William Mitchell College of Law, Richard W. Murphy, Texas Tech University School of Law, Due Process and Targeted Killing of Terrorists (March 1, 2009). Cardozo Law Review, Vol. 31, p. 405, 2009; William Mitchell Legal Studies Research Paper No. 126; Texas Tech Law School Research Paper No. 2010-06. Available at SSRN: [http://ssrn.com/abstract=1349357](http://ssrn.com/abstract%3D1349357), jj

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.

#### Cause of action fails and doesn’t increase accountability

* Also links to politics

Epps ’13, Garrett Epps, a former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore and lives in Washington, D.C. His new book is Wrong and Dangerous: Ten Right Wing Myths About Our Constitution. 2-16-13, The Atlantic, Why a Secret Court Won't Solve the Drone-Strike Problem, <http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/>, jj

What about after the fact, then? Could there be a secret court that would hear the administration's case for a drone strike and then decide whether that strike had been justified? Not hardly, I think. A court that meets in secret, hears only one side of a dispute, and issues a final judgment without notifying other parties is not any kind of Article III court I recognize. It is not deciding cases; it is granting absolution. Finally, some scholars have suggested that the Congress create a new "cause of action"--a right to sue in an ordinary federal court on a claim that the government improperly unleashed drones on a deceased relative. The survivors of the late Anwar al-Awlaki tried such a suit, and the Obama administration has so far insisted that it concerns "political questions," not fitted for judicial proceedings. Congress could pass a statute specifically granting a right to sue in a federal district court. Without careful design, that would actually not make things any better. The survivors will file their complaint; the administration will claim state secrets and refuse to provide information. A court might reject the secrets claim and order the government to produce discovery. The administration would probably refuse to comply. The court's recourse would be to order judgment for the plaintiffs. The dead person's family would get some money, but we'd be no closer to accountability for the drone-strike decision. Professor Stephen I. Vladeck of American University has offered a remedy to this problem. He proposes a statute in which Congress assigns jurisdiction to a specific judicial district, probably the District Court for the District of Columbia. Congress in the statute would strip the executive of such defenses as "state secrets" and "political question." Survivors of someone killed in a drone attack could bring a wrongful-death suit. The secret evidence would be reviewed by the judge, government lawyers, and the lawyers for the plaintiff. Those lawyers would have to have security clearance; the evidence would not be shown to the plaintiffs themselves, or to the public. After review of the evidence, the court would rule. If the plaintiffs won, they would receive only symbolic damages--but they'd also get a judgment that the dead person had been killed illegally. It's an elegant plan, and the only one I've seen that would permit us to involve the Article III courts in adjudicating drone attacks. Executive-power hawks would object that courts have no business looking into the president's use of the war power. But Vladeck points out that such after-the-fact review has taken place since at least the Adams administration. "I don't think there's any case that says that how the president uses military force--especially against a U.S. citizen--is not subject to judicial review," he said in an interview. "He may be entitled to some deference and discretion, but not complete immunity." The real problem with Vladeck's court might be political. I expect that any president would resist such a statute as a dilution of his commander in chief power, and enactment seems unlikely. Without such a statute, then, systematic review of secret drone killings must come inside the executive branch. That doesn't mean it will be a lawless whitewash. Congress can prescribe rules for these reviews, decide who will carry them out, and require periodic reports to its committees and to the public. In a recent conversation, David Ignatius of the Washington Post, an old friend and my go-to guy for national-security thinking, suggested the role be assigned to the president's Intelligence Advisory Board, a non-partisan panel of independent experts from outside the executive branch, who serve independently for fixed terms. That is the kind of body we need. Bringing in the courts themselves would be at best tricky, and at worst as dangerous, in its way, as allowing the drone war to continue without supervision.

#### Long term Pakistan relations now – Energy cooperation and the Strategic Dialogue forum solve any residual status quo hostility

Xinhuanet, “ Pakistan, U.S. vow broad-based, long-term relations in joint statement”, 10/24/13, http://news.xinhuanet.com/english/world/2013-10/24/c\_132827569.htm

ISLAMABAD, Oct. 24 (Xinhua) -- U.S. President Barack Obama and Prime Minister Nawaz Sharif have issued a joint statement at the conclusion of Sharif's visit to the United States, expressing their conviction that an enduring U.S.-Pakistan partnership is vital to regional and international security. The two leaders also recognized their shared interest in Pakistan's economic growth and development, regional stability and mutually determined measures to counter terrorism, the joint statement issued by the Foreign Ministry in Islamabad and in Washington said Thursday. "President Obama and Prime Minister Sharif committed themselves to remaining in close contact and to continuing their efforts to build a strong, broad-based, long-term and enduring relationship between the United States and Pakistan that should serve as a foundation for the stability and prosperity of the region and around the globe,"the statement said. The two leaders reaffirmed their strong relationship between the two countries, stressing that their enduring partnership is based on the principles of respect for sovereignty and territorial integrity. "President Obama conveyed appreciation for Pakistan's internal and regional security challenges and affirmed that a peaceful, prosperous and democratic Pakistan was an essential partner for the United States in the advancement of shared goals of peace, security and socio-economic development in South Asia." Both leaders welcomed the resumption of the U.S.-Pakistan Strategic Dialogue and reaffirmed its importance as the suitable framework for guiding bilateral relationship. The dialogue was suspended in 2010 due to certain issues including the U.S. unilateral operation to kill Osama bin Laden and American raid that had killed 26 soldiers. President Obama gave the assurance that the United States would strongly support efforts to enlarge and strengthen Pakistan's economy, particularly in the energy sector, as this sector could play a critical role in ensuring the well-being and prosperity of the people of Pakistan, the statement said. President Obama noted that U.S. assistance in the energy sector has added over 1,000 megawatts of power to Pakistan's national grid, helping over 16 million Pakistanis. The U.S. president commended the resolve of the government and people of Pakistan, armed forces and law enforcement agencies to defeat terrorists and praised Pakistan for its military campaign. President Obama thanked Sharif for Pakistan's efforts to help defeat al-Qa'ida, and both Leaders expressed their deep appreciation for the sacrifices of military personnel and civilians in the fight against terrorism and extremism, the joint statement said.

#### No Yemeni backlash – they internally support US drone strikes

Michael Hirsch, National Journal, “Pakistan Signed Secret 'Protocol' Allowing Drones”, October 23rd 2013, http://www.nationaljournal.com/white-house/pakistan-signed-secret-protocol-allowing-drones-20131023

Officials say that a major reason why the Obama administration resisted efforts by Congress to obtain the full range of its classified legal memos justifying so-called targeted killing was to protect the secret protocols with Pakistan and other countries, such as Yemen. Last February, a legal expert outside the government who is intimately familiar with the contents of the memos drafted by the Justice Department's Office of Legal Counsel told National Journal that the government-to-government accords on the conduct of drone strikes were a key element not contained in a Justice Department "white paper" revealed by NBC News. He said it was largely in order to protect this information that the targeted-killing memos drafted by Justice's Office of Legal Counsel were even withheld from congressional committees. "That is what is missing from the white paper but forms a core part of the memos," the expert said. A Human Rights Watch report this week also criticized the U.S. drone program in Yemen, saying the targeted airstrikes against alleged terrorists have violated international law by killing innocent civilians. But a year ago, the new leader of Yemen – another country with which Washington has signed a secret protocol on drones – publicly endorsed America's use of drones within his borders. "They pinpoint the target and have zero margin of error, if you know what target you're aiming at," the new Yemeni president, Abdu Rabbu Mansour Hadi, said at the Woodrow Wilson Center in Washington.

***Intel sharing is sustainable***

**NYT 13**, 1/30, “Drone Strike Prompts Suit, Raising Fears for U.S. Allies”

**The issue is more complex than drone-strike foes suggest**, the **current and former officials said, and is based on *decades of cooperation*** rather than a shadowy pact for the United States to do the world’s dirty work. **The arrangements for intensive intelligence** sharing by Western allies **go back to *World War II,* said** Richard **Aldrich, professor of international security at the University of Warwick**, when the United States, Canada, Britain, Australia and New Zealand agreed to continue to collaborate. “**There’s a *very high volume* of intelligence shared, some** of which is collected ***automatically***, so it’s impossible to track what every piece is potentially used for,” said Mr. Aldrich, who is also the author of a history of the Government Communications Headquarters, the British signal-intelligence agency. **Britain’s history and expertise in South Asia means** that the **intelligence it gathers in Pakistan, Afghanistan and the tribal areas** in between **is in high demand**, Mr. Aldrich said. **The arrangement has been focused** recently **by** a chill in relations between the United States and Pakistan, and by **the shared war in Afghanistan.** **Other nations**, too, **intercept communications** in the region **that are *shared broadly*** with the United States, he said. In Afghanistan, for example, **German and Dutch forces run aggressive electronic interception operations**, he said, because their rules on collaborating with local interpreters are less stringent than those of the United States. A spokesman for the coalition forces in Afghanistan, Lt. Col. Lester Carroll, declined to give details about intelligence sharing, saying agreements were classified. But he confirmed that American military forces “do share information with other U.S. government organizations on a need-to-know basis.” Few argue against the notion that **European nations, many of which have been attacked by terrorists, have benefited from the drone killing**, however controversial, **of many of the most hardened Islamic extremist leaders.**

***Extremely broad support for intel sharing***

Maciej **Osowski 11**, 3/8, EU-US intelligence sharing post 9/11: predictions for the future, [www.e-ir.info/2011/03/08/eu-us-intelligence-sharing-post-911-predictions-for-the-future/](http://www.e-ir.info/2011/03/08/eu-us-intelligence-sharing-post-911-predictions-for-the-future/)

Intelligence cooperation between the US and other EU member states. The **9/11** attacks started **increased intelligence cooperation not only between the ‘old allies’** such as the US and the UK **but** **also** by necessity **with many other states**, many of them European Union member states[37]. Suffice it to mention the words of the Deputy Secretary of State Richard Armitage: “Probably the most dramatic improvement in our intelligence collection and sharing has come in bilateral cooperation with other nations — those we considered friendly before 9/11, and some we considered less friendly. This is marked change, and one that I believe comes not just from collective revulsion at the nature of the attacks, but also the common recognition that such groups present a risk to any nation with an investment in the rule of law”[38]. It is reasonable to assume that all European partners were considered friendly before 9/11. However, what is the most important in this quote is that Armitage recognises that cooperation comes from the common position of states whereby Islamic terrorism is a serious danger for every state, not only European. The majority of academic voices claim that “**Since 9/11, liaison relationships between the *U*nited *S*tates and foreign services have increased in number and, in the case of pre-existing partnerships, have *grown deeper***”[39]. This is confirmed by many European intelligence responsible civil servants: “Contacts have been increased and there is more cooperation in all areas,”[40] revealed to the journalists the director of Spain’s National Intelligence Centre Jorge Dezcallar. It has been taking place in many areas despite political condemnation of the US military actions in Iraq or covert programs such as extraordinary renditions. Immediately after 9/11 all members of EU and NATO were supporting the US in their anti-terrorist actions and military mission in the Afghanistan. It changed radically when the US started the operation in Iraq on the basis of weak preconditions that Saddam Hussein is in possession of WMD and cooperates with Al-Qaeda. The ‘Old Europe’ (France, Germany) was against this intervention, probably because they knew the weakness of the evidence confirming American assumptions (especially as it was partially delivered by them – the German agent from Iraq known as ‘Curveball’). Despite this withdrawal of the political support, both Germany and France, as well as the rest of Europe have been closely cooperating with the US since after 9/11 and still are, as will be demonstrated in this sub-chapter. Usually reluctant towards Americans, France started close cooperation with the US just after the 9/11 attacks. An article in the daily Le Monde “Nous sommes tous Américains” expressed not only emotions and cultural unity with the USA, but was also a sign of what was bound to happen on the platform of secret intelligence sharing. In 2002, the CIA and the French Direction Générale de la Sécurité Extérieure (DGSE) established an intelligence cooperation centre in Paris called ‘Alliance Base’[41]. According to newspaper articles[42], ‘Alliance Base’ is led by a French general from the DGSE and staffed with intelligence officers from Germany, Britain, France, Australia, Canada and in large numbers from the United States. This secret institution is more than just intelligence sharing body. It is forum for operational collaboration and covert actions in anti-terrorist actions, also those involved extraordinary renditions condemned by whole EU. There is a paradox in the fact that while publicly criticising American program of renditions, European governments took part in it. This kind of hypocrisy was fiercely criticised by the CIA Director Michael Hayden who pointed to European political leaders that they publicly condemn the CIA, but privately enjoy the protection of the enhanced security provided by joint intelligence operations[43]. Indeed, recent history suggests that intelligence cooperation ties are affected by disagreements over ideals, strategy, politics or Human Rights observance, at least within the Transatlantic relationships. This is crucially important to the whole issue of intelligence liaison, as it shows that **practice of intelligence sharing is *independent of politics***. This can have both its advantages and disadvantages. It is surely profitable that **the US and the EU members can cooperate in the area of intelligence** while disagreeing in politics. However, this bias can be the result of the lack of control by governments and parliaments over European intelligence services actions. Should this be the case, it should be used as food for thought in European capitals. Nevertheless, in the meantime the **cooperation between American and EU member states intelligence services has** arguably **been highly successful**. For example, decisions and steps taken by Algemene Inlichtingen- en Veiligheidsdienst (the Dutch General Intelligence and Security Service) allowed to prevent the attack on US embassy just after the 9/11 events in the US[44]. This was possible thanks to the international intelligence cooperation. Germany and the US have share intelligence on terrorism since 1960s. This relation has remained robust after the 9/11 attacks and has even increased, not only through the ‘Alliance Base’ but also in bilateral relation. A case in point here is the unfortunate example of the German intelligence service HUMINT source agent named ‘Curveball’. The final outcome of that case, which led to the US’s invasion of Iraq – based on false suspicions that the country possessed WMD – seems to suggest that sharing information here was faulty and misleading. However, it seems less so in light of the declassified documents[45]. These show that the case of ‘Curveball’ was properly described by Bundesnachrichtendienst, especially as far as his credibility was concerned – it was in fact believed to be dubious and unclear. However, as it was the only American human source, and it was delivering information desired by the Executive, the BND kept sending reports to the United States Defense Intelligence Agency. In other words, cooperation between both services was smooth, it was the American side that used the information despite warnings coming even from home intelligence[46]. Based on this case, it can be assumed that intelligence sharing between Germany and the US has increased to the extent that even not confirmed sources were delivered to the US on special request. Once again, this confirms the argument whereby intelligence cooperation between the US and European partners has existed despite European reluctance to the US international policy. To take this argument even further, it can be argued that the transatlantic intelligence liaison will increase in the future, as long as a new threat in the form of Islamic terrorism is deemed serious danger by both the US and the European Union member states. Apart from the UK, a traditional ally of the US, there has been a group of newly accepted EU members which were, most of them, supporting the US policy after 9/11, including the intervention in Iraq. It can be assumed that those states (Poland, the Czech Republic, Hungary, Romania, Bulgaria, and the Baltic states) were prepared to seek intelligence cooperation with the US. However, it is obvious that these states did not probably have much intelligence to offer, while their first concern has always been Russia and its actions. It this particular case, there are all reasons to suspect that the ‘complex’ intelligence liaison took place. It has been confirmed in the cases of Poland and Romania when both states have hosted the secret CIA prisons used for extraordinary renditions. That they did host such prisons was confirmed by both the European Parliament inquiry[47] and investigative journalists[48]. In exchange, those states received a mixture of military, political and intelligence support. From the above analysis it appears that after the **9/11** attacks the US **increased intelligence cooperation with the EU member states**. There is also no doubt that most **European states were willing to increase this cooperation as they saw real threat** that Islamic terrorism constituted not only for the US but also for European states**. It was the nature of both in multilateral and bilateral relationships**. The level of cooperation has been different depending on a state. Usually, **the biggest ally of the US – the UK, has led in intelligence liaison. But it is now visible that the rest of the EU has not stayed behind, and tried to contribute to the liaison in many different ways**. All those alleged facts lead to the conclusion that the **future liaison between the US and the European member states will increase** even further as long as there will be a common strong threat to the security to all participating states.

