# Round 7 Kentucky – UGA FB

# 1NC

## 1NC

### Off 1

#### Interpretation –restrictions must directly prohibit activities currently under the president’s war powers authority – this excludes regulation or oversight

#### Restriction is a prohibition

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be **authorized by any permit or license**.

#### B. Vote Neg – The courts they create don’t mean people stop being detained

#### 1. Limits – Oversight of authority allows a litany of new affs in each area

#### 2. Ground – Restriction ground is the locus of neg prep – their interpretation jacks all core disads

### Off 2

#### Text: The President of the United States should issue an executive order that creates a National Security Court structured under Article III of the United States’ Constitution for the purposes of judicial review of United States’ indefinite detention policy.

#### Solves –

#### Executive orders concerning war powers are common, have the same effect as the plan, and withstand judicial scrutiny

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

### Off 3

#### Obama's capital will force the GOP to quickly cave and end the shutdown

WSJ 10/2/13 ("A GOP Shutdown Strategy," http://online.wsj.com/article/SB10001424052702303464504579107720562837270.html)

President Obama defaulted to his usual strategy Tuesday of denouncing Republicans for the partial government shutdown that began at midnight even as he refuses to negotiate. He's betting that his bully pulpit, amplified by his media echoes, will cause the GOP to blink first.¶ And the truth is that Mr. Obama and the GOP's own "defund ObamaCare" caucus have put Speaker John Boehner and House Republicans in a difficult spot. If they now surrender empty-handed, their Ted Cruz faction will denounce them as sellouts. But the longer they hold out for compromise from an AWOL President, the more chances increase that the public will turn against GOP governance.¶ We opposed this shutdown strategy precisely because the congressional math made this box canyon so clearly inevitable. But now that it's here, the question is what Republicans can do to navigate an honorable exit that accomplishes some of their goals.¶ The strategy of the defund faction seems to be for the House to hold "firm," as Mr. Cruz puts it, and wait for Democrats to break. The public won't notice much inconvenience from the furloughs of 800,000 or so employees in this view. And to the extent they do notice, the voters will blame the President as much as the GOP. Sooner or later Mr. Obama will sue for peace and agree to delay his signature legislative achievement for a year if not longer.¶ That would be great if it worked, though Mr. Obama hardly looked worried on Tuesday as he assailed the "Republican shutdown." He rolled out his usual parade of horribles, including damage to the economy.¶ He's exaggerating the harm, just as he did on the sequester spending cuts in January. The economy doesn't depend on nonessential government spending for growth. And if the showdown ended with serious reforms that reduced Washington's claim on the private economy, it would be worth the political price and help growth.¶ Yet that still leaves the not-so-small matter of what Republicans do if Mr. Obama won't compromise and if the public continues by 2 to 1 to disapprove of using the shutdown to end ObamaCare. The Presidency is a powerful platform, and the executive branch can make the shutdown more onerous if it wants to. Pressure will build on Republicans to break ranks in the kind of unruly retreat that would demoralize their own voters. A long shutdown followed by surrender would be the worst possible result.

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### Presidential war power battles expend capital – it’s immediate and forces a trade-off

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Battles undermine focus and constant pressure on the GOP – that kills budget negotiations

**Milbank 9/27/13 (**Dana**,** Washington Post Opinion Writer, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans. That’s an awfully big “if.” This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning: Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd. But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered. Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone. Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions. But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare. To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after. Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note. In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently. The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.” This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers. Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator. Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### Prolonged shutdown decks global economy

Arcega 10/1/13 (Mil, Voice of America News, "Global Markets Calm on First Day of US Government Shutdown," http://www.voanews.com/content/global-markets-calm-on-first-day-of-us-government-shutdown/1761037.html)

On Tuesday, financial markets, by and large, shrugged off the first U.S. government shutdown in 17 years. Analysts believe the shutdown is likely to be short-lived but others worry a prolonged stand-off could wreak havoc on the global economy. ¶ While the back and forth continued in Washington, “The House has made its position known very clearly," said Republican Speaker of the House John Boehner.¶ “Madame President, it is embarrassing," said Democratic Leader of the Senate Harry Reid.¶ Financial markets around the world watched from the sidelines, waiting for cooler heads to prevail.¶ “I think the market is convinced that a deal eventually will be reached but right now they are really in wait and see mode," said market strategist Mike Ingram.¶ If resolved quickly, many investors believe the economic impact of the government shutdown will be minimal. Investment manager Patrick Armstrong says the danger lies in not knowing when.¶ “The longer it does drag on the more impact it will have, because it will have consequences on consumer confidence, the unemployment rate kicks up as you’ve got government workers who aren’t employed," he said. "And it will probably create a bit more uncertainty about the budget crisis that’s looming at the middle of this month as well."¶ He’s referring to the country’s $16.7 trillion debt.¶ Unless Congress reaches a deal on raising the debt limit this month, the U.S. Treasury says the country will run out of money to pay its debts. ¶ Economist Eric Chaney says the longer the political stand-off continues, the greater the risk that people who hold U.S. Treasury bonds will not get paid. ¶ ¶ “If the government shutdown in the U.S. lasts more than a week, people will start to think that “Okay, the deadline for the debt ceiling, which is around the 17th of October is not going to be met,” he said. "In that case, the risk is a risk of default. And I think in that case, we might have a very negative reaction."¶ If that happens, analysts say the dollar’s value will fall, interest rates will rise and the U.S. could see another credit downgrade. ¶ The prospect of a U.S. default is especially troubling in Asia, where stock prices were rising on manufacturing gains. ¶ South Korean TV newscasters voiced the concerns this way:¶ “If the United States federal government’s temporary shutdown is prolonged, not only America but the world’s economy could be affected negatively.”