#### Status quo solves --- Al Qaeda is weak and doesn’t threaten the U.S.

Roth 8-2-’13, Kenneth Roth is executive director of Human Rights Watch, 8-2-’13, Washington Post, The war against al-Qaeda is over, <http://www.washingtonpost.com/opinions/the-war-against-al-qaeda-is-over/2013/08/02/3887af74-f975-11e2-b018-5b8251f0c56e_story.html>, jj

The al-Qaeda threat to the United States, while still real, no longer meets those standards. At most, al-Qaeda these days can mount sporadic, isolated attacks, carried out by autonomous or loosely affiliated cells. Some attacks may cause considerable loss of life, but they are nothing like the military operations that define an armed conflict under international law.¶ Obama himself has said that the core of al-Qaeda — the original enterprise now based, if anywhere, in the tribal areas of northwestern Pakistan — has been “decimated.” Its affiliates, such as al-Qaeda in the Arabian Peninsula and al-Qaeda in the Islamic Maghreb, are more robust armed groups but have limited capacity to pro­ject their violence beyond their regions.¶ These affiliates are significant actors in Yemen and northern Africa, but it is far from clear that they pose a threat to the United States greater than, for example, Mexican drug cartels or international ­organized-crime networks — organizations for which few would characterize U.S. containment efforts as “war.” That the United States continues to deploy military force against al-Qaeda is not enough to qualify that effort as an armed conflict, because if it were, a government could justify the summary killing of “combatants” simply by using its armed forces to do so.

#### No risk of nuclear or WMD terror

John Mueller and Mark G. Stewart 12, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute AND Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle, "The Terrorism Delusion," Summer, International Security, Vol. 37, No. 1, politicalscience.osu.edu/faculty/jmueller//absisfin.pdf, jj

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. Brian Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002.47

By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48

Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000.49

In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders.50

If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs.51 Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

And as explicitly rendered into U.S. law, the term was extended even further to include bombs of any kind, grenades, and mines; rockets having a propellant charge of more than four ounces; missiles having an explosive or incendiary charge of more than onequarter ounce; and projectile-spewing weapons that have a barrel with a bore more than a half inch in diameter.53

It turns out then that the “shot heard round the world” by revolutionary war muskets was the firing of a WMD, that Francis Scott Key was exultantly, if innocently, witnessing a WMD attack in

1814; and that Iraq was full of WMD when the United States invaded in 2003—and still is, just like virtually every other country in the world.

After September 11, the delusional—or at least preposterous—expanded definition of WMD has been routinely applied in the United States. Many of those arrested for terrorism have been charged with planning to use “weapons of mass destruction” even though they were working, at most, on small explosives or contemplating planting a hand grenade in a trash bin.

#### No nuclear retaliation

Neely 3/21/13 Meggaen Neely is a research intern for the Project on Nuclear Issues, Center for Strategic & International Studies, 3/21/13, Doubting Deterrence of Nuclear Terrorism, <http://csis.org/blog/doubting-deterrence-nuclear-terrorism>, jj

Because of the difficulty of deterring transnational actors, many deterrence advocates shift the focus to deterring state sponsors of nuclear terrorism. The argument applies whether or not the state intended to assist nuclear terrorists. If terrorists obtain a nuclear weapon or fissile materials from a state, the theory goes, then the United States will track the weapon’s country of origin using nuclear forensics, and retaliate against that country. If this is U.S. policy, advocates predict that states will be deterred from assisting terrorists with their nuclear ambitions.¶ ¶ Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely.¶ ¶ Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons.¶ ¶ Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public.¶ ¶ This is not an argument against those technologies associated with nuclear forensics. The United States and International Atomic Energy Agency (IAEA) should continue their development and distribution.¶ ¶ Instead, I question the presumed American response that is promulgated by deterrence advocates. By looking at possibilities for a U.S. response to nuclear terrorism, a situation in which we assume that deterrence has failed, we cast doubt on the likelihood of a U.S. retaliatory nuclear strike and hence cast doubt on the credibility of a U.S. retaliatory nuclear strike as a deterrent. Would the United States launch a nuclear weapon now unless it was sure of another state’s intentional sponsorship of nuclear terrorism? Any reasonable doubt of sponsorship might stay the United States’ nuclear hand. Given the opaqueness of countries’ intentions, reasonable doubt over sponsorship is inevitable to some degree. Other countries are probably aware of U.S. hesitance in response to terrorists’ use of nuclear weapons. If this thought experiment is true, then the communication required for credible retaliatory strikes under deterrence of nuclear terrorism is missing.

### Heg

#### The drone program is legitimate now --- no risk of shutdown or backlash --- the public opposes the plan, not targeted killing

LaFranchi 6-3-’13, Howard LaFranchi, Staff writer / June 3, 2013, Christian Science Monitor, American public has few qualms with drone strikes, poll finds, <http://www.csmonitor.com/USA/Military/2013/0603/American-public-has-few-qualms-with-drone-strikes-poll-finds>, jj

When a US drone strike last week killed a top Taliban leader in Pakistan, critics of the strikes that have become a staple of President Obama’s counterterrorism policy were quick to condemn it.¶ The killing of Waliur Rehman in the North Waziristan region on May 29 would only make reconciliation talks between the Taliban and the Afghan government – a US priority – more difficult to convene, some critics said. Others said such strikes infuriate local populations and are a recruiting tool for Al Qaeda and other Islamist extremists.¶ But the American public appears to be unmoved by such arguments. A new Monitor/TIPP poll finds that a firm majority of Americans – 57 percent – support the current level of drone strikes targeting “Al Qaeda targets and other terrorists in foreign countries.” Another 23 percent said the use of drones for such purposes should increase. Only 11 percent said the use of drones should decrease.¶ The poll, conducted from May 28-31, followed a major speech in which Mr. Obama suggested the use of drone strikes would decline. In the May 26 address, he also hinted at his own ambivalence about the controversial tactic, weighing the program’s efficacy against the moral questions and long-term impact.¶ Obama acknowledged that the pluses of drone strikes – no need to put boots on the ground and the accuracy and secrecy they offer – can “lead a president and his team to view drone strikes as a cure-all for terrorism.”¶ He balanced that against words of caution: “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance.”¶ The drone strikes, which under Obama have mostly been carried out in secrecy by the CIA, are credited with killing as many as 3,000 terrorists and Islamist militants – at least four of whom were American citizens. Obama is planning to shift most drone operations to the military as part of an effort to make the program more transparent.¶ Americans are by and large comfortable with drone strikes being ordered by the president, the CIA, or by the military, according to the Monitor poll. Less popular is the idea of creating a separate “drone court” – a panel that would presumably increase the accountability of the program.¶ Almost two-thirds of Americans (62 percent) say they approve of drone-strike authorization coming from the president, the Pentagon, or the CIA. About a quarter (26 percent) favor setting up a drone court to sign off on strikes.¶ The question of who should retain responsibility for authorizing drone strikes reveals something of a political divide: While 67 percent of Democrats approve of the president, the CIA, or the Pentagon deciding on the strikes, a lower percentage of Republicans (55 percent) approve of entrusting the decisionmaking to those three.¶ On the other hand, self-described “conservatives” were more likely than the general population to favor increasing drone strikes, with 28 percent supporting more strikes, compared with 11 percent of all Americans.¶ The Monitor poll also revealed what could be interpreted as little enthusiasm for Obama’s efforts to move away from the post-9/11 concept of a “war on terrorism.”¶ More than half of Americans – 56 percent – say the US continues to be in a “war on terror,” while 58 percent say “fundamentalist Islam” remains a “major threat” to the US.¶ As for the military detention facility in Guantánamo Bay, Cuba, which Obama continues to seek to close, nearly two-thirds of Americans (61 percent) favor keeping it open.

#### Even liberals strongly support the program, despite controversy

Goldsmith ’12, Jack Goldsmith is a Harvard Law professor and a member of the Hoover Task Force on National Security and Law. He served in the Bush administration as assistant attorney general in charge of the Office of Legal Counsel. His new book is Power and Constraint: The Accountable Presidency after 9/11. MARCH 19, 2012, Foreign Policy, Fire When Ready, <http://www.foreignpolicy.com/articles/2012/03/19/fire_when_ready?page=full>, jj

The final and arguably most fundamental check on the president's targeted killing program is public disclosure and debate. Public congressional hearings have revealed a lot about the factual and legal basis for the government's program. At the same time, human rights NGOs, led by Romero's ACLU, have filed lawsuits and made Freedom of Information Act requests about the practice, and issued many hard-hitting reports. These efforts have pressured the executive branch -- in speeches, document disclosures, and leaks -- to make public more and more factual and legal details about its targeted killing program over time. The U.S. and global press have also disclosed many details of supposedly secret or covert targeted killing operations against White House wishes. In general, technological innovation in the last decade has made the press and public more adept than ever at scrutinizing the wartime presidency's secret operations, including its targeting decisions.¶ These disclosures have fostered a robust public debate about targeting killing in the United States and abroad, and the American public broadly approves of what it sees. According to a recent Washington Post/ABC News poll, 83 percent of respondents (including 77 percent of liberal Democrats) say they approve of the Obama administration's use of drones against terror suspects overseas, while only 11 percent disapprove. The approval/disapproval numbers drop to 65/26 percent when respondents are told that the targets are American citizens. As the Washington Post's Greg Sargent noted, "65 percent is still a very big number." Sargent added that "Democrats approve of the drone strikes on American citizens by 58-33, and even liberals approve of them, 55-35."

***Heg high and sustainable now – overwhelming power***

Tufts Daily 2-23-11 (Prashanth Parameswaran, master's candidate at the Fletcher School of Law and Diplomacy, writer for the New Strait Times, Strait Times and China Post, and former CSIS intern, “America is not in decline” <http://www.tuftsdaily.com/op-ed/prashanth-parameswaran-the-asianist-1.2478466>, jj)

I don't. **Very little about "American decline" is real or new. Similar predictions of U.S. decline have surfaced every decade or so** since Washington rebuilt the international system after World War II, from the aftermath of Sputnik in the 1960s to the economic distress of the 1980s. Foreign Policy is also hardly the only peddler of the latest declinism fetish. Everyone from [Newsweek's](http://newsweek.com) Fareed Zakaria to former Singaporean diplomat Kishore Mahbubani to American intelligence agencies themselves has parroted a version of it. But every myth has a grain of truth. In this case it's the fact that — God forbid — other powers are rising. Goldman Sachs says China will overtake the U.S. economy by 2027 and that the BRIC nations (**Brazil, Russia, India and China) will emerge as major world players**. But **so what? Other powers have been rising for decades**. **Yet,** to take one statistic**, the American economy in 2004 was the same size relative to the world's total GDP as it was in 1975 — 20 percent.** The real and more useful questions about decline are therefore not who is growing and by how much, but whether emerging powers can dent American power sufficiently and whether the United States will lose the key advantages that have sustained it as the world's sole superpower. **For all the fretting, the United States,** as Mr. Rachman himself admits, **remains the leader across the board. U.S. military power is still unmatched and vastly technologically superior to any other nation. Military spending is almost as much as the rest of the world combined. The American economy dominates futuristic industries like biotechnology and nanotechnology with a potent combination of technological prowess and entrepreneurial flair.** According to China's own Jiao Tong University's rankings, **17 of the world's top 20 universities are American. Millions still flock here to pursue the American Dream, while America's melting pot of cultures bodes well for its exceptional innovative capacity**. Provided the United States continues to encourage immigration and starts controlling its debt, **there is little reason to believe that such a** resilient colossus **will see its vast advantages perish**. **There are also few signs of a "global multipolar system" emerging anytime soon.** Despite doomsday realist predictions, **no country has attempted to balance Washington's hegemony since 1991**. And while the future rise of Asian powers may boost the case for eventual American decline, the truth is that **each of the United States' potential balancers also faces significant challenges going forward. For China, it is the growing disparity between its coastal and inland areas, its physical isolation and the risk that it will get old before it gets rich. For India and the European Union, the challenge will be to painfully negotiate the divergent interests of states in a noisy democratic system. As for Iran, Russia and Venezuela, they are flexing their muscles as proud spoilers, not global powers. It is also quite unlikely that these states will soon form a coalition to confront the United States, given their own divergent interests.** Even China and Russia compete ferociously in Central Asia today. Don't get me wrong. I don't believe we've reached Francis Fukuyama's "end of history," particularly with the slowing of democracy's progress during the last decade. Nor do I think the United States will be able to dominate and dictate terms to others all the time in the future. Still, **I just don't see the irreversible decline in U.S. power and the rise of a new world order that many seem to reflexively accept.**

***Heg collapse doesn’t cause global nuclear war – conflicts would be small and managable***

Richard Haas (president of the Council on Foreign Relations, former director of policy planning for the Department of State, former vice president and director of foreign policy studies at the Brookings Institution, the Sol M. Linowitz visiting professor of international studies at Hamilton College, a senior associate at the Carnegie Endowment for International Peace, a lecturer in public policy at Harvard University’s John F. Kennedy School of Government, and a research associate at the International Institute for Strategic Studies) April 2008 “Ask the Expert: What Comes After Unipolarity?” http://www.cfr.org/publication/16063/ask\_the\_expert.html

Does a non polar world increase or reduce the chances of another world war? Will nuclear deterrence continue to prevent a large scale conflict? Sivananda Rajaram, UK Richard Haass: I believe the chance of a world war, i.e., one involving the major powers of the day, is remote and likely to stay that way. This reflects more than anything else the absence of disputes or goals that could lead to such a conflict. Nuclear deterrence might be a contributing factor in the sense that no conceivable dispute among the major powers would justify any use of nuclear weapons, but again, I believe the fundamental reason great power relations are relatively good is that all hold a stake in sustaining an international order that supports trade and financial flows and avoids large-scale conflict. The danger in a nonpolar world is not global conflict as we feared during the Cold War but smaller but still highly costly conflicts involving terrorist groups, militias, rogue states, etc.