#### Global nuclear war

Harris & Burrows 9 (Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the **harmful effects on fledgling democracies** and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which **the potential for** greater **conflict could grow** would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism**’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any **economically-induced drawdown** of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, **acquire additional weapons**, and consider pursuing their own **nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and **broader conflict** if clear red lines between those states involved are not well established. The close proximity of potential **nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on **preemption** rather than defense, potentially leading to **escalating crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in **interstate conflicts** if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

### Off 4

#### Congressional action undermines the state secrete privilege – ends court deference and spills over

Windsor 12 (Lindsay – J.D. candidate and Master of Security Studies candidate at Georgetown University, “IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT”, 2012, 43 Geo. J. Int'l L. 897, lexis)

In contrast to the acknowledged roles of both Congress and the President in foreign affairs matters, the Constitution does not grant the judiciary branch any authority over foreign affairs, and the courts have traditionally been "hesitant to intrude" upon matters of foreign policy and national security. n153 The Supreme Court "has recognized the generally accepted view that foreign policy [is] the province and responsibility of the Executive." n154 Hence, "courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs." n155 This hesitation and reluctance stem from the limited institutional competence of the judiciary in foreign affairs. As the Court wrote in Boumediene v. Bush, "Unlike the President and some designated Members of Congress, neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." n156 Echoing the "sole organ" [\*920] scheme of Curtiss-Wright, the Court later wrote that in foreign affairs matters, "The Judiciary is not suited to [make] determinations that would . . . undermine the Government's ability to speak with one voice in this area." n157 A court should, therefore, give great deference to the Executive's invocation of the state secrets privilege because it inherently involves matters of national security. Nonetheless, deciding cases or controversies before the Court is within its field of expertise. n158 Such cases include separation of powers controversies between federal branches and enforcing checks on executive power. n159 Though a court could not amend the substance of the state secrets privilege, it could amend the procedure for its invocation in one of two ways: pursuant to congressional authorization or by interpreting its own rules of procedure. First, if Congress enacts specific legislation under its Article I powers requiring the President to follow certain procedures in invoking the privilege, then a court could enforce that procedure in a case before it. Second, the Court could reinterpret the procedural requirements for the privilege. The Reynolds Court specifically wrote a court should not always "insist[] upon an examination of the evidence, even by the judge alone, in chambers." n160 But in national security cases implicating core civil liberties, the Court could find that plaintiffs' necessity routinely requires different procedures to satisfy the Court that national security matters are at stake. n16

#### Secrecy is key to the US nuclear deterrent

Green 97 (Tracey – Associate with McNair Law Firm, J.D. – University of South Carolina, “Providing for the Common Defense versus Promoting the General Welfare: the Conflicts Between National Security and National Environmental Policy”, South Carolina Environmental Law Journal, Fall, 6 S.C Envtl. L.J. 137, lexis)

The deployment of nuclear weapons, however, is a DoD action for which secrecy is crucial and, thus, is classified by Executive Order. n59 According to the American policy of deterrence through mutually assured destruction (MAD), nuclear weapons are essential to an effective deterrent. n60 If DoD disclosed the location of these weapons, disclosure would reduce or destroy the deterrent. An adversary could destroy all nuclear weapons with an initial strike, leaving the country exposed to nuclear terror. n61 Additionally, terrorists would know where to strike to obtain material for nuclear blackmail. In short, secrecy regarding nuclear weapons has enormous implications for national security. While the armed services must consider the environmental effects of maintaining nuclear weapons, they cannot release any information regarding the storage of these weapons.

#### Escalates to global nuclear war

**Caves 10** (John P. Jr., Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction – National Defense University, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent”, Strategic Forum, No. 252, http://www.ndu.edu/inss/docUploaded/SF%20252\_John%20Caves.pdf)

Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particu­larly if they emerge at a time when a nuclear-armed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout.

■ A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante.

■ The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position.

■ Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assur­ances. They could compensate by accom­modating U.S. rivals, especially in the short term, or acquiring their own nuclear deter­rents, which in most cases could be accom­plished only over the mid- to long term. A more nuclear world would likely ensue over a period of years.

■ Important U.S. interests could be com­promised or abandoned, or a major war could occur as adversaries and/or the United States miscalculate new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terror­ists alone could inflict.

### 1NC Terrorism

#### No risk of nuclear terror

Mueller 10 (John, professor of political science at Ohio State, Calming Our Nuclear Jitters, Issues in Science and Technology, Winter, <http://www.issues.org/26.2/mueller.html>)

Politicians of all stripes preach to an anxious, appreciative, and very numerous choir when they, like President Obama, proclaim atomic terrorism to be “the most immediate and extreme threat to global security.” It is the problem that, according to Defense Secretary Robert Gates, currently keeps every senior leader awake at night. This is hardly a new anxiety. In 1946, atomic bomb maker J. Robert Oppenheimer ominously warned that if three or four men could smuggle in units for an atomic bomb, they could blow up New York. This was an early expression of a pattern of dramatic risk inflation that has persisted throughout the nuclear age. In fact, although expanding fires and fallout might increase the effective destructive radius, the blast of a Hiroshima-size device would “blow up” about 1% of the city’s area—a tragedy, of course, but not the same as one 100 times greater. In the early 1970s, nuclear physicist Theodore Taylor proclaimed the atomic terrorist problem to be “immediate,” explaining at length “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time he thought it was already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.” Three decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, the likelihood that a group could surmount a series of them quickly becomes vanishingly small. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion. Other routes would-be terrorists might take to acquire a bomb are even more problematic. They are unlikely to be given or sold a bomb by a generous like-minded nuclear state for delivery abroad because the risk would be high, even for a country led by extremists, that the bomb (and its source) would be discovered even before delivery or that it would be exploded in a manner and on a target the donor would not approve, including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence. The terrorist group might also seek to steal or illicitly purchase a “loose nuke“ somewhere. However, it seems probable that none exist. All governments have an intense interest in controlling any weapons on their territory because of fears that they might become the primary target. Moreover, as technology has developed, finished bombs have been out-fitted with devices that trigger a non-nuclear explosion that destroys the bomb if it is tampered with. And there are other security techniques: Bombs can be kept disassembled with the component parts stored in separate high-security vaults, and a process can be set up in which two people and multiple codes are required not only to use the bomb but to store, maintain, and deploy it. As Younger points out, “only a few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” There could be dangers in the chaos that would emerge if a nuclear state were to utterly collapse; Pakistan is frequently cited in this context and sometimes North Korea as well. However, even under such conditions, nuclear weapons would probably remain under heavy guard by people who know that a purloined bomb might be used in their own territory. They would still have locks and, in the case of Pakistan, the weapons would be disassembled. The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years,” but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda’s desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as “academic” in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda’s bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a “nuclear-related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons-related issues.” Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, “If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent.” Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaeda’s nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face.” Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although “it is likely that al Qaeda central has considered the option of using non-conventional weapons,” there is “little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.” She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban’s distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any “threat,” particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.” In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones. Glenn Carle, a 23-year CIA veteran and once its deputy intelligence officer for transnational threats, warns, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed, and miserable opponents that they are.” al Qaeda, he says, has only a handful of individuals capable of planning, organizing, and leading a terrorist organization, and although the group has threatened attacks with nuclear weapons, “its capabilities are far inferior to its desires.” Policy alternatives The purpose here has not been to argue that policies designed to inconvenience the atomic terrorist are necessarily unneeded or unwise. Rather, in contrast with the many who insist that atomic terrorism under current conditions is rather likely— indeed, exceedingly likely—to come about, I have contended that it is hugely unlikely. However, it is important to consider not only the likelihood that an event will take place, but also its consequences. Therefore, one must be concerned about catastrophic events even if their probability is small, and efforts to reduce that likelihood even further may well be justified. At some point, however, probabilities become so low that, even for catastrophic events, it may make sense to ignore them or at least put them on the back burner; in short, the risk becomes acceptable. For example, the British could at any time attack the United States with their submarine-launched missiles and kill millions of Americans, far more than even the most monumentally gifted and lucky terrorist group. Yet the risk that this potential calamity might take place evokes little concern; essentially it is an acceptable risk. Meanwhile, Russia, with whom the United States has a rather strained relationship, could at any time do vastly more damage with its nuclear weapons, a fully imaginable calamity that is substantially ignored. In constructing what he calls “a case for fear,” Cass Sunstein, a scholar and current Obama administration official, has pointed out that if there is a yearly probability of 1 in 100,000 that terrorists could launch a nuclear or massive biological attack, the risk would cumulate to 1 in 10,000 over 10 years and to 1 in 5,000 over 20. These odds, he suggests, are “not the most comforting.” Comfort, of course, lies in the viscera of those to be comforted, and, as he suggests, many would probably have difficulty settling down with odds like that. But there must be some point at which the concerns even of these people would ease. Just perhaps it is at one of the levels suggested above: one in a million or one in three billion per attempt.

#### Zero impact – no acquisition.

Leitenberg 6 (Milton, Senior research scholar at the University of Maryland, Trained as a Scientist and Moved into the Field of Arms Control in 1966, First American Recruited to Work at the Stockholm International Peace Research Institute, Affiliated with the Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, Senior Fellow at CISSM, http://www.commondreams.org/views06/0217-27.htm)