***Transition is smooth – decline in power causes global cooperation***

Carla Norrlof (an Associate Professor in the Department of Political Science at the University of Toronto) 2010 “America’s Global Advantage US Hegemony and International Cooperation” p. 50

Keohane and Snidal’s predictions – that the waning of American power did not have to jeopardize cooperation – were in this context reassuring. As mentioned at the outset of this chapter, Keohane explained the persistence of cooperation in terms of states’ continued demand for regimes.40 Snidal demonstrated that collective action depends as much on the hegemon’s size, as it does on the size of other actors in the international system. By paying attention to the size of all Great Powers, not just the hegemon, Snidal opened up the possibility that a more symmetrical distribution of power might enhance the prospects for the provision of public goods, thus offering a potential explanation for the otherwise puzzling persistence of cooperation in the 1980s despite America’s relative decline. The likelihood for cooperation increases with American decline because the hegemon can no longer singlehandedly provide the good as it declines, so smaller states have to chip in for the good to be provided. If one were to use Snidal’s production function in the revised model (i.e., by plugging the numbers from his production function into the revised model), the waning hegemon continues to be taken advantage of. While Snidal was modeling a theory he did not believe in, these distributional implications haunt the literature and cast decline as inescapable and continuous

# 2NC

## Terror

**2NC Link**

***Uniquely kills warfighting***

* Flexibility – causes judicial second guessing
* Secrecy – litigation process discloses key intel

**Radsan & Murphy ’09**, Afsheen John Radsan, William Mitchell College of Law, Richard W. Murphy, Texas Tech University School of Law, Due Process and Targeted Killing of Terrorists (March 1, 2009). Cardozo Law Review, Vol. 31, p. 405, 2009; William Mitchell Legal Studies Research Paper No. 126; Texas Tech Law School Research Paper No. 2010-06. Available at SSRN: [http://ssrn.com/abstract=1349357](http://ssrn.com/abstract%3D1349357), jj

In defense of this anomaly, **there are obvious policy reasons for not allowing Bivens-style claims against American officials for targeted killings wherever they occur in the world**. Among them, **we do not want federal courts damaging national security through excessive, misdirected second-guessing of executive judgments; nor do we want the litigation process to reveal information that national security requires to be kept secret**. In Arar v. Ashcroft, a divided panel of the Second Circuit cited these ―special factors‖ to disallow a plaintiff from bringing a Bivens claim against officials he alleged subjected him to extraordinary rendition.209

***After-the-fact damage suits fail and won’t gain convictions for a host of reasons, but the prospect of them freaks out the executive hurting counter-terror***

Andrew **Kent 10/1/13**\*, \* Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, Are Damages Different?: Bivens and National Security (October 1, 2013). Forthcoming S. Cal. L. Rev. (2014). Available at SSRN: [http://ssrn.com/abstract=2330476](http://ssrn.com/abstract%3D2330476), jj

When discussing early versions of this project, some of the reactions I heard were polarized around the relevance of Bivens. **One view was that Bivens suits are so well known to be bark rather than bite that there is not much to talk about**. First, these readers pointed out, **the rules and practices of litigation in this area massively favor government defendants**. Iqbal heightened pleading, **qualified immunity, interlocutory appeals, the courts’ presumption against extending Bivens, the political question doctrine, the state secrets privilege and underlying judicial reticence in the national security area are some of the obvious ones**. Second, it said, that **as a result of these factors Bivens suits almost never succeed**.101 Third, even while they are ongoing, Bivens suits matter little to officials because the Department of Justice defends them and the U.S. government will indemnify them.102

**Another very different reaction** I heard, including from people who had served in the executive branch, ***conceded the general thrust of the above points but still asserted that officials are in fact concerned about the prospect or actuality of Bivens suits against them and that this might well shape the incentives or behavior of those officials***.

Although it is impossible to conclusively document the inner thoughts of the many human beings who make up the executive branch, in my view ***the second reaction is the more accurate***. **Bivens suits undoubtedly face many obstacles to success**, but Alex Reinert has shown that far more succeed than previously assumed—in fact, they appear to be about as successful as other types of challenges to alleged government misconduct.103 Jack **Goldsmith recently conducted wide-ranging interviews with national security officials and heard that the prospect of personal damages liability is concerning**.104 While almost all federal employees will get government-paid defense counsel when sued for official conduct,**105 it is not guaranteed by law that employees will be indemnified for judgments or settlements against them—and even if they are indemnified they likely will not know that until after judgment**.106 **It seems likely that word of this travels through the grapevine of the executive branch**. **In addition, many federal officials obtain personal liability insurance policies**.107 **Unless they are dramatically misinformed or excessively risk averse, this suggests that Bivens suits are reasonably thought to be a danger to their pocketbooks**.

It seems likely that the highest officials—the Attorney General or CIA Director, for example—are somewhat differently situated than lower level officials. The highest officials are sued hundreds or even thousands of times and it seems exceedingly unlikely that the government would not defend and indemnify them. But **there are good reasons to believe that Bivens matters a good deal for all but those at the very top.**

***Multiple independent links—expertise, flexibility, over-deterrence, clarity, and intel—also turns legitimacy***

**Andrew Kent 10/1/13**\*, \* Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, Are Damages Different?: Bivens and National Security (October 1, 2013). Forthcoming S. Cal. L. Rev. (2014). Available at SSRN: [http://ssrn.com/abstract=2330476](http://ssrn.com/abstract%3D2330476), jj

Since 9/11, four **courts of appeals**, including two sitting en banc, **have applied a strong presumption against Bivens in the national security and foreign relations cases they were confronted with, holding that a variety of** constitutional and **pragmatic concerns about the involvement of courts in those areas justified the refusal to allow suits under Bivens**. These cases concerned some of the most controversial national security actions of the federal government in the first years after 9/11, such as extraordinary rendition, coercive interrogation and torture at Guantanamo Bay and in Iraq and Afghanistan, military detention of U.S. citizens in the United States and even the outing of Valerie Plame as a CIA officer by Bush administration’s case for the war against Iraq.70 A number of other putative Bivens suits concerning post-9/11 national security policies were filed and dismissed on grounds other than the impropriety of allowing a Bivens suit in those areas.71

**These four circuit courts which found that “special factors” precluded allowing a Bivens suit** in the national security or foreign affairs area emphasized a number of different considerations, including (1) separation of powers, namely that **the Constitution allocates** nearly plenary **control over most aspects of the military, war-fighting, foreign affairs, diplomacy and intelligence matters to Congress and the President**;72 (2) **comparative institutional competence, that is, the relative lack of judicial competence to assess legal and policy issues in these fields**;73 (3) **caution about courts declaring** constitutional **rules that will limit or overrule the policy judgments of the executive and/or Congress in the complex and *rapidly changing* environment of national security**;74 (4) ***a concern that officials would be over-deterred by the threat of individual liability and fail to take aggressive, decisive actions necessary to keep the country safe***;75 (5) **the impropriety that the litigation or decision of the lawsuit might interfere with relations with foreign countries, for example by causing the court to contradict the executive branch** (**the so-called “one voice” problem**);76 (6) **concerns about judicial manageability and improper disclosure of sensitive information because of the prevalence of classified or otherwise secret documents and programs in the litigation**;77 (7) **caution about allowing the courts to be used by noncitizens, especially when located abroad, to challenge the U.S. government and undermine its prestige and legitimacy**;78 (8) when the challenged conduct occurred in a war zone, the propriety of special judicial hesitation and deference;79 and (9) **a special degree of caution when the suit challenges how civilian or military commanders supervise and deploy the military establishment.80**

**Underlying many of these concerns is the view that the courts should be very cautious about declaring rules of constitutional law in judicial opinions that will bind executive branch policymakers working in complex, sensitive and rapidlychanging national security and foreign affairs contexts in which courts have little expertise and where the *executive’s flexibility is extremely valuable.***

***Causes brain drain—nobody will work in the TK program if they can get sued. SQUO goldilocks because informal checks prevent executive abuse***

Andrew **Kent 10/1/13**\*, \* Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, Are Damages Different?: Bivens and National Security (October 1, 2013). Forthcoming S. Cal. L. Rev. (2014). Available at SSRN: [http://ssrn.com/abstract=2330476](http://ssrn.com/abstract%3D2330476), jj

Parts III and IV explored large structural changes in the role of the judiciary and its methods of operation over the last hundred plus years that help explain why the modern Court prefers injunctive-type remedies to damages across the board. This Part discusses reasons why **courts might be particularly cautious about allowing Bivens damages suits in cases involving national security and foreign affairs.**

**The Court believes that damages suits and the concomitant discovery burdens and threats of personal liability are likely to waste officials’ time, cause excessive caution in the performance of official duties, *and deter good people from entering government service*, and there are some reasons to think that these problems are worse in national security and foreign affairs cases**. **The courts might well believe that the executive branch is adequately constrained in the national security area by mechanisms other than damages lawsuits**. And **allowing Bivens suits in the national security and foreign relations areas will greatly increase the size of the pool of potential plaintiffs who can challenge the constitutionality of the executive’s conduct, subject the government to litigation and potential law declaration it will be unable to moot by conceding individual relief, and will force courts to make difficult determinations about whether and how constitutional rights should apply abroad and outside the ordinary peacetime contexts for which they were developed**. **If one is concerned about the judicialization** and constitutionalization **of** foreign relations and **national security**, for some or all of the reasons raised by the courts of appeals and canvassed in Section II.A, **judicial caution about extending Bivens would be desirable**.

***Crushes flex which is key in this instance***

Andrew **Kent 10/1/13**\*, \* Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, Are Damages Different?: Bivens and National Security (October 1, 2013). Forthcoming S. Cal. L. Rev. (2014). Available at SSRN: [http://ssrn.com/abstract=2330476](http://ssrn.com/abstract%3D2330476), jj

**The Supreme Court’s case law on official immunity highlights a number of consequences it sees as flowing from damages liability**. Robust official immunity for individual officials sued personally is justified by the Court because the “costs” “not only to the defendants, but to society as a whole”178 of damages suits and the prospect of individual liability. **The cost that appears to most worry the Court is often called “*over-deterrence*,” which occurs when the fear of personal damages liability discourages the vigorous, efficient, and socially-beneficial performance of official functions, either because there is some doubt about what the law requires or there is a prospect of meritless but nevertheless costly damages suits**.179 It is a frequent trope of discussions of national security and foreign affairs that the political branches, in particular **the executive, must be able to act quickly, vigorously and flexibly to meet dangerous and unforeseen or changing circumstances**.180 In keeping with this, Iqbal implied that **the social cost of over-deterrence might be especially high when “high-level officials” are sued because of their actions responding to “a national and international security emergency**,”181 though the Court has in the past refused to accord cabinet heads absolute immunity in these circumstances.182

The Court recognizes that this immunity has downsides—individuals who are harmed are deprived of compensation and “the ideal of the rule of law” suffers183—but overall the Court weighs the policy balance to favor very strong official immunity. Indeed, in qualified immunity cases the Court frequently discourses about the myriad harms of damages actions against individual officers.184 When it initially created the Bivens remedy, the Court saw it is fulfilling at least two purposes, compensation of a wronged individual and deterrence of government misconduct.185 In recent decades, as it has cut back on Bivens, the Court has said it serves only one purpose—deterrence.186 But **since the modern Court is so concerned with over-deterrence, especially of senior policymakers responding to national security crises, the sole purpose of Bivens is one about which the Court is very suspicious.**

### Solvency

***Too many hurdles for ex post litigation***

**Taylor, 13** [February, Paul Taylor, Senior Research FellowA FISC for Drones? Center for Policy & Researchhttp://transparentpolicy.org/2013/02/a-fisc-for-drones/]

Additionally, **in search and seizure warranting**, **there an ex post review will eventually be available**. **That will** likely **not be the case** **in *drone strikes*** and other targeted killings **unless such a process is specifically created. There are simply too many** hurdles to judicial review **(**including state secrets, political questions, discovery problems**, etc**) **for the courts to create such an opportunity without congressional action**.

**UQ**

***Obama’s drone campaign is effective now --- but new restrictions that shift oversight and control away from the executive crush the program***

**Chicago Tribune 5-24-13**, “Editorial: Obama won't ground aerial strikes that kill terrorists. Good.” <http://articles.chicagotribune.com/2013-05-24/opinion/ct-edit-drone-0524-jm-20130524_1_drone-program-drone-campaign-president-barack-obama>, jj

President Barack **Obama has taken a lot of heat over America's targeting of terrorists overseas with lethal drone strikes. Critics argue that the secret CIA-run program provokes political backlash in Pakistan, Yemen and Somalia, outweighing the value of the terrorists killed. That the attacks too often go awry and inadvertently kill innocents. That there's no effective oversight. And that Obama hasn't given Congress sufficient legal rationale for the aerial strikes.**¶ **Those complaints** include kernels of validity but often **have been exaggerated**. **Drone attacks also have exterminated many sworn enemies of this country without risking U.S. lives on the ground or in the air.**¶ Obama on Thursday answered his critics with a full-throated defense of drones:¶ "**To do nothing in the face of terrorist networks would invite far more civilian casualties — not just in our cities at home and facilities abroad, but also in the very places — like Sanaa and Kabul and Mogadishu — where terrorists seek a foothold**," Obama said in a speech at the National Defense University in Washington. "**Let us remember that the terrorists we are after target civilians and the death toll from their acts of terrorism against Muslims dwarfs any estimate of civilian casualties from (U.S.) drone strikes**."¶ He's right. **The drone campaign has been *extremely and surgically effective*, targeting militants across Pakistan, Afghanistan, Yemen and parts of Africa. It has killed wide swaths of al-Qaida leadership.**¶ **But the president also has suggested that he thinks the program has shortcomings. That's why Obama administration officials have indicated that the drone strike program will be narrowed and subjected to greater scrutiny**: A new classified policy directive signed by Obama reportedly curtails when the unmanned aircraft can be used to attack in places that are not declared war zones. The president also is shifting more responsibility to the military from the CIA, an effort to provide more rigid accountability for the strikes.¶ **Bottom line: This speech wasn't some dramatic new statement of policy. And none of these refinements means America's drone program will be significantly weakened**. **These adjustments mostly reflect changing reality on the ground in those countries where the U.S. targets terrorists: The number of reported U.S. drone attacks already has fallen sharply since 2010.** One likely reason is the absence of high-value targets, those al-Qaida kingpins of yore. Many are dead or on the run.¶ Obama also promised more transparency for the drone program, something critics have long sought. One day before his speech, the administration acknowledged for the first time that it has killed four U.S. citizens in strikes in Yemen and Pakistan.¶ **The president also mentioned the possibility of a secret court that would sign off on future strikes.** That's an idea floated by Democratic Sen. Dianne Feinstein of California and others. We've said before that we'd like to hear a debate on that. However:¶ **The United States risks losing the advantage of surprise if individual drone strikes become entangled in slow-motion bureaucracy back home. We fear U.S. warriors shrinking from what in effect are battlefield decisions because they have one eye on Congress, or judges, or some other overseer who is not their commander in chief. We don't want drone operators hoping their targeted terrorist will stay put in Pakistan while judges in Washington debate whether it's appropriate to fire the missile. Nor, we imagine, would the president.**¶ **Obama has said he envisions a day when the nation will no longer be on the war footing forced on this country by terrorists on Sept. 11, 2001.** All Americans hope to see that day.¶ **But we're not there yet**. The president alluded Thursday to many other attacks — before and after 9/11 — on Americans and their interests. Those assaults ebb and flow and change form. But all of them have something in common: the evil architects who plot and execute them.¶ **That's why the U.S. needs to keep those drones flying.**