So what substantiates the alarm and the massive federal spending on bioterrorism? There are two main sources of bioterrorism threats: first, from **countries developing bioweapons**, and second, from terrorist groups that might **buy**, **steal** or **manufacture** them. The first threat is **declining**. U.S. intelligence estimates say the number of countries that conduct offensive bioweapons programs has fallen in the last 15 years from **13 to nine**, as South Africa, Libya, Iraq and Cuba were dropped. There is no publicly available evidence that even the most hostile of the nine remaining countries — Syria and Iran — are ramping up their programs. And, despite the fear that a hostile nation could help terrorists get biological weapons, **no country** has ever done so — even nations known to have trained terrorists. It's more difficult to assess the risk of terrorists using bioweapons, especially because the perpetrators of the anthrax mailings have not been identified. If the perpetrators did not have access to assistance, materials or knowledge derived from the U.S. biodefense program, but had developed such sophistication independently, that would change our view of what a terrorist group might be capable of. So far, however, the **history** of terrorist experimentation with bioweapons has shown that **killing large numbers** of people isn't as easy as we've been led to believe. Followers of Bhagwan Shree Rajneesh succeeded in culturing and distributing salmonella in Oregon in 1984, sickening 751 people. Aum Shinrikyo failed in its attempts to obtain, produce and disperse anthrax and botulinum toxin between 1990 and 1994. Al Qaeda tried to develop bioweapons from 1997 until the U.S. invasion of Afghanistan in 2001, but declassified documents found by U.S. forces outside Kandahar indicate the group never obtained the necessary pathogens. At a conference in Tokyo this week, bioterrorism experts called for new programs to counter the possibility that terrorists could genetically engineer new pathogens. Yet three of the **leading scientists** in the field have said there is no likelihood at this time that a terrorist group could perform such a feat. The real problem is that a decade of widely broadcast discussion of what it takes to produce a bioweapon has provided terrorists with at least a rough roadmap. Until now, no terrorist group has had professionals with the skills to exploit the information — but the publicity may make it easier in the future. There is no military or strategic justification for imputing to real-world terrorist groups capabilities that they do not possess. Yet no risk analysis was conducted before the $33 billion was spent. Some scientists and politicians privately acknowledge that the threat of bioterror attacks is **exaggerated**, but they argue that spending on bioterrorism prevention and response would be inadequate without it. But the persistent hype is not benign. It is almost certainly the single major factor in provoking interest in bioweapons among terrorist groups. Bin Laden's deputy, the Egyptian doctor Ayman Zawahiri, wrote on a captured floppy disk that "we only became aware of (bioweapons) when the enemy drew our attention to them by repeatedly expressing concerns that they can be produced simply with easily available materials." We are creating our worst nightmare.

#### Impossible to eradicate AQAP in the short-term—reform efforts take too long to take root

Ng 11 (Aaron, International Centre for Political Violence and Terrorism Research, "In Focus: Al Qaeda in the Arabian Peninsula (AQAP) and the Yemen

Uprisings," http://www.pvtr.org/pdf/CTTA/2011/CTTA-June11.pdf)

To eradicate the problem of terrorism in Yemen, the United States and the international community must view the solution through the prism of state building. Yemen has, for many years, been on the brink of state failure. The Middle East revolts offer hope for the Arab countries to build democratic governments and create opportunities for the population that would curb Islamic extremism and terrorism. Any new regime in Yemen must improve governance, increase its social service in rural areas, run an effective public campaign against terrorism, and respond to the needs of the tribes. However, such reforms would require time to take root and be institutionalized. Thus any reforms by the regime will have little or no direct threat to AQAP in the near future. Any new regime in Yemen will not drastically alter the environment in which the AQAP currently thrives in. The group will continue to remain the most active branch of the Al Qaeda global terror network and the most serious threat to the West in the near future.

#### AQAP low – no territory, no attacks

Baron 13 [Aaron, correspondent with CSMonitor, 8/7 “With AQAP's strategy unclear, Yemen struggles to respond,” Christian Science Monitor <http://www.csmonitor.com/World/Middle-East/2013/0807/With-AQAP-s-strategy-unclear-Yemen-struggles-to-respond>]

In light of the raised alert level, focus is on AQAP’s potential offensive moves. Since losing control of ground they once held, they’ve made few, if any, concrete efforts toward establishing governance elsewhere and, despite the absence of large scale attacks, they’ve still been blamed for a series of assassinations of Yemeni security officials that have occurred across the country. Analysts are reluctant to speak with much certainty regarding the current threat.

The Yemeni government, while stressing its commitment to countering the threat and its belief in its severity, appears to think that the evacuation of the US and British embassy's staff was a bit of an overreaction.

"Yemen has taken all necessary precautions to ensure the safety and security of foreign missions in the capital Sanaa," the Yemeni embassy in Washington said in a statement Tuesday. "While the government of Yemen appreciates foreign governments' concern for the safety of their citizens, the evacuation of embassy staff serves the interests of the extremists and undermines the exceptional cooperation between Yemen and the international alliance against terrorism."

#### AQAP threat in Yemen is exaggerated—small membership, non-ideological affiliation with a small number of tribes

MEFN 11/11/11 (Middle East Futures Network, "The Arab Spring and the looming threat of disintegration in Yemen," http://mefn.org/2011/11/the-arab-spring-and-the-looming-threat-of-disintegration-in-yemen/)