**Allied Co-Op**

**2NC US / Pakistan Co-op High**

***Pakistan knows it can’t change US drone policy – which is why they are expanding relations to other sectors – literally zero risk of spillover***

**The Express Tribune**, “An evolving US-Pakistan Relationship”, **October 25th** 2013, http://tribune.com.pk/story/621981/an-evolving-us-pakistan-relationship/

Prime Minister Nawaz **Sharif’s meeting** in Washington **with** President Barack **Obama has**, of course, **been closely watched**. **The meeting marks the first face-to-face interaction between the two men** since Nawaz was elected to power in May this year ***and obviously holds considerable significance*** given how central Pakistan-US relations are to the region, and developments within our own country too, where the battle with militancy continues and debate rages over just how the issue should be dealt with. Ties with the US are, of course, also central in terms of our floundering economy and the $1.6 billion in aid quietly handed over by Washington just ahead of Sharif’s arrival in the US capital will have been received with relief. There were also other good signs, with the Pakistan’s prime minister and his wife both warmly received by their hosts. But beyond the formalities of any such trip, it is of course, the actual talks themselves which are most significant. At a joint media talk with President Obama after they ended, Prime Minister **Sharif said they had proceeded along positive lines** and tensions had been cleared. This, of course, is good news and we must hope the gains made now can translate into a more lasting relationship of cooperation between the two nations. But reading a little more carefully between the lines, i**t is also obvious there were disagreements.** While Mr **Sharif, of course under immense pressure over the issue from home, made it a point to mention** in his remarks that ***the matter of drones*** had been discussed, Obama made no reference to the matter. From this **we can assume that the US has no real intention of changing its policy** on the matter. As has been the case in the past, it seems unprepared to alter its stand on the question. And a report published by The Washington Post, just as the two leaders went into talks, said that **for years Pakistan had secretly endorsed the US drone policy.** The detailed article backed by documentation referred to requests from Pakistan for specific targets to be hit and also mentioned US concerns of links between militant insurgents and Pakistan’s ISI. Identification found on the bodies of some militants was mentioned as proof of this. The report will, of course, only add further fuel to the drone fire. Given all this, **we wonder if it was really worth wasting so much breath on the drone issue.** After all, we know perfectly well, for all the pretence to the contrary, that **we cannot really do much to alter Washington’s stance on this.** In real terms, we are not equal partners; ***Pakistan today is dependent on the US and cannot do without it***. This is a fact. ***We really have no power to stop the drones***, so rather than focusing on things that lie out of reach, it may have been more sensible to aim for those that can be grasped. Kashmir, an issue also raised by the Pakistan’s prime minister, is too one about which little can be done, though President Obama did emphasise the need for better relations to be built between Pakistan and India for the sake of regional stability and balance. Regional matters were also brought up by Vice-President Joe Biden who brought up the transitional phase coming up in Afghanistan during his discussions with Mr Sharif.

**2NC US / Yemen Co-op High**

***And even if the aff is 100% correct about Yemen relations being damaged by drones – there is nothing they can do to stop it***

Sadeq **Al-Wesabi**, Yemen Times, “GLENN GREENWALD TO THE YEMEN TIMES: “EVEN IF HADI WANTS TO STOP USING AMERICAN DRONES, I DON’T THINK HE HAS THE POWER TO DO THAT”. **10/24**/2013, http://www.yementimes.com/en/1723/intreview/3043/Glenn-Greenwald-to-the-Yemen-Times-%E2%80%9CEven-if-Hadi-wants-to-stop-using-American-drones-I-don%E2%80%99t-think-he-has-the-power-to-do-that%E2%80%9D.htm

Glenn Greenwald is an American journalist who reported bombshell NSA leaks for the Guardian and has received international acclaim for his writings on U.S. national security. The former Guardian columnist left his post last week and currently resides in Brazil. As part of his focus on national security, he has commented extensively on America’s counter-terrorism policy in Yemen, including the use of armed drones to battle Al-Qaeda in the Arabian Peninsula (AQAP). Yemen Times interviewed Greenwald in Rio de Janeiro about the nature of relations between Yemen and the U.S. as it relates to security issues and counter-terrorism tactics. “Obviously, **the Yemeni government has been dependent on the United States government for many years**,” Greenwald said. “**The ability of the Yemeni government to restrict the U.S. government** in terms of what it does inside Yemen ***is almost nothing***.” Greenwald has made it no secret in his writings that he objects to the current use of U.S. drones in both Yemen and Pakistan, two nations the U.S. has targeted with the war technology. The American government has increasingly drawn scrutiny from the international community for its drone policy. This week, four separate reports were issued by the United Nations, Human Rights Watch, Amnesty International and AlKarama calling on the U.S. to disclose more information about its covert operations and to offer more transparency about its drone program. “The American government doesn't want Americans to ask them the question, ‘Why are there so many people who want to harm the United States?’ because that would make them question [their own] policies,” Greenwald said. Greenwald says questioning the policies of the U.S. that contribute to anti-Americanism is non-existent in America’s political culture. “If you start asking this question then you start to realize that one of the main answers is because the U.S. government has brought so much violence to [these targeted] parts of the world for so long.” Over the last decade, **many areas of Yemen believed to be AQAP strongholds have been targeted by American drones.** Civilians, including children and women, have been killed in the bombings. **Despite criticism from human rights groups and growing anger from Yemeni** and American **citizens**, **the strikes have continued.** **The Yemeni government has been criticized for supporting of the American strikes**. Greenwald is also critical of Yemen’s transitional president, Abdu Rabu Mansour Hadi, who has been vocal about his support of U.S. drone strikes.

**Intel**

***Intel sharing is sustainable***

**NYT 13**, 1/30, “Drone Strike Prompts Suit, Raising Fears for U.S. Allies”

**The issue is more complex than drone-strike foes suggest**, the **current and former officials said, and is based on *decades of cooperation*** rather than a shadowy pact for the United States to do the world’s dirty work. **The arrangements for intensive intelligence** sharing by Western allies **go back to *World War II,* said** Richard **Aldrich, professor of international security at the University of Warwick**, when the United States, Canada, Britain, Australia and New Zealand agreed to continue to collaborate. “**There’s a *very high volume* of intelligence shared, some** of which is collected ***automatically***, so it’s impossible to track what every piece is potentially used for,” said Mr. Aldrich, who is also the author of a history of the Government Communications Headquarters, the British signal-intelligence agency. **Britain’s history and expertise in South Asia means** that the **intelligence it gathers in Pakistan, Afghanistan and the tribal areas** in between **is in high demand**, Mr. Aldrich said. **The arrangement has been focused** recently **by** a chill in relations between the United States and Pakistan, and by **the shared war in Afghanistan.** **Other nations**, too, **intercept communications** in the region **that are *shared broadly*** with the United States, he said. In Afghanistan, for example, **German and Dutch forces run aggressive electronic interception operations**, he said, because their rules on collaborating with local interpreters are less stringent than those of the United States. A spokesman for the coalition forces in Afghanistan, Lt. Col. Lester Carroll, declined to give details about intelligence sharing, saying agreements were classified. But he confirmed that American military forces “do share information with other U.S. government organizations on a need-to-know basis.” Few argue against the notion that **European nations, many of which have been attacked by terrorists, have benefited from the drone killing**, however controversial, **of many of the most hardened Islamic extremist leaders.**

**A2: CO-Op I/L’s – General**

***Cooperation’s inevitable\*\****

**Mueller 12** (John, Prof @ Ohio State, Terrorism and Security, in “Controversies in Globalization,” page 149-150)

Overall, with 9/11 and subsequent activity, **bin Laden and his gang** seem mainly to **have succeeded in uniting the world**, including its huge Muslim portion, ***against*** their violent global **jihad**. ***No matter how much* they might disagree on *other issues*** (most notably America’s war on Iraq), **there is a *compelling incentive* for states** – including Arab and Muslim ones – **to cooperate to deal with** any international **terrorist** problem emanating from groups and individuals **connected to**, or sympathetic with, **al-Qaeda**. **Although these** multilateral **efforts**, particularly **by** such **Muslim States** as Sudan, Syria, Libya, Pakistan, and even Iran, **may not have received** sufficient **publicity, these countries have had a vital interest, because they felt directly threatened by the militant network**, and **their** diligent and aggressive **efforts have led to important breakthroughs against al-Qaeda**. ¶ **This** post-9/11 **willingness** of governments around the world to take on terrorists **has been reinforced and amplified as they reacted to subsequent,** if sporadic, **terrorist activity** with**in** **their own countries**. Thus a terrorist bombing in Balin in 2002 galvanized the Indonesia government into action and into extensive arrests and convictions. **When terrorists attacked** Saudis in **Saudi** Arabia in 2002, **that country** **seems**, very much for self-interested reasons, **to have become** considerably **more serious about** dealing with internal **terrorism**, including a clampdown on radical clerics and preachers. Some inept terrorist **bombings in** **Casablanca** in 2003 **inspired** a similar determined **crackdown by Moroccan authorities.** **The** main **result** **of** al-Qaeda-linked **suicide terrorism in Jordan** in 2003 **was to outrage** Jordanians and other **Arabs** against the perpetrators. Massive protests were held, and in polls, those expressing a lot of confidence in Osama Bin Laden to “do the right thing” plunged from 25 percent to less than 1 percent. In polls conducted in 35 predominately Muslim coutnries, more than 90 percent condemned bin Laden’s terrorism on religious grounds. [149-150]

**\*Drones Sustainable / No Backlash or Shutdown Coming**

***The drone program is legitimate now --- no risk of shutdown or backlash --- the public opposes the plan, not targeted killing***

**LaFranchi 6-3-’13**, Howard LaFranchi, Staff writer / June 3, 2013, Christian Science Monitor, American public has few qualms with drone strikes, poll finds, <http://www.csmonitor.com/USA/Military/2013/0603/American-public-has-few-qualms-with-drone-strikes-poll-finds>, jj

When a US drone strike last week killed a top Taliban leader in Pakistan, critics of the strikes that have become a staple of President Obama’s counterterrorism policy were quick to condemn it.¶ The killing of Waliur Rehman in the North Waziristan region on May 29 would only make reconciliation talks between the Taliban and the Afghan government – a US priority – more difficult to convene, some critics said. Others said such strikes infuriate local populations and are a recruiting tool for Al Qaeda and other Islamist extremists.¶ But **the American public appears to be unmoved by such arguments**. A new Monitor/TIPP poll finds that **a firm majority of Americans** – 57 percent – **support the current level of drone strikes targeting “Al Qaeda targets and other terrorists in foreign countries**.” **Another 23 percent said the use of drones for such purposes should increase. Only 11 percent said the use of drones should decrease**.¶ The poll, conducted from May 28-31, followed a major speech in which Mr. Obama suggested the use of drone strikes would decline. In the May 26 address, he also hinted at his own ambivalence about the controversial tactic, weighing the program’s efficacy against the moral questions and long-term impact.¶ Obama acknowledged that the pluses of drone strikes – no need to put boots on the ground and the accuracy and secrecy they offer – can “lead a president and his team to view drone strikes as a cure-all for terrorism.”¶ He balanced that against words of caution: “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance.”¶ The drone strikes, which under Obama have mostly been carried out in secrecy by the CIA, are credited with killing as many as 3,000 terrorists and Islamist militants – at least four of whom were American citizens. Obama is planning to shift most drone operations to the military as part of an effort to make the program more transparent.¶ **Americans are by and large comfortable with drone strikes being ordered by the president, the CIA, or by the military**, according to the Monitor poll. **Less popular is the idea of creating a separate “drone court” – a panel that would presumably increase the accountability of the program**.¶ Almost **two-thirds of Americans** (62 percent) **say they approve of drone-strike authorization coming from the president, the Pentagon, or the CIA. About a quarter** (**26 percent**) **favor setting up a drone court to sign off on strikes**.¶ The question of who should retain responsibility for authorizing drone strikes reveals something of a political divide: While 67 percent of Democrats approve of the president, the CIA, or the Pentagon deciding on the strikes, a lower percentage of Republicans (55 percent) approve of entrusting the decisionmaking to those three.¶ On the other hand, self-described “**conservatives” were more likely than the general population to favor increasing drone strikes, with 28 percent supporting more strikes, compared with 11 percent of all Americans**.¶ **The Monitor poll also revealed what could be interpreted as little enthusiasm for Obama’s efforts to move away from the post-9/11 concept of a “war on terrorism**.”¶ **More than half of Americans – 56 percent – say the US continues to be in a “war on terror,” while 58 percent say “fundamentalist Islam” remains a “major threat” to the US**.¶ As for the military detention facility in Guantánamo Bay, Cuba, which Obama continues to seek to close, nearly two-thirds of Americans (61 percent) favor keeping it open.