Externally, exaggerated accounts of AQAP’s presence and strength in Yemen have discouraged Western powers, in particular the United States, to pressure President Saleh to comply with protesters’ demands. Western officials tend to see in Saleh a staunch ally in their fight against Islamic extremism, and thus they fear that his sudden departure will create a power vacuum which AQAP will then fill. And the recent occupation of Zinjibar, where AQAP joined forces with local militants in a group calling itself Partisans of Islamic Law, only reinforced this rather misguided view in various Western capitals. The fact of the matter, however, is that AQAP’s core membership, according to various estimates, does not pass 400 in Yemen, and it seems to have been cultivating a weak network of support with certain politically ambitious tribes in the southern governorates of Abyan, Shebwa, Hadramawt, Aden, and Lajh. As such, the rather temporal cooperation between tribes and AQAP ought to be understood as a coalition of necessity against the government of Ali Abdullah Saleh and on the basis of the logic of ‘the enemy of my enemy is my friend’ and not ideological affiliations. The very fact that local tribes eventually turned against Partisans of Islamic Law and joined government forces in an effort to recapture Zanjibar is evidence of this. It is therefore more plausible that President Saleh, in a similar fashion to his counterparts in Pakistan, has been manipulating Washington’s paranoia with AQAP to his own advantage, seeking to consolidate his power. Such assertion becomes all the more likely when one takes into account the timing of the death of Anwar al-Awlaki. Given that Washington was tipped-off about his whereabouts at a time when Saleh’s government was at its weakest point – right after his return from Saudi Arabia – there is the suggestion that Sana had been using al-Awlaki as a bargaining chip.

#### Plan causes a compensatory shift to drone strikes – that’s worse and causes drone prolif

RT, 13 (5/3, “US targeted drone killings used as alternative to Guantanamo Bay - Bush lawyer.” http://rt.com/usa/obama-using-drones-avoid-gitmo-747/)

A lawyer who was influential in the United States’ adoption of unmanned aircraft has spoken out against the Obama administration for what he perceives as using drones as an alternative to capturing suspects and sending them to Guantanamo Bay prison camp. John Bellinger, the Bush administration attorney who drafted the initial legal specifications regarding drone killings after the September 11, 2001 terrorist attacks, said that Bush’s successor has abused the framework, skirting international law for political points. “This government has decided that instead of detaining members of Al-Qaeda [at Guantanamo Bay prison camp in Cuba] they are going to kill them,” Bellinger told a conference at the Bipartisan Policy Center, as quoted by The Guardian. Earlier this week Obama promised to reignite efforts to close Guantanamo Bay, where prisoners have gone on a hunger strike to protest human rights violations and wrongful incarcerations. They were his first in-depth remarks on the subject since 2009, when Obama had just recently been elected to office after campaigning on a promise to close the facility. But international law is equally suspect of drone strikes. Almost 5,000 people are thought to have been killed by roughly 300 US attacks in four countries, according to The Guardian. Bellinger maintained that the government has justified strikes throughout Pakistan and Yemen by using the 'War on Terror' as an excuse. “We are about the only country in the world that thinks we are in an armed conflict with Al-Qaeda,” he said. “We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law." “These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem,” he added. Of the 166 detainees at Guantanamo Bay, 86 have been cleared for release by a commission made up of officials from the Department of Homeland Security, Joint Chiefs of Staff and other influential government divisions. White House officials have justified the use of unmanned aircraft by saying the US is at war with Al-Qaeda and that those targeted in drone attacks were planning attacks on America. In the future, experts say, future countries could use the same rationale to explain their own attacks. “Countries under attack are the ones that get to decide whether or not they are at war,” said Philip Zelikow, a member of the White House Intelligence Advisory Board. While the conversation around drones is certainly a sign of things to come, Hina Shamsi of the American Civil Liberties Union encouraged Americans to think about the human rights issues posed by the new technology. It could be another long process, if the Guantanamo Bay handling is any indication. “The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programs,” Shamsi said. “Few things are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties.”

#### Drone prolif escalates and destroys deterrence without strong norms—multiple scenarios for conflict

Michael J. Boyle 13, Assistant Professor, Political Science – La Salle, International Affairs 89: 1 (2013) 1–29

An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125 A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities. The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

### 1NC Legitimacy

#### NSC bypasses the 6th amendment and evidence rules.

Rittgers 9 [David Rittgers is an attorney and decorated former Army Special Forces officer who served three tours in Afghanistan and is now a legal policy analyst at the Cato Institute; “National Security Court: Reinventing the Wheel, Poorly”; 9/21/2009; <http://www.cato.org/publications/commentary/national-security-court-reinventing-wheel-poorly>]

In Sulmasy’s proposed “national security court,” suspected terrorists would be tried in front of a panel of three federal judges, violating their Sixth Amendment right to a jury trial. Defendants would be detained, tried, and imprisoned on military bases, a practice out of step with a federal statutory bar to the military’s direct participation in domestic law enforcement. The Bush administration kept its military commissions more palatable for the public by keeping American citizens and aliens detained in the United States out of Guantanamo. Sulmasy proposes that we bring Gitmo home and open its doors to citizens and non-citizens alike. Sulmasy does endeavor to solve one perceived problem with the military commissions that military lawyers have expressed to me: few courts-martial deal with contested felony charges, so most military lawyers have little courtroom experience. We are now entrusting them with the biggest trials of our time. Sulmasy proposes to fix this by using veteran federal prosecutors instead. The catch? The defense counsel would be those same military lawyers he says are not up to the task of prosecuting the case, unless the defendant could afford his own attorney with a high-level security clearance. Sulmasy also reduces the core protections of defendants by barring the use of the exclusionary rule, the doctrine that bars evidence collected illegally or otherwise in violation of the law. Without the prospect of excluding evidence collected in ways barred by federal courts, there is no incentive for law enforcement officers to follow any rules. Looking for terrorists? No warrant? No problem. Sulmasy attempts to allay fears of lost civil liberties by claiming that this court’s jurisdiction is limited to “international terrorists” such as al Qaeda and their ilk. In this, he falls into the trap that Benjamin Wittes, another proponent of national security courts, warns us of: “a slippery slope in which what they approve for Khalid Sheikh Mohammed today the government will use for someone like Jose Padilla tomorrow, a minor drug offender next week, and a political dissenter five years from now.” Sulmasy makes the leap from Khalid Sheikh Mohammed (a non-citizen terrorist organizer) to Padilla (a citizen terrorist operative) immediately, leaving the rest of the downhill slide to broader jurisdiction to an aggressive prosecutor’s argument or a subsequent change in the court’s authorizing statute. After all, with an increasingly connected world, the definition of “international terrorist” is an elastic term. Would someone have to have orders from abroad to be “international”? If so, then Jose Padilla, alleged “dirty bomb” plotter, certainly qualifies. What about two American citizens who traveled overseas to help suicide bombers planning to infiltrate Iraq and attack American troops? What about a native-born American citizen who met with like-minded extremists in Canada and sent surveillance videos of potential targets to a radical in London? Federal courts dealt with all of the above. No special court needed. The transition to prosecuting drug charges in a national security court is no great leap either. We already have a federal narco-terrorism statute, a long-standing “war on drugs,” and a government ad campaign telling us that buying drugs supports terrorism financing. For all of the courage that Sulmasy exercises in giving a specialized court extraordinary power, he shies away from letting terrorists lose when they unleash a tirade in the courtroom. While he claims that it is necessary to close sessions of court so that “hearings do not become propaganda tools for the enemy,” this is part and parcel of letting civil society defeat violent extremists in the marketplace of ideas. The disgruntled student who drove through the center of the University of North Carolina and wounded nine had such an outburst (which you probably wouldn’t know about unless you read it here) and is now serving a minimum of 26 years in a state prison. At his sentencing, Shoe Bomber Richard Reid slandered the court and declared that he was at war with the United States. Federal District Judge William Young told Reid, “You are not a soldier in any war. You are a terrorist. To give you that reference, to call you a soldier gives you far too much stature.” Reid received three life sentences plus 110 years, which ended the debate rather firmly. Sulmasy tries to work up the reader with potential legal fallout from the Boumediene decision, alarming us with the prospect of civilian courts requiring soldiers and Marines on the battlefield to get a search warrant before they enter an al Qaeda safehouse. The Supreme Court has held that the Fourth Amendment protection against unreasonable searches and seizures does not have any extraterritorial application, so this simply doesn’t hold water.

#### Hegemony isn’t true – data’s on our side

Fettweis 11 (Christopher J., Department of Political Science, Tulane University, “Free Riding or Restraint? Examining European Grand Strategy”, 9/26, Comparative Strategy, 30:316–332, Ebsco)

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

#### The aff can’t solve – the executive circumvents – in future crises the President justifies skirting the law no matter what it says

Fatovic, 9 – Director of Graduate Studies for Political Science at Florida International University (Clement, *Outside the Law: Emergency and Executive Power.* pp 1-5.)