***Even liberals strongly support the program, despite controversy***

**Goldsmith ’12**, Jack Goldsmith is a Harvard Law professor and a member of the Hoover Task Force on National Security and Law. He served in the Bush administration as assistant attorney general in charge of the Office of Legal Counsel. His new book is Power and Constraint: The Accountable Presidency after 9/11. MARCH 19, 2012, Foreign Policy, Fire When Ready, <http://www.foreignpolicy.com/articles/2012/03/19/fire_when_ready?page=full>, jj

The final and arguably most fundamental check on the president's targeted killing program is public disclosure and debate. Public congressional hearings have revealed a lot about the factual and legal basis for the government's program. At the same time, human rights NGOs, led by Romero's ACLU, have filed lawsuits and made Freedom of Information Act requests about the practice, and issued many hard-hitting reports. These efforts have pressured the executive branch -- in speeches, document disclosures, and leaks -- to make public more and more factual and legal details about its targeted killing program over time. **The U.S. and global press have also disclosed many details of supposedly secret or covert targeted killing operations** against White House wishes. **In general, technological innovation in the last decade has made the press and public more adept than ever at scrutinizing the wartime presidency's secret operations**, including its targeting decisions.¶ **These disclosures have fostered a robust public debate** about targeting killing in the United States and abroad, ***and the American public broadly approves of what it sees***. According to a recent Washington Post/ABC News poll, **83 percent of respondents** (**including 77 percent of liberal Democrats) say they approve of the Obama administration's use of drones** against terror suspects overseas, **while only 11 percent disapprove**. **The approval/disapproval numbers drop to 65/26 percent when respondents are told that the targets are American citizens**. As the Washington Post's Greg Sargent noted, "**65 percent is still a very big number**." Sargent added that "**Democrats approve of the drone strikes on American citizens by 58-33, and even liberals approve of them, 55-35."**

***Drones are sustainable—US government won’t react to backlash***

Benjamin **Wittes**, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/**13**, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation. There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

***No public backlash***

**Sides 13** (John, George Washington University, “Most Americans approve of foreign drone strikes,” 3-10, <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/03/10/most-americans-approve-of-foreign-drone-strikes/>)

In fact, **drone strikes *attracted*** roughly similar amounts of **support from across the partisan spectrum**: **68 percent of** **Republicans approved**, as did **58 percent** of **Democrats** and 51 percent of independents. **A pattern of relative bipartisanship** is not all that common **in public opinion** today, but **it is predictable in this case**. When leaders in the two parties don't really disagree on something, there is no reason for partisans in the public to disagree either. In John Zaller's magisterial account of how public opinion is formed and evolves, he refers to a pattern of bipartisanship like this one as a "mainstream effect." Like it or not, **drone warfare has become so common that "mainstream" does not sound inapt**.

Thus, **there is little reason to expect public opinion about the drone program to change** without concerted and prolonged dissent from political leaders. That does not seem to be forthcoming. Paul's dissent -- which didn't even emphasize foreign targets of American drones -- was met with harsh rebuttals from Lindsay Graham, John McCain and the Wall Street Journal editorial page. Democrats were not exactly rushing to stand with Paul either.

**\*\*1NC – Heg Defense**

***Heg high and sustainable now – overwhelming power***

**Tufts Daily** 2-23-**11** (Prashanth Parameswaran, master's candidate at the Fletcher School of Law and Diplomacy, writer for the New Strait Times, Strait Times and China Post, and former CSIS intern, “America is not in decline” <http://www.tuftsdaily.com/op-ed/prashanth-parameswaran-the-asianist-1.2478466>, jj)

I don't. **Very little about "American decline" is real or new. Similar predictions of U.S. decline have surfaced every decade or so** since Washington rebuilt the international system after World War II, from the aftermath of Sputnik in the 1960s to the economic distress of the 1980s. Foreign Policy is also hardly the only peddler of the latest declinism fetish. Everyone from [Newsweek's](http://newsweek.com) Fareed Zakaria to former Singaporean diplomat Kishore Mahbubani to American intelligence agencies themselves has parroted a version of it. But every myth has a grain of truth. In this case it's the fact that — God forbid — other powers are rising. Goldman Sachs says China will overtake the U.S. economy by 2027 and that the BRIC nations (**Brazil, Russia, India and China) will emerge as major world players**. But **so what? Other powers have been rising for decades**. **Yet,** to take one statistic**, the American economy in 2004 was the same size relative to the world's total GDP as it was in 1975 — 20 percent.** The real and more useful questions about decline are therefore not who is growing and by how much, but whether emerging powers can dent American power sufficiently and whether the United States will lose the key advantages that have sustained it as the world's sole superpower. **For all the fretting, the *U*nited *S*tates,** as Mr. Rachman himself admits, **remains the leader across the board. U.S. military power is still unmatched and vastly technologically superior to any other nation. Military spending is almost as much as the rest of the world combined. The American economy dominates futuristic industries like biotechnology and nanotechnology with a potent combination of technological prowess and entrepreneurial flair.** According to China's own Jiao Tong University's rankings, **17 of the world's top 20 universities are American. Millions still flock here to pursue the American Dream, while America's melting pot of cultures bodes well for its exceptional innovative capacity**. Provided the United States continues to encourage immigration and starts controlling its debt, **there is little reason to believe that such a *resilient colossus* will see its vast advantages perish**. **There are also few signs of a "global multipolar system" emerging anytime soon.** Despite doomsday realist predictions, **no country has attempted to balance Washington's hegemony since 1991**. And while the future rise of Asian powers may boost the case for eventual American decline, the truth is that **each of the United States' potential balancers also faces significant challenges going forward. For China, it is the growing disparity between its coastal and inland areas, its physical isolation and the risk that it will get old before it gets rich. For India and the European Union, the challenge will be to painfully negotiate the divergent interests of states in a noisy democratic system. As for Iran, Russia and Venezuela, they are flexing their muscles as proud spoilers, not global powers. It is also quite unlikely that these states will soon form a coalition to confront the United States, given their own divergent interests.** Even China and Russia compete ferociously in Central Asia today. Don't get me wrong. I don't believe we've reached Francis Fukuyama's "end of history," particularly with the slowing of democracy's progress during the last decade. Nor do I think the United States will be able to dominate and dictate terms to others all the time in the future. Still, **I just don't see the irreversible decline in U.S. power and the rise of a new world order that many seem to reflexively accept.**

## Judicial Review

**Ext – Independence Impossible**

***Alt causes outweigh—86% of judges run for election which makes them dependent institutions***

Lydia Brashear **Tiede ‘06**\*, The Journal of Contemporary Legal Issues, 2006, 15 J. Contemp. Legal Issues 129, Positive Political Theory and the Law: Judicial Independence: Often Cited, Rarely Understood, Lexis, jj

As opposed to judicial appointment, **many state court judges are selected by bipartisan or partisan elections**. In fact, ***eighty-six percent of American judges run for election*** n35 **and state courts where judges sit for election hear the majority of all litigation in the United States**. n36 Despite the prevalence of elected judges, at least in the United States, **most legal scholars argue that elections compromise the integrity and impartiality of judges because they must actively seek votes to obtain, and in some cases, retain their posts**. While elections may make judges more responsive to the needs and desires of the electorate, scholars argue that **elections** may **limit judicial independence if judges are intent on staying in office and voters use information about judicial decisions when they go to the polls**. n37 Furthermore, **elections may compromise a judge's ability to make decisions on individual cases due to the signals received by voters** n38 **and election campaign contributors.**

Scholars claim that **judicial elections may hinder judicial independence because individual judges running for election may be compelled to take positions on social and political issues to solicit both votes and campaign funding.**

***This in turn may compromise their impartiality to render decisions on such issues.*** n39 **This may be cause for concern due to the** [\*141] **explosion in campaign spending in state judicial races in recent years**. n40 For example, litigants who appear before a judge to decide a case involving abortion may be concerned about a judge who asserts strong pro-life or pro-choice opinions in his election campaign. **The voicing of such political opinions by judges**, who traditionally have been viewed as "above" politics, **was implicitly approved by the U.S. Supreme Court in a finding that a law prohibiting "a candidate for judicial office" from "announcing his or her views on disputed legal or political issues" violated the First Amendment**. n41 **The Supreme Court decision signals that the political opinions of judges, once a taboo subject, are now considered legitimate election fodder.**

**The use of advertising in judicial election races also accentuates the political opinions of judges and weakens the public perception of judges** [\*142] **as independent free-thinking arbiters of cases**. Not surprisingly, **hand-in-hand with the increase in state judicial campaign funding, is the increase in contentious election advertisements, which not only air negative campaign messages against opponents, but also tends to focus on three particular political issues: civil justice** (tort reform), **crime control, and family values**. n42 **This focus on the political positions of judges on specific issues comes at the expense of objective analysis of the candidates' credentials and professional integrity. Thus, a judicial election has come to appear much as any other political election and the independence and impartiality of judging a quaint notion**. n43

The concern over the effects of judicial elections on judicial independence has led to demands for reform. State and national reform efforts have focused on abandoning judicial elections completely in favor of other selection methods. However, **such reform by state legislators would require constitutional amendments to state constitutions, which may in turn require voter approval** n44 **- a difficult task as most voters arguably would like to retain their rights to influence judicial selection.** Other efforts have focused on revising judicial codes of conduct, curbing especially egregious behavior, and on reforming campaign finance and advertisement disclosure laws.

**Russia**

***No risk of civil war – opposition divided, Putin is inev***

Hugh **Cortazzi** served as Britain's ambassador to Japan from 1980 to 1984, **3-21-12**, the Japan Times,

Nearing the end of tyranny?, <http://www.japantimes.co.jp/text/eo20120321hc.html>, jj

LONDON — President Vladimir Putin in Russia, President Bashar Assad in Syria and President Robert Mugabe in Zimbabwe are detested by many of their fellow countrymen who would like to see them overthrown and tried for human rights abuses. They depend on a close coterie of guards and aides who have to be kept happy. If they ride roughshod over their entourage there is the possibility of assassination by the "Praetorian Guard." Commentators suggest that all three are doomed to fall in the end and that we are seeing the beginning of the end of their power. But **the end could still be quite a long way off and we should beware of wishful thinking.** Putin's majority in the recent election was boosted by some dubious electoral practices including multiple voting and strong arm tactics against opponents and critics. Corruption in modern Russia is so extensive and violence against critics so endemic that the correspondent in Moscow of The Guardian, an English newspaper known for its independent views, titled his book about his terrifying years in Moscow as "The Mafia State." Russia' inclusion in the quartet of major emerging powers (Brazil, Russia, China and India) is questioned by some observers. But Russia is a nuclear weapons state and has significant armed forces, although these still depend on conscription and the treatment of the rank and file is brutal. The economy remains too dependent on oil and gas. Expectation of life is significantly lower than in Western Europe and the population is aging and declining. But all pervading corruption and the absence of an independent judicial system threaten long-term political and economic stability. The Russian middle class has grown significantly in recent years and recent demonstrations in Moscow show that many are thoroughly disgruntled with the present state of their country. But **Putin has cleverly ensured that the opposition is weak and divided. The media generally does his bidding. There is unfortunately at present no credible alternative**. Gorbachev is too old and weak. Medvedev has been shown up as a puppet and leading oligarchs are either in jail, abroad or see it as being in their best interests to be subservient to Putin. **Putin is still relatively young and boasts of his physique. He is well guarded. He could remain president of Russia and continue to wield power for many years. It would be unwise to predict that his end is nigh.**

**2NC – D.C. Circuit / Lower Courts Block**

***The DC Circuit court crushes their solvency – empirically proven – extend Buijs – the Boumediene detention ruling was totally ignored by lower courts – the DC Circuit is radically conservative and won’t enforce the plan’s precedent***

***The government will appeal the plan’s ruling—and win, because of the DC District Court***

Lyle **Denniston 12** has been covering the Supreme Court for fifty-five years. In that time, he has covered one-quarter of all of the Justices ever to sit, and he has reported on the entire careers on the bench of ten of the Justices. He has been a journalist of the law for sixty-five years, beginning that career at the Otoe County Courthouse in Nebraska City, Nebraska, in the fall of 1948. He is not an attorney. March 9th, 2012, SCOTUS Blog, D.C. Circuit: Last stop for detainees?, <http://www.scotusblog.com/2012/03/d-c-circuit-last-stop-for-detainees/>, jj

For almost four years, **the Supreme Court has left it to lower courts to sort out** the **legal review** that the Justices mandated for prisoners held by the U.S. military **at Guantanamo** Bay, Cuba, **with a remarkable result**: the detainees very often win in District Court, but not one has ever gotten released from confinement by court order. The reason: ***the government has never lost any of its appeals in the D.C. Circuit Court***, **and that series of rulings has been accompanied by caustic criticism of the Supreme Court by three of the Circuit Court’s judges**. The Supreme Court has never reacted, but lawyers in eight new cases are now urging it to do so. Based on actual experience since the Court’s historic ruling in 2008 in Boumediene v. Bush, one of two things appears to be true: the Court is satisfied with the results and essentially has taken itself out of the Guantanamo controversy, or the Court has not found a suitable new case that four Justices want to review and is still waiting. In the meantime, **the Executive Branch**, though frustrated by frequent efforts in Congress to control the fate of the 171 men still at Guantanamo on the theory that most if not all of them are terrorists, **has not again suffered a courthouse setback like the one in Boumediene and in three other Supreme Court decisions before that**. Last Term, the Court opted not to hear any of eight cases brought to it by Guantanamo detainees’ lawyers. One factor that seemed to be at work then was that Justice Elena Kagan, a former U.S. Solicitor General who previously had some role in detainee matters in the Obama Administration, took no part in most of those cases. With eight new cases now on file, Kagan so far has not disqualified herself from any, although the occasion for doing so has not yet arisen in several of them. She did recuse in a preliminary vote in a potential ninth new case, but that one has not developed fully yet. There is another pending case, but it was filed for former detainees, no longer held by the U.S. The government — in both the Bush and Obama Administrations — has taken the view that the Boumediene decision entitles Guantanamo detainees to a single court test of their detention, but that, if they win that case, actual release or transfer is a matter for the Executive Branch, either under its control of immigration and deportation matters or its diplomatic authority. **The Circuit Court** has embraced that claim, but also **has gone far to make it harder for any detainee to win such a case in the first place**. **In one of the more recent Circuit Court rulings, the dissenting judge argued that it was “hard to see what is left of the Supreme Court’s command in Boumediene that habeas review be ‘meaningful.**’” ***The majority of the Circuit Court***, that judge added, ***has “called the game in the government’s favor***.” Among the lengthy list of cases in which District Court judges have ruled against further detention, a number have involved a judge’s sharp criticism of the quality of proof in intelligence reports offered by the government. But, when **the Circuit Court** has decided appeals, it **has regularly found the evidence sufficient to support further confinement on the theory that official evidence is entitled to judicial deference**. It has sent a few cases back to District Court for further review, but has yet to clear any detainee for release. Releases that have occurred have been at the discretion of the Executive Branch. Although **the government has regularly won in the Circuit Court with an argument that only the lowest accepted standard of proof need be satisfied to justify continued detention**, a senior judge on the Circuit Court, Laurence H. Silberman, has criticized the Justice Department for not pressing for an even more permissive view of detention authority and has expressed doubt that any of his colleagues would vote to release any detainee without virtually absolute proof that they do not actively support a terrorist group. ”Some evidence” should be enough, Silberman has written. Another senior judge, A. Raymond Randolph, has likened the Justices in the majority in Boumediene to fictional characters in The Great Gatsby, “careless people” making messes for other people to clean up. One of the more junior judges, Janice Rogers Brown, has castigated the Boumediene ruling for its “airy suppositions” about the nature of war and for using logic that would lead the Executive Branch to adopt a policy of taking no prisoners. Judge Brown has also argued that international law should put no limits on the President’s detention power.