But the problem for any legal order is that law aims at fixity in a world beset by flux. The greatest challenge to legally established order comes not from the resistance of particular groups or individuals who object to any of its substantive aims but from the unruliness of the world itself. The stability, predictability, and regularity sought by law eventually runs up against the unavoidable instability, unpredictability, and irregularity of the world. Events constantly threaten to disrupt and destabilize the artificial order established by law. Emergencies-sudden and extreme occurrences such as the devastating terrorist attacks of September 11, an overwhelming natural disaster like Hurricane Katrina, a pandemic outbreak of avian flu, a catastrophic economic collapse, or a severe food shortage, to name just a few-dramatize the limitations of the law in dealing with unexpected and incalculable contingencies. Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in spite of its aspiration to comprehensiveness. When such events arise, the responsibility for formulating a response usually falls to the executive. The executive has a unique relationship to the law and the order that it seeks, especially in a liberal constitutional system committed to the rule of law. Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances. But while the executive is expected to uphold and follow the law in normal times, emergencies sometimes compel the executive to exceed the strict letter of the law. Given the unique and irrepressible nature of emergencies, the law often provides little effective guidance, leaving executives to their own devices. Executives possess special resources and characteristics that enable them to formulate responses more rapidly, flexibly, and decisively than can legislatures, courts, and bureaucracies. Even where the law seeks to anticipate and provide for emergencies by specifying the kinds of actions that public officials are permitted or required to take, emergencies create unique opportunities for the executive to exercise an extraordinary degree of discretion. And when the law seems to be inadequate to the situation at hand, executives often claim that it [is] necessary to go beyond its dictates by consolidating those powers ordinarily exercised by other branches of government or even by expanding the range of powers ordinarily permitted. But in seeking to bring order to the chaos that emergencies instigate, executives who take such action also bring attention to the deficiencies of the law in maintaining order, often with serious consequences for the rule of law. The kind of extralegal action that executives are frequently called upon to take in response to emergencies is deeply problematic for liberal constitutionalism, which gives pride of place to the rule of law, both in its self-definition and in its standard mode of operation. If emergencies test the limits of those general and prospective rules that are designed to make governmental action limited and predictable, that is because emergencies are largely unpredictable and potentially limitless.1 Yet the rule of law, which has enjoyed a distinguished position in constitutional thought going back to Aristotle, has always sought to place limits on what government may do by substituting the arbitrariness and unpredictability of extemporary decrees with the impartiality and regularity of impersonal rules promulgated in advance. The protection of individual freedom within liberal constitutionalism has come to be unimaginable where government does not operate according to general and determinate rules.2 The rule of law has achieved primacy within liberal constitutionalism because it is considered vital to the protection of individual freedom. As Max Weber famously explained of the modern bureaucratic state, legitimacy in the liberal state is not based on habitual obedience to traditions or customs sanctified by time or on personal devotion to a charismatic individual endowed with superhuman gifts but on belief in the legality of a state that is functionally competent in administering highly impersonal but "rational rules." 3 In fact, its entire history and aim can be summed up as an attempt to curtail the kind of discretionary action associated with the arbitrary "rule of men"-by making government itself subject to the law. The apparent primacy of law in liberal constitutionalism has led some critics to question its capacity to deal with emergencies. Foremost among these critics is German political and constitutional theorist Carl Schmitt, who concluded that liberalism is incapable of dealing with the "exception" or "a case of extreme peril" that poses "a danger to the existence of the state" without resorting to measures that contradict and undermine its commitments to the rule of law, the separation of powers, the preservation of civil liberties, and other core values.4 In Schmitt's view, liberalism is wedded to a "normativistic" approach that seeks to regulate life according to strictly codified legal and moral rules that not only obscure the "decisionistic" basis of all law but also deny the role of personal decision-making in the interpretation, enforcement, and application of law. 5 Because legitimacy in a liberal constitutional order is based largely on adherence to formal legal procedures that restrict the kinds of actions governments are permitted to take, actions that have not been specified or authorized in advance are simply ruled out. According to Schmitt, the liberal demand that governmental action always be controllable is based on the naive belief that the world is thoroughly calculable. 6 If it expects regularity and predictability in government, it is because it understands the world in those terms, making it oblivious to the problems of contingency. Not only does this belief that the world is subject to a rational and predictable order make it difficult for liberalism to justify actions that stand outside that order, it also makes it difficult for liberalism even to acknowledge emergencies when they do arise. But Schmitt's critique goes even further than this. When liberal constitutionalism does acknowledge the exception, its commitment to the rule of law forces it to choose between potential suicide if it adheres strictly to its legalistic ideals and undeniable hypocrisy if ignores those ideals? Either way, the argument goes, emergencies expose the inherent shortcomings and weaknesses of liberalism. It is undeniable that the rule of law occupies a privileged position within liberal constitutionalism, but it is a mistake to identify liberal constitutionalism with an excessively legalistic orientation that renders it incapable of dealing effectively with emergencies. Schmitt is correct in pointing out that liberal normativism seeks to render government action as impersonal and predictable as possible in normal circumstances, but the history of liberal 'I· constitutional thought leading up to the American Founding reveals that its main proponents recognized the need to supplement the rule of law with a personal element in cases of emergency. The political writings of John Locke, David Hume, William Blackstone, and those Founders who advocated a strong presidency indicate that many early liberal constitutionalists were highly attuned to the limitations of law in dealing with events that disrupt the regular order. They were well aware that rigid adherence to the formalities of law, both in responding to emergencies and in constraining the official who formulates the response, could undermine important substantive aims and values, thereby sacrificing the ends for the means. Their reflections on the chronic instability and irregularity of politics reveal an appreciation for the inescapable-albeit temporary-need for the sort of discretionary action that the law ordinarily seeks to circumscribe. As Locke explained in his classic formulation, that "it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick means that the formal powers of the executive specified in law must be supplemented with "prerogative," the "Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it." 8 Unlike the powers of the Hobbesian sovereign, which are effectively absolute and unlimited, the exercise of prerogative is, in principle, limited in scope and duration to cases of emergency. The power to act outside and even against the law does not mean that the executive is "above the law”—morally or politically unaccountable—but it does mean that executive power is ultimately irreducible to law.

#### NSC is worse for legal fairness – evidence rules would be relaxed

Vladeck 9 [STEPHEN I.VLADECK, Associate Professor, American University Washington College of Law; “THE CASE AGAINST NATIONAL SECURITY COURTS”; 3/31/2009; http://willamette.edu/wucl/resources/journals/review/pdf/Volume%2045/WLR45-3\_Vladeck.pdf]