# 1NR

### \*2NC – D.C. Circuit / Lower Courts Block

#### \*\*The government will appeal the plan’s ruling—and win, because of the DC District Court

Lyle Denniston 12 has been covering the Supreme Court for fifty-five years. In that time, he has covered one-quarter of all of the Justices ever to sit, and he has reported on the entire careers on the bench of ten of the Justices. He has been a journalist of the law for sixty-five years, beginning that career at the Otoe County Courthouse in Nebraska City, Nebraska, in the fall of 1948. He is not an attorney. March 9th, 2012, SCOTUS Blog, D.C. Circuit: Last stop for detainees?, <http://www.scotusblog.com/2012/03/d-c-circuit-last-stop-for-detainees/>, jj

For almost four years, the Supreme Court has left it to lower courts to sort out the legal review that the Justices mandated for prisoners held by the U.S. military at Guantanamo Bay, Cuba, with a remarkable result: the detainees very often win in District Court, but not one has ever gotten released from confinement by court order. The reason: the government has never lost any of its appeals in the D.C. Circuit Court, and that series of rulings has been accompanied by caustic criticism of the Supreme Court by three of the Circuit Court’s judges. The Supreme Court has never reacted, but lawyers in eight new cases are now urging it to do so. Based on actual experience since the Court’s historic ruling in 2008 in Boumediene v. Bush, one of two things appears to be true: the Court is satisfied with the results and essentially has taken itself out of the Guantanamo controversy, or the Court has not found a suitable new case that four Justices want to review and is still waiting. In the meantime, the Executive Branch, though frustrated by frequent efforts in Congress to control the fate of the 171 men still at Guantanamo on the theory that most if not all of them are terrorists, has not again suffered a courthouse setback like the one in Boumediene and in three other Supreme Court decisions before that. Last Term, the Court opted not to hear any of eight cases brought to it by Guantanamo detainees’ lawyers. One factor that seemed to be at work then was that Justice Elena Kagan, a former U.S. Solicitor General who previously had some role in detainee matters in the Obama Administration, took no part in most of those cases. With eight new cases now on file, Kagan so far has not disqualified herself from any, although the occasion for doing so has not yet arisen in several of them. She did recuse in a preliminary vote in a potential ninth new case, but that one has not developed fully yet. There is another pending case, but it was filed for former detainees, no longer held by the U.S. The government — in both the Bush and Obama Administrations — has taken the view that the Boumediene decision entitles Guantanamo detainees to a single court test of their detention, but that, if they win that case, actual release or transfer is a matter for the Executive Branch, either under its control of immigration and deportation matters or its diplomatic authority. The Circuit Court has embraced that claim, but also has gone far to make it harder for any detainee to win such a case in the first place. In one of the more recent Circuit Court rulings, the dissenting judge argued that it was “hard to see what is left of the Supreme Court’s command in Boumediene that habeas review be ‘meaningful.’” The majority of the Circuit Court, that judge added, has “called the game in the government’s favor.” Among the lengthy list of cases in which District Court judges have ruled against further detention, a number have involved a judge’s sharp criticism of the quality of proof in intelligence reports offered by the government. But, when the Circuit Court has decided appeals, it has regularly found the evidence sufficient to support further confinement on the theory that official evidence is entitled to judicial deference. It has sent a few cases back to District Court for further review, but has yet to clear any detainee for release. Releases that have occurred have been at the discretion of the Executive Branch. Although the government has regularly won in the Circuit Court with an argument that only the lowest accepted standard of proof need be satisfied to justify continued detention, a senior judge on the Circuit Court, Laurence H. Silberman, has criticized the Justice Department for not pressing for an even more permissive view of detention authority and has expressed doubt that any of his colleagues would vote to release any detainee without virtually absolute proof that they do not actively support a terrorist group. ”Some evidence” should be enough, Silberman has written. Another senior judge, A. Raymond Randolph, has likened the Justices in the majority in Boumediene to fictional characters in The Great Gatsby, “careless people” making messes for other people to clean up. One of the more junior judges, Janice Rogers Brown, has castigated the Boumediene ruling for its “airy suppositions” about the nature of war and for using logic that would lead the Executive Branch to adopt a policy of taking no prisoners. Judge Brown has also argued that international law should put no limits on the President’s detention power.

## Pltx

### 1NR Overview --- India

***Indo Pak war outweighs --- causes extinction***

**Robock and Toon ‘09** [Alan and Owen Brian, “Local Nuclear War, Global Suffering”, Scientific American, <http://climate.envsci.rutgers.edu/pdf/RobockToonSciAmJan2010.pdf>]

***\*we don’t endorse ableist language***

 Twenty-five years ago international teams of scientists showed that a nuclear war between the U.S. and the Soviet Union could produce a “nuclear winter.” The smoke from vast fires started by bombs dropped on cit­ies and industrial areas would envelop the planet and absorb so much sunlight that the earth’s sur­face would get cold, dark and dry, killing plants worldwide and eliminating our food supply. Sur­face temperatures would reach winter values in the summer. International discussion about this prediction, fueled largely by astronomer Carl Sa­gan, forced the leaders of the two superpowers to confront the possibility that their arms race endangered not just themselves but the entire hu­man race. Countries large and small demanded disarmament. Nuclear winter became an important factor in ending the nuclear arms race. Looking back later, in 2000, former Soviet Union leader Mikhail S. Gorbachev observed, “Models made by Russian and American scientists showed that a nuclear war would result in a nuclear winter that would be extremely destructive to all life on earth; the knowledge of that was a great stimulus to us, to people of honor and mo­rality, to act.” Why discuss this topic now that the cold war has ended? Because **as** other nations continue to acquire nuclear weapons, smaller, regional nu­clear wars could create a similar global catastro­phe**.** New analyses reveal that a conflict be­tween India and Pakistan, for example, in which 100 nuclear bombs were dropped on cities and industrial areas—only 0.4 percent of the world’s more than 25,000 warheads—would produce enough smoke to ~~cripple~~ global agriculture. A regional war could cause widespread loss of life even in countries far away from the conflict.

#### Escalates globally

**Caldicott 2** (Helen, Founder of Physicians for Social Responsibility [Helen, The New Nuclear Danger: George W. Bush’s Military-Industrial Complex, p. X]

The use of Pakistani nuclear weapons could trigger a chain reaction. Nuclear-armed India, an ancient enemy, could respond in kind. China, India's hated foe, could react if India used her nuclear weapons, triggering a nuclear holocaust on the subcontinent. If any of either Russia or America's 2,250 strategic weapons on hair-trigger alert were launched either accidentally or purposefully in response, nuclear winter would ensue, meaning the end of most life on earth.

***And, relations are key to accessing every impact***

**Asia Society Task Force ‘09**[Delivering on the Promise: Advancing US Relations With India, January, <http://www.asiasociety.org/policy-politics/task-forces/delivering-promise-advancing-us-relations-india>, Acccessed, 9-19-09, p. 7-8]

India matters to virtually every major foreign policy issue that will confront the United States in the years ahead. A broad-based, close relationship with India will thus be necessary to solve complex global challenges, achieve security in the critical South Asian region, reestablish stability in the global economy, and overcome the threat of violent Islamic radicalism which has taken root across the region and in India. The members of this task force believe that the US relationship with India will be among our most important in the future, and will at long last reach its potential for global impact—provided that strong leadership on both sides steers the way. The new relationship rests on a convergence of US and Indian national interests, and never in our history have they been so closely aligned. With India, we can harness our principles and power together to focus on the urgent interconnected challenges of our shared future: economic stability, expanded trade, the environment and climate change, innovation, nonproliferation, public health, sustainability, and terrorism. Together our two countries will be able to take on some of the most vexing problems facing the world today, and improve the lives and security of our citizens in doing so. But to get there, we must set broad yet realistic goals to be shared by both countries.

**1NR – CIR Turns Heg**

***Turns heg***

**Nye 12/10** Joseph S. Nye, a former US assistant secretary of defense and chairman of the US National Intelligence Council, is University Professor at Harvard University. His most recent book is The Future of Power. 12/10/12, Project Syndicate, Immigration and American Power, <http://www.project-syndicate.org/commentary/obama-needs-immigration-reform-to-maintain-america-s-strength-by-joseph-s--nye>, jj

CAMBRIDGE – The United States is a nation of immigrants. Except for a small number of Native Americans, everyone is originally from somewhere else, and even recent immigrants can rise to top economic and political roles. President Franklin Roosevelt once famously addressed the Daughters of the American Revolution – a group that prided itself on the early arrival of its ancestors – as “fellow immigrants.”

**In recent years**, however, **US politics has had a strong anti-immigration slant**, and the issue played an important role in the Republican Party’s presidential nomination battle in 2012. But Barack Obama’s re-election demonstrated the electoral power of Latino voters, who rejected Republican presidential candidate Mitt Romney by a 3-1 majority, as did Asian-Americans.

**As a result, several prominent Republican politicians are now urging their party to reconsider its anti-immigration policies, and plans for immigration reform will be on the agenda at the beginning of Obama’s second term. Successful reform will be an important step in preventing the decline of American power.**

Fears about the impact of immigration on national values and on a coherent sense of American identity are not new. The nineteenth-century “Know Nothing” movement was built on opposition to immigrants, particularly the Irish. Chinese were singled out for exclusion from 1882 onward, and, with the more restrictive Immigration Act of 1924, immigration in general slowed for the next four decades.

During the twentieth century, the US recorded its highest percentage of foreign-born residents, 14.7%, in 1910. A century later, according to the 2010 census, 13% of the American population is foreign born. But, despite being a nation of immigrants, more Americans are skeptical about immigration than are sympathetic to it. Various opinion polls show either a plurality or a majority favoring less immigration. The recession exacerbated such views: in 2009, one-half of the US public favored allowing fewer immigrants, up from 39% in 2008.

Both the number of immigrants and their origin have caused concerns about immigration’s effects on American culture. Demographers portray a country in 2050 in which non-Hispanic whites will be only a slim majority. Hispanics will comprise 25% of the population, with African- and Asian-Americans making up 14% and 8%, respectively.

But mass communications and market forces produce powerful incentives to master the English language and accept a degree of assimilation. Modern media help new immigrants to learn more about their new country beforehand than immigrants did a century ago. Indeed, most of the evidence suggests that the latest immigrants are assimilating at least as quickly as their predecessors.

While too rapid a rate of immigration can cause social problems, over the long term, **immigration strengthens US power**. **It is estimated that at least 83 countries and territories currently have fertility rates that are below the level needed to keep their population constant. Whereas most developed countries will experience a shortage of people as the century progresses, America is one of the few that may avoid demographic decline and maintain its share of world population.**

For example, **to maintain its current population size, Japan would have to accept 350,000 newcomers annually for the next 50 years,** which is difficult for a culture that has historically been hostile to immigration. **In contrast, the Census Bureau projects that the US population will grow by 49% over the next four decades.**

Today, **the US is the world’s third most populous country; 50 years from now it is still likely to be third** (after only China and India). **This is highly relevant to economic power: whereas nearly all other developed countries will face a growing burden of providing for the older generation, immigration could help to attenuate the policy problem for the US.**

In addition, though studies suggest that the short-term economic benefits of immigration are relatively small, and that unskilled workers may suffer from competition, **skilled immigrants can be important to particular sectors – and to long-term growth**. **There is a strong correlation between the number of visas for skilled applicants and patents filed in the US**. **At the beginning of this century, Chinese- and Indian-born engineers were running one-quarter of Silicon Valley’s technology businesses, which accounted for $17.8 billion in sales; and, in 2005, immigrants had helped to start one-quarter of all US technology start-ups during the previous decade. Immigrants or children of immigrants founded roughly 40% of the 2010 Fortune 500 companies.**

**Equally important are immigration’s benefits for America’s soft power**. **The fact that people want to come to the US enhances its appeal, and immigrants’ upward mobility is attractive to people in other countries. The US is a magnet, and many people can envisage themselves as Americans, in part because so many successful Americans look like them**. **Moreover, connections between immigrants and their families and friends back home help to convey accurate and positive information about the US.**

Likewise, **because the presence of many cultures creates avenues of connection with other countries, it helps to broaden Americans’ attitudes and views of the world in an era of globalization. Rather than diluting hard and soft power, immigration enhances both.**

Singapore’s former leader, Lee Kwan Yew, an astute observer of both the US and China, argues that **China will not surpass the US as the leading power of the twenty-first century**, precisely **because the US attracts the best and brightest from the rest of the world and melds them into a diverse culture of creativity**. China has a larger population to recruit from domestically, but, in Lee’s view, its Sino-centric culture will make it less creative than the US.

That is a view that Americans should take to heart. **If Obama succeeds in enacting immigration reform in his second term, he will have gone a long way toward fulfilling his promise to maintain the strength of the US.**

**1NR – Terror Impact**

***Turns terror***

**Castaneda et al** 20**05** (NORTH AMERICAN COOPERATION ON THE BORDER HEARING BEFORE THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE ONE HUNDRED NINTH CONGRESS FIRST SESSION \_\_\_\_\_\_\_\_\_\_ JULY 12, 2005 Castaneda, Hon. Jorge, Global Distinguished Professor of Politics and Latin American and Caribbean Studies, New York University, and former Foreign Minister, Mexico City, Mexico, Obama, Hon. Barack, U.S. Senator from Illinois, Biden, Hon. Joseph R., Jr., U.S. Senator from Delaware)

I think that attitudes in Mexico have changed in relation to drugs and I think that they are also changing in relation to terrorism, that there is a sense in Mexico, particularly as cooperation with the United States increases--and it is increasing--and as cooperation with Canada is increasing--and it is increasing--**that the threats of terrorism to the United States are threats that are also extensive to Mexico** and to Canada and that we have to view this from a North American perspective. That does not mean, Senator, of course, in the same way as in the United States, that everyone in Mexico who subscribes to these points of view, as myself, necessarily agrees with every decision made by the United States administration, for example, in the war on terrorism. Senator Biden. I do not agree with it all. Mr. Castaneda. I know full well, and I know Senator Dodd does not either. I know that in Mexico there are many views on this. But I do agree with you completely on this fact that **we have to find a way in Mexico to understand that these are common security threats.** A threat to the United States, to London, to Spain, the Atocha attacks in Madrid 2 years ago, all of these terrorist attacks are attacks that can happen in Mexico any day of the year, and for the same absurd reasons that they happen elsewhere. There are no good reasons for terrorist attacks and consequently they can happen anywhere at any time. Senator Biden. Thank you, Mr. Chairman. The Chairman. Thank you very much, Senator Biden. Please proceed, Senator Obama. STATEMENT OF HON. BARACK OBAMA, U.S. SENATOR FROM ILLINOIS Senator Obama. Thank you very much, Mr. Chairman. The ranking member asked some important questions and I think they encompass a broader concern. I think when I think about immigration I think there are a number of elements to it, some of which have been covered today. The **politics of immigration in this country are extraordinarily complex** and I think Senator Biden was touching on whether the politics in your countries can generate the same amount of effort. So let me turn to you, Mr. Castaneda, first and just ask whether--from your testimony, I gather that you believe that **without comprehensive immigration reform it is going to be hard to initiate anything piecemeal**. **Do you get a sense right now that your country is prepared to make significant investments if,** for example, Senator **Kennedy and McCain's bill moves forward, that**, in fact, **you would see some concomitant investments in** terms **of border security or other strategies on the other side of the border** at this stage? I mean, **is there enough sort of political momentum** that people would see that **as a fair trade? Mr. Castaneda. I do believe so, Senator Obama. I think that precisely what the Fox administration has been able to do**--and, of course, it is winding down; we are only a year away from the elections and a year and a half away from President Fox leaving office. But I think what the Fox administration has been able to do is precisely to explain to the Mexican people that **if we can get the sort of agreement or reform in the U**nited **S**tates **that addresses all of these issues that I mention in my opening remarks, regarding Mexicans already here,** and in your home State in particular, Mexicans who

will continue to come because that is what the demographics and the economics of our relationship imply, if we can get many of the things that we think are important, that we can put an end to the deaths in the desert every single day**, then Mexico is prepared to do its share,** prepared to put its money where its mouth is, but not only its money. It is not so much a question on our side of money. **It is a question of political will, of making the very tough decisions on the southern border,** the very tough decisions in the sending community, the very tough decisions along the chokepoints on the highways and air routes to the border, make the tough decisions that will make an agreement sellable in the United States and viable in the long run for the two countries. I think that today in Mexico this is doable, and I must say it is largely doable because President Fox has made an effort to educate Mexican society about these issues.

### Turns LA

***And turns latin america***

Robert **Gittelson** (Notre Dame Journal of Law, Ethics, & Public Policy) 20**09** “The Centrists Against the Ideologues: What Are the Falsehoods That Divide Americans on the Issue of Comprehensive Immigration Reform?” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1400764>

However, the above list of security enhancements is only a part of the overall security ramifications of CIR. For example, as **everyone**—including our enemies all over the world—**knows, our military manpower is strained to the limit. Our troops are on a seemingly endless loop of deployment**s, with no imminent relief in sight. Our **military recruiting officers are struggling to meet the vital new quotas for fresh servicemen and women**, and scandals have started to come to light of instances where we have waived or lowered our induction standards.28 We are also offering record high bonus inducements to lure potential recruits to join the armed forces.29 **CIR can really help us in this regard, with the potential addition of millions of military age, able-bodied men and women, should CIR allow them to legalize their status. This would not only increase the potential pool of new recruits; it would allow the military to once again raise standards**, and— because of the laws of supply and demand—**they could save much-needed revenue** by lowering the bonuses that they are currently offering due to the short supply of potential seamen, soldiers, and airmen. The long-term benefit to our country through the addition of these potential recruits is that these young men and women would receive valuable training for advancement in life in whatever career path they should choose. They would be able to take advantage of the laws governing accelerated citizenship for immigrants who serve in the military, and, of course, our country—and by extension **the entire world**—**would be safer because of this** provision of **CIR**. In the alternative, **should we fail to pass CIR,** and instead opt to deport or force attrition on these millions of economic refugees through an enforcement-only approach to our current undocumented immigrant difficulties, what would be the net result? Forgetting for now **the devastating effect on our own economy, and the worldwide reproach and loss of moral authority** that we would frankly deserve should we act so callously and thoughtlessly, there **is** another **important** political imperative to our **passing CIR** that **affects** our national security, and **the** security and **political stability of our neighbors in our hemisphere**. That is the very real threat of communism and/or socialism. First of all, the primary reason why millions of undocumented economic refugees migrated to the United States is because the economies of their home countries were unable to support them. They escaped extreme poverty and oppression, and risked literally everything they had, including their lives and their freedom, to come to this country to try to work hard and support themselves and their families. **Deporting our illegal immigrant population back to primarily Latin America would boost the communist and socialist movements in that part of our hemisphere**, and if the anti-immigrationists only understood that fact, they might re-think their “line in the sand” position on what they insist on calling “amnesty.” Communism thrives where hope is lost. **The economies of Latin American nations are struggling to barely reach a level of meager subsistence for the population that has remained at home;** Mexico, for example, has already lost 14% of their able-bodied workers to U.S. migration.30 **Without the billions of dollars in remissions from these nations’ expatriates working in the United States that go back to help support their remaining family members, the economies of many of these countries, most of whom are in fact our allies, would certainly collapse**, or at least deteriorate **to dangerously unstable levels. The addition of millions of unemployed and frustrated deported people** who would go to the end of the theoretical unemployment lines of these already devastated economies **would surely cause massive unrest and anti-American sentiment**. The issue of comprehensive immigration reform is not simply a domestic issue. In our modern global economy, everything that we do, as the leaders of that global economy, affects the entire world, **and** most especially our region of the world. If we were to naively initiate actions that **would lead to the destabilization of the Mexican and many Central and South American governments,** while at the same time **causing serious harm to our own economy** (but I digress . . .), it would most assuredly lead to disastrous economic and political consequences. By the way, I’m not simply theorizing here. In point of fact, over the past few years, eight countries in Latin America have elected leftist leaders. Just last year, Guatemala swore in their first leftist president in more than fifty years, Alvaro Colom.31 He joins a growing list. Additional countries besides Guatemala, Venezuela,32 and Nicaragua33 that have sworn in extreme left wing leaders in Latin America recently include Brazil,34 Argentina,35 Bolivia,36 Ecuador,37 and Uruguay.38 This phenomenon is not simply a coincidence; it is a trend. **The political infrastructure of Mexico is under extreme pressure** from the left.39 Do we really want a leftist movement on our southern border? If our political enemies such as the communists **Chavez** in Venezuela **and Ortega** in Nicaragua **are calling the shots in Latin America, what kind of cooperation can we expect in our battle to secure our southern border**?

### A2: N/U – Won’t Pass

#### 2) Here’s more evidence – Comprehensive reform obviously won’t pass the House – but piecemeal bills mean success in conference

DYLAN SCOTT 10/23, Talking Point Memo, “Chamber President: 'Still An Appetite' To Pass Immigration Reform”, OCTOBER 21, 2013, http://talkingpointsmemo.com/livewire/chamber-president-still-an-appetite-to-pass-immigration-reform?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+tpm-news+(TPMNews)

U.S. Chamber of Commerce President Tom Donohue said Monday that he believes there is still an opportunity to pass comprehensive immigration reform this Congress, even as some House conservatives signal that the effort is dead-on-arrival in that chamber. "We're in a good position. There's still an appetite to get comprehensive immigration reform done," he said at a Monday briefing sponsored by the Christian Science Monitor. "We're really hot after it. ... The Chamber is keeping up the push for reform. It's an opportunity to show the world we can get big things done." Donohue acknowledged that a comprehensive bill isn't likely to pass the House, but expressed hope that the lower chamber would pass enough piecemeal bills to go into conference committee negotiations with the Senate and agree on a sweeping set of reforms. "I don't think they'll pass a great, big comprehensive bill, but I think they'll do three or four more things that have to be in that bill, and then we'll have an opportunity to go to conference," he said. "Just think about it: Pass a bill in the Senate, pass a bill in the House, go to conference, get a result and have the president sign it. Hey, government still works."

#### 3) Debt fight gave Democrats the blueprint to get a comprehensive bill through committee – But political capital key

DAVID MARTOSKO, U.S. POLITICAL EDITOR, “Immigration battle threatens to dwarf debt-limit fight as many Republicans fear power of 17 MILLION newly legalized loyal Democrats”, MailOnline, October 17, 2013, Lexis

House Republicans' strategy so far has been to approach the Senate bill piecemeal, advancing parts of it - border security and more fences, for instance - that GOP leaders like. Speaker John Boehner has said Senate Democrats' more comprehensive approach won't reach the House floor, even though 14 Senate Republicans gave it 'yes' votes. But the fight over the partial government shutdown that occupied half of October may have given Democrats insights into how to combat that strategy. House Republicans offered a series of nearly a dozen one-off bills to fund government agencies and initiatives whose absence became a black eye, including the National Institutes of Health, the Department of Veterans Affairs and salary payments for active-duty military. Obama found he could stave off the pressure to sign all but a few, insisting on an all-or-nothing approach - which he eventually got. 'It's different, of course, because there's no economic catastrophe awaiting if Republicans sit on their hands with immigration,' a Democratic campaign strategist told MailOnline on Wednesday. 'But the White House has learned how stubborn some of the Republicans are willing to be. And more important, they've figured out which ones are worth trying to reason with.' While some Republican moderates will be unwilling to cross the tea party caucus while the sting of the debt defeat is still in the air, others have already signaled their openness to meet Democrats halfway, mostly in one-off measures that carve out pet projects from the larger immigration issue. California Rep. Nancy Pelosi, a long-time supporter of immigration reform, said this month that she will do 'whatever it takes' to find a bill that the House can bring to the Senate. She's open to going to a House-Senate legislative conference with 'one bill, two bills, one at a time, singly, jointly, severally, whatever,' betting that whatever emerges from such a meeting would including 'comprehensive immigration reform that will lead to a pathway to citizenship.'

#### 4) Framing issue - Prefer the direction of the link – Immigration can pass with the right momentum

- only most extreme GOP will bail

Greg Sargent, “Immigration reform: Still not quite dead”, Washington Post, October 22nd 2013, http://www.washingtonpost.com/blogs/plum-line/wp/2013/10/22/immigration-reform-still-not-quite-dead/

The terrible political damage Republicans sustained in the government shutdown fight is apparently making some House Republicans even less willing to pass immigration reform, because mistrust of Obama is running higher than usual. To me, that’s a bit like saying: We just shot ourselves in the foot, so let’s get back at the president by shooting ourselves in the other foot. But for some Republicans, this is where we’re headed. However, immigration reform still isn’t quite dead yet. In an interview, GOP Rep. Mario Diaz-Balart of Florida told me that a “number” of House Republicans are in negotiations to develop a piecemeal solution to the problem of the 11 million undocumented immigrants – with the goal of commanding a majority of Republicans. This is good to hear. It means not all Republicans are using the shutdown loss as a way to bail on immigration reform. “There are a number of us who are working on a proposal to deal with the folks who are here in a way that allows those who have not committed crimes to get right with the law,” Diaz-Balart says, adding that the goal is to figure out “what to do with the millions of undocumented who are here in a way that completely conforms with the rule of law.” Diaz-Balart declined to specify who these Republicans were or what policy fixes are being discussed. But he provided a clue to the thinking. Republicans insist they can’t support anything that doesn’t secure the border before permitting legalization, and will only accept a piecemeal approach. So one model for a proposal to deal with the 11 million in a piecemeal way could be an idea drawn from the now-defunct House “gang of seven” talks. House Republicans could pass border security measures, and then pass a measure that puts the 11 million on probation — status they would lose if E-Verify is not operational after five years. Legalization can only proceed after it is operational. “It is a non-negotiable objective to make sure we have border and interior security as part of anything we do,” Diaz-Balart said. “It has to be enforceable. That aspect that was agreed to [by the gang of seven] is an example of something that’s workable.” “We have to get the majority of Republicans in support, but on something this difficult and controversial, we’re going to need Democratic votes as well,” he continued. That’s a key point, because it suggests those in these talks recognize that, because the far right will not support anything, the solution must be crafted to be acceptable to Dems, too. Conservatives are also gearing up to block House Republicans from going to conference on immigration — again in part because Obama and Dems can’t be trusted to negotiate. I asked Diaz-Balart to respond to that argument and whether he thought Republicans should be willing to go to conference. “To me that’s a bit of a technicality. The question is, do we want to move forward on legislation to fix the borders? We’re going to have to take some political arrows but that’s what we’re here to do,” he told me. “I’m hearing a lot that you’ve got a president you can’t trust or negotiate with. That’s pretty much a consensus among Republicans. Here is what is also consensus: We have porous borders and 11 million here unlawfully. The broken system is not something Republicans should accept. If we don’t solve this issue, it will be back year after year. The number of undocumented will continue to grow.” If enough House Republicans agree with the above sentiment, immigration reform is not dead yet. Indeed, in addition to the need to repair relations with Latinos, reform’s chances may turn on whether enough House Republicans — and their leadership — decide they want to be seen as a party that is capable of solving the country’s problems. Today’s Post/ABC poll found that only 20 percent of Americans think the GOP is “interested in doing what’s best for the country.” Now, maybe such considerations just don’t matter, because the House GOP majority is supposedly invulnerable. But if Republicans do want to broaden the party’s appeal and show they are capable of constructive governing, immigration reform is one of only a handful of ways to do this.

#### 5) Republican’s will compromise on Immigration now – bad poll numbers

JULIA PRESTON and ASHLEY PARKER, “Democrats Aim to Restore Immigration To Agenda”, NYT, October 19, 2013, Lexis

As the fiscal crisis subsided and the government went back to work this week, President Obama and other leading Democrats were quick to say that an immigration overhaul should be back on the agenda in Congress. Mr. Obama raised the issue in his first comments after lawmakers reached a deal to reopen the government, and on the night the shutdown ended the three top Senate Democrats said they hoped to extend the bipartisan moment that produced the compromise by taking up immigration. ''Let's move on,'' said the Senate majority leader, Harry Reid of Nevada. He added that he hoped ''the next venture is making sure we do immigration reform.'' But the possibilities for progress on the issue will be determined in the House of Representatives, where many conservative Republicans are fuming with frustration over their meager gains from the two-week shutdown and turning their ire against Mr. Obama, saying he failed to negotiate with them. It will be up to Speaker John A. Boehner of Ohio to discern whether relations with the White House are simply too raw for House Republicans to consider legislation on an issue the president has made a priority. Many Democrats and some Republicans are arguing that passing a broad immigration bill could be a way for Republicans to come back from the bruising they took in the polls during the shutdown. ''When the Republican polling numbers are at 20 percent, there's a pretty strong argument to do something to get those poll numbers up, and immigration is a good way to do that,'' said Senator Charles E. Schumer, Democrat of New York. The effort to repair the immigration system has attracted support across the political spectrum, including from traditional Republican allies like business, agriculture and evangelical Christians. The Senate passed a sweeping bill in June on a bipartisan vote. But lawmakers on both sides agreed that the window for action on immigration is narrow, most likely limited to the remaining months of this year, before the next fiscal deadlines, or maybe to early next spring. Mr. Boehner would like to make progress this year on immigration, a spokesman said Friday. ''The speaker remains committed to a step-by-step process to fix our broken immigration system,'' said the spokesman, Michael Steel.

#### 6) Will pass now – This card answers all their post debt ceiling partisanship warrants

The Huffington Post, “Immigration Reform: A Pathway to Citizenship for the GOP?” October 17th 2013, Lexis

Of course there are those[2] who will say immigration reform is not possible now, especially given the nasty partisanship of the past couple of weeks. Why on earth would the House GOP work with President Obama and their counterparts in the House on immigration reform given the animosity and partisan bickering that plagues Washington? The answer: because it's in their best interest. Recent polls[3] in key GOP held districts show that voters overwhelmingly support immigration reform with a path to citizenship. More ominously for the GOP, polling from NBC/Wall Street Journal, Washington Post/ABC News, and Public Policy Polling shows that the Republican party's image is badly in need of repair among the American people and especially among Latino voters. They could surprise everyone by doing something big and bold and turning immediately to broad immigration reform. Just this morning, Mr. Obama reiterated what he has been saying all week -- even during the midst of the debt crisis -- that immigration reform is one of the three key issues upon which Republicans and Democrats can work together to strengthen the economy. The president stressed that an immigration overhaul will grow the economy by $1.4 trillion. It's something the majority of Americans agree about. Immigration reform also happens to be the right thing to do. The American people want it and the American economy needs it. And therein lies the opportunity. Just as the House GOP leadership handled the fiscal cliff crisis which loomed at the start of the year, and just as the House GOP leadership finally ended the debt crisis this week, House Republicans can fix America's broken immigration system if they are willing to work across the aisle. This time they should take charge, boldly seize the initiative and push forward to pass a bipartisan immigration bill. And they have a framework from which to build. Earlier this year, as Mr. Obama pointed out this morning, the Senate passed a comprehensive immigration bill, and did so on a bipartisan basis. The House leadership should work with willing Republicans and Democrats to build upon the legislation hammered out in the Senate, send it to the floor for a vote and, deliver it to the White House for the president's signature. And even if they can't bring themselves to do that, they can put together the pieces that ultimately can fix what's wrong with our immigration system. In this case, a "win" for Obama is also a "win" for Republicans. That's why immigration reform is different than any other issue in Congress. If they do this right not only will the House GOP have given the country a badly needed immigration overhaul -- but they will have taken a major stride toward rebuilding their brand and earning the confidence of the American people.

### A2: UQ – palmer

#### Top priority—passes before 2014

Sen 10/23 [Anirban Sen, Live Mint – WSJ, US immigration Bill back as top agenda after shutdown ends, <http://www.livemint.com/Industry/nojGe2TYjndtkel1B1AgFO/Proposed-immigration-reform-Bill-in-US-worries-Indian-IT-fir.html>, jj]

During the two-week shutdown, the Immigration Bill took a backseat on Capitol Hill. But with the shutdown finally coming to an end and with mid-term elections set for November 2014, comprehensive visa reform has become a focal point for both Democrats and Republicans as they attempt to woo the public with tough rhetoric. “There is now pressure for Congress (especially the House) to take action and pass Bills instead of preventing the government from doing its business,” said Neil Ruiz, a senior policy analyst at Washington-based thinktank The Brookings Institution. “Immigration reform is definitely a top policy issue now for the House and they have to pass these Bills over the next three months before the election season begins.”

#### Vote before the end of the year because of Obama’s push

Brustein 10/23 [Joshua Brustein is a Bloomberg Businessweek reporter, October 23, 2013, SF Gate, Immigration reform gets push from tech industry, <http://www.sfgate.com/technology/article/Immigration-reform-gets-push-from-tech-industry-4920783.php>, jj]

FWD.us had a rough start, and then immigration reform fell to the wayside as fiscal issues dominated the debate in Washington. But with the government open again and the debt ceiling lifted, some observers think this is immigration reform's moment. President Obama is pushing the issue hard, and House Speaker John Boehner, R-Ohio, said Wednesday that he may try to hold a vote on immigration reform by the end of the year.

### A2: baker – allows pltl cover

#### Obama’s not committed to a drone court

Wittes 5-24-’13, Benjamin Wittes is editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law. 5-24-’13, Lawfare Blog, The President’s Speech: A Quick and Dirty Reaction–Part 4 (Hedging on the Drone Court), <http://www.lawfareblog.com/2013/05/the-presidents-speech-a-quick-and-dirty-reaction-part-4-hedging-on-the-drone-court/>, jj

Notice here what the president is not promising. He is not promising to support a drone court. He is not promising to support proposals like Neal Katyal’s or Jen Daskal’s for an enhanced, court-like internal executive review mechanism. He is only promising to have his administration “review [such] proposals” and saying that he will “actively engag[ing] with Congress to explore” such ideas.¶ Nobody can possibly object to this, and I certainly don’t, but it is notable that the president nowhere hints what sort of outcome he expects from his engagement. This is a way of signaling respect for the ideas—and the underlying idea that he needs to be on the side of “increased oversight”—without actually committing his administration to doing anything concrete.

**A2: allows pltl cover --- Courts Link**

#### Courts link to politics

Hamilton, JD Candidate, Stanford Law School, 12

(Eric, “Politicizing the Supreme Court,” 8-30-12, http://www.stanfordlawreview.org/online/politicizing-supreme-court)

To state the obvious, Americans do not trust the federal government, and that includes the Supreme Court. Americans believe politics played “too great a role” in the recent health care cases by a greater than two-to-one margin.[1] Only thirty-seven percent of Americans express more than some confidence in the Supreme Court.[2] Academics continue to debate how much politics actually influences the Court, but Americans are excessively skeptical. They do not know that almost half of the cases this Term were decided unanimously, and the Justices’ voting pattern split by the political party of the president to whom they owe their appointment in fewer than seven percent of cases.[3] Why the mistrust? When the Court is front-page, above-the-fold news after the rare landmark decision or during infrequent U.S. Senate confirmation proceedings, political rhetoric from the President and Congress drowns out the Court. Public perceptions of the Court are shaped by politicians’ arguments “for” or “against” the ruling or the nominee, which usually fall along partisan lines and sometimes are based on misleading premises that ignore the Court’s special, nonpolitical responsibilities.

#### Court decisions are heavily politicized, will trigger a Congressional backlash

Calabresi, 2008

[Massimo, TIME, 6-26, “Obama's Supreme Move to the Center Washington” Thursday, 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.

#### Drone court costs PC – Obama and Congress will block it

Rushforth ’12, Elinor June Rushforth\*, \* J.D. candidate, University of Arizona, James E. Rogers College of Law, Class of 2013, Fall, 2012¶ Arizona Journal of International and Comparative Law¶ 29 Ariz. J. Int'l & Comp. Law 623, NOTE: THERE'S AN APP FOR THAT: IMPLICATIONS OF ARMED DRONE ATTACKS AND PERSONALITY STRIKES BY THE UNITED STATES AGAINST NON-CITIZENS, 2004-2012, Lexis, jj

The next level of review should be a statutorily created court that is the last stop on the targeted killing process. Though there may be some grumbling among judges and politicians about overextended courts and full dockets, national security concerns and the risk of lethal mistakes should outweigh reluctance to introduce an important check on targeted killing. The President, and perhaps Congress, could also be reluctant to allow courts into what they deem a core executive function. n198 Attorney General Eric Holder gave the public another piece of the Obama administration's targeted killing model when he claimed that the Constitution "guarantees due process, not judicial process" and that "due process [\*653] takes into account the realities of combat." n199 This signals to the public that the Obama administration will remain wary of any encroachment and that the imposition of judicial process on targeted killing would be fought.

#### And, drone Court causes GOP backlash

Associated Press 2-10-’13, Lawmakers urge oversight of drone program, <http://cnsnews.com/news/article/lawmakers-urge-oversight-drone-program>, jj

The potential model that some lawmakers are considering for overseeing such drone attacks is a secret court of federal judges that now reviews requests for government surveillance in espionage and terrorism cases. In those proceedings, 11 federal judges review wiretap applications that enable the FBI and other agencies to gather evidence to build cases. Suspects have no lawyers present, as they would in other U.S. courts, and the proceedings are secret.¶ The Democratic leader of the Senate Intelligence Committee, Sen. Dianne Feinstein of California, said she intends to review proposals for "legislation to ensure that drone strikes are carried out in a manner consistent with our values."¶ Republicans seemed to oppose such an oversight proposal.¶ The Republican chairman of the House Intelligence Committee said his members review all drone strikes on a monthly basis, both from the CIA and Pentagon.¶ "There is plenty of oversight here," said Rep Mike Rogers, R-Mich. "There is not an American list somewhere overseas for targeting, that does not exist."¶ Other lawmakers seemed leery of the program's current reach even as they lined up against the oversight proposals.¶ Sen. John McCain, R-Ariz., said a Feinstein-backed oversight panel would be "an encroachment on the powers of the president of the United States."

### \*Yes Link – D.C. Circuit

#### The D.C. Circuit court is perceived and politicized

Moshe Z. Marvit 13 is a civil rights and labor attorney. May 26, 2013, Dissent Magazine, The Most Dangerous Court in America, <http://www.dissentmagazine.org/online_articles/the-most-dangerous-court-in-america>, jj

Some have argued that the D.C. Circuit’s character is different as a matter of historical accident—lawyers simply treat it as the proper venue for challenging (or supporting) executive power. But there are important structural qualities that distinguish it from other federal courts. For one, it is among the most politicized of the already-partisan federal courts; the D.C. Circuit is often regarded as a stepping stone for the Supreme Court, with four of the nine current justices having served there. Yet the D.C. Circuit is not just a springboard to the big leagues. It is also accorded a special privilege that other circuits are not: it has jurisdiction over any case involving a federal agency. This means that if a company is fined by the EPA in San Francisco, for example, it can choose to appeal its case in California or with the D.C. Circuit. In the term ending in 2012, over 40 percent of the D.C. Circuit’s cases involved a federal agency, compared to less than 14 percent for the remaining circuits. As a result, the D.C. Circuit has a disproportionate influence on federal regulatory power. Whether a regulation concerns banking institutions (through the Securities and Exchange Commission), labor relations (through the National Labor Relations Board), power and utility companies (through the Department of Energy), the D.C. Circuit has a hand in shaping it. This undeniable fact should cause concern for anyone who still be believes in a traditional separation of powers.

### A2: Healthcare

#### CIR is top of the agenda—not healthcare

Chakrabory 10-24-13 (Barnini, staff writer, "A pivot in priorities? Obama touts immigration reform" Fox News) www.foxnews.com/politics/2013/10/24/pivot-in-priorities-obama-touts-immigration-reform/

President Obama shifted focus Thursday from the pile-up of problems related to the rollout of his health care law to another prickly political topic: immigration. Obama made his case for comprehensive reform at a White House event and insisted that Congress had enough time to pass the immigration bill by the end of the year. “It doesn’t get easier to put it off,” Obama said.

### A2: thumpers

#### 2) Obama is making immigration top priority – Has to pass before Thanksgiving – also a focus link

J.D. Harrison, Washington Post, “An immigration reform revival?”, October 21, 2013, Lexis

Now that lawmakers have forged an agreement to reopen the government and extend the debt ceiling, President Obama has said he plans to make immigration reform a top priority during the remaining months of 2013 - and Robbins's group is taking steps to make sure that's the case. On Oct. 29, his team is helping fly more than 300 business, technology and religious leaders to Washington to urge House Republicans to move forward on immigration reform legislation. Mark Zuckerberg's FWD.us lobbying arm, entrepreneurship advocacy group EngineAdvocacy, Republican anti-tax leader Grover Norquist and the U.S. Chamber of Commerce will also take part in the rally. "There is a very clear window up until Thanksgiving where, if House leadership wanted to push a series of immigration bills, they could," Robbins said. Many political analysts have suggested lawmakers will be less likely to pass any major legislation next year, as the midterm elections approach. And there are a number of other hurdles standing in their way.

#### 3) Top of the agenda

Stephen Dinan and Dave Boyer, Washington Times, “Immigration back on the front burner for Obama; But Homeland Security choice raises eyebrows”, October 18, 2013, Lexis

With the end of the government shutdown, Mr. Obama has elevated immigration to the top of his legislative agenda, saying Thursday that he will pressure House Republicans to pass a bill, following the lead of the Senate which passed one in June. "This can and should get done by the end of this year," he said, adding that he expected it to be an area of cooperation with the GOP.

**A2: No Impact To Indo Pak War**

#### Answered in overview – also,

***Escalation is highly probable.***

**Geller 2005** (Daniel S. – Professor and Chair of the Department of Political Science at Wayne State University, The India-Pakistan Conflict: An Enduring Rivalry, Ed. T. V. Paul, p. 99)

In fact, **both the May-July 1999 military engagement** between India and Pakistan over Kashmir **and the crisis of December 2001-June 2002** after the terrorist attack on the Indian Parliament **mirrored the conflict escalation pattern for nuclear-armed states**. Each side initiated troop mobilization and general military alerts, coupled with the evacuation of civilians from border-area villages. **However, the outcome of the future confrontations for India and Pakistan may not adhere to the pattern established by other nuclear dyads. Elements are present in this dyad that were largely absent between other nuclear-armed antagonists and that make the escalation of war more probable. Among those factors are the presence of a contiguous border between India and Pakistan, a history of multiple wars, and an ongoing territorial dispute. These factors**, among others,79 **increase the likelihood that an Indo-Pakistani dispute will turn violent and that the violence will escalate** to war **irrespective of the presence of nuclear weapons**.

***That escalation has a high probability of being nuclear.***

**Raghavan**, Fall-Winter **2001** (Lieutenant General V. R. – former Director General of Military Operations for India, Limited War and Nuclear Escalation in South Asia, The Nonproliferation Review, p. 1)

**The status of India and Pakistan as declared nuclear powers with growing nuclear arsenals has raised the risks of a nuclear exchange between them**, if the two countries engage in a large military conflict. **The political leadership in both countries does not seem to have fully grasped the implications of nuclear weapons** in relation to the ongoing conflict in Jammu and Kashmir. **This conflict could lead to a limited war**, as it has triggered three wars in the past. The risks involved in fighting a limited war over the Kashmir issue and the potential for such a war to escalate into a nuclear exchange are at best inadequately understood, and at worst brushed aside as an unlikely possibility. Despite this official stance, however, **a close examination of Indian and Pakistani military and nuclear doctrine reveals elements that could contribute to the rapid escalation of a limited war to include nuclear weapons**. Strikingly, India and Pakistan have not revealed warfighting doctrines for the post-1998 condition of nuclear weapons readiness. It is not clear, for example, what threats to its security would compel India to declare a state of war with Pakistan. There is also no indication of the circumstances that would induce Pakistan to seek a larger war with India. The political objectives that a limited war might seek to achieve have also not been articulated in official and public discourse in the two countries. This article examines the possibility of limited war between India and Pakistan, and the potential of such a conflict triggering a nuclear war. It examines the considerations that could push each of the two countries to fight a limited war. It discusses how such a war might be waged and the circumstances that would likely precipitate an escalation to a nuclear exchange. The doctrinal beliefs and decisionmaking processes of the two countries are examined to trace the likely escalatory spiral towards a nuclear war. The article concludes that **the probability of a nuclear war between India and Pakistan is high** in the event the two countries engage in a direct military conflict.