By far the more controversial—and comprehensive—set of proposals for a national security court concern criminal prosecutions of suspected terrorists. Along with the white paper by McCarthy and Velshi (relied upon by Mukasey), articles by Commander Glenn Sulmasy and Professor Amos Guiora have expressly called for prosecutions by hybrid courts as the best way forward for incapacitating terrorism suspects, and as vastly preferable to trials either in Article III courtrooms or in military commissions under the MCA.40 Unlike preventive detention, where there are fewer established norms from which the proposals can (and do) deviate, the proposals for a national security court for criminal prosecutions are replete with departures from the traditional criminal process. These distinctions generally run along two axes: the nature of the evidence that may be introduced (both by the government and by the detainee), and the means by which that evidence is reviewed (including the prospect that certain secret evidence be withheld from the detainee). Most proposals therefore start with perceived constraints of the Article III process, including: the right to confront witnesses under the Sixth Amendment’s Confrontation Clause; the exclusion of hearsay evidence and evidence obtained through coercion; the right to selfrepresentation; and the right to a trial by a jury of the defendant’s peers.41 Emphasizing these constraints, proponents of national security courts suggest that the Article III courts simply are not in a position to adequately handle such cases, and that any attempt to do so risks long-term damage to the civilian criminal justice system as a whole.42 A national security court, in contrast, would be marked by relaxed evidentiary rules, including the ability to introduce hearsay testimony and perhaps even evidence that is produced by governmental coercion.43 As importantly, the government would also be able, under most proposals, to use classified information as evidence without fully disclosing such to the defendant. Otherwise, as McCarthy and Velshi describe in their proposal: [[“]][P]eople who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so.44[[”]] Similarly, but in somewhat more detail, Professor Guiora also proposes that national security courts have the ability to consider classified information without disclosure to the defendant: [[“]][I]ntelligence information would be presented in camera by the prosecutor and a representative of the intelligence services who would be subject to rigorous cross-examination by the court. The judges who would sit on the domestic terror courts would be trained in understanding intelligence information. In addition, the bench would be expected to fulfill a “double role”—that of factfinder and defense counsel alike. As the latter will be barred from attending the hearings when intelligence information is submitted, the domestic terror courts would have to proactively engage the prosecutor. The burden on the court would be enormously significant because the defendant, who would not be present, would not have counsel representing him with respect to the submission of intelligence information into the record.45[[”]] In the process, these proposals bemoan as hopelessly inadequate the provisions of the Classified Information Procedures Act (CIPA),46 which prescribe procedures for the use of classified information in criminal proceedings. The criticisms rest on two separate grounds: First, proponents of national security courts view CIPA as too constraining substantively—as too greatly infringing upon the government’s ability to use secret evidence in the abstract. Second, the proposals also view CIPA as an insufficient protection for the government’s interest in keeping classified information classified—as insufficiently protecting against the disclosure of such information by the defendant.

#### Detention doenst spillover to warming – China and India wont listen to us because of it.

#### Warming inevitable and not anthropogenic.

**Bell 3-19** [Larry, climate, energy, and environmental writer for Forbes, University of Houston full/tenured Professor of Architecture; Endowed Professor of Space Architecture; Director of the Sasakawa International Center for Space Architecture; Head of the Graduate Program in Space Architecture; former full Professor/ Head of the University of Illinois Industrial Design Graduate Program; Associate Fellow, American Institute for Aeronautics and Astronautics, “The Feverish Hunt For Evidence Of A Man-Made Global Warming Crisis” http://www.forbes.com/sites/larrybell/2013/03/19/the-feverish-hunt-for-evidence-of-a-man-made-global-warming-crisis/2/]

Indeed, climate really does change without any help from us, and we can be very grateful that it does. Over the past 800,000 years, much of the Northern Hemisphere has been covered by ice up to miles thick at regular intervals lasting about 100,000 years each. Much shorter interglacial cycles like our current one lasting 10,000 to 15,000 years have offered reprieves from bitter cold.¶ And yes, from this perspective, current temperatures are abnormally warm. By about 12,000 to 15,000 years ago Earth had warmed enough to halt the advance of glaciers and cause sea levels to rise, and the average temperature has held fairly constant ever since, with brief intermissions.¶ Although temperatures have been generally mild over the past 500 years, we should remember that significant fluctuations are still normal. The past century has witnessed two distinct periods of warming. The first occurred between 1900 and 1945, and the second, following a slight cool-down, began quite abruptly in 1975. That second period rose at quite a constant rate until 1998, and then stopped and began falling again after reaching a high of 1.16ºF above the average global mean.¶ But What About Those “Observed” Human Greenhouse Influences?¶ The IPCC stated in its last 2007 Summary for Policymaker’s Report that “Most of the observed increase in globally averaged temperature since the mid-20th century [which is very small] is very likely due to the observed increase in anthropogenic [human-caused] greenhouse gas concentrations.” And there can be no doubt here that they are referring to CO2, not water vapor, which constitutes the most important greenhouse gas of all. That’s because the climate models don’t know how to “observe” it, plus there aren’t any good historic records to enable trends to be revealed.¶ Besides, unlike carbon, there is little incentive to attach much attention to anthropogenic water vapor. After all, no one has yet figured out a way to regulate or tax it.¶ A key problem in determining changes and influences of water vapor concentrations in the Earth’s atmosphere is that they are extremely variable. Differences range by orders of magnitude in various places. Instead, alarmists sweep the problem to one side by simply calling it a CO2 “feedback” amplification effect, always assuming that the dominant feedback is “positive” (warming) rather than “negative” (cooling). In reality, due to clouds and other factors, those feedbacks could go both ways, and no one knows for sure which direction dominates climate over the long run.¶ Treating water vapor as a known feedback revolves around an assumption that relative humidity is a constant, which it isn’t. Since it is known to vary nearly as widely as actual water vapor concentrations, no observational evidence exists to support a CO2 warming amplification conclusion.¶ But let’s imagine that CO2 is the big greenhouse culprit rather than a bit-player, and that its influences are predominately warming. Even if CO2 levels were to double, it would make little difference. While the first CO2 molecules matter a lot, successive ones have less and less effect. That’s because the carbon that exists in the atmosphere now has already “soaked up” its favorite wavelengths of light, and is close to a saturation point. Those carbon molecules that follow manage to grab a bit more light from wavelengths close to favorite bands, but can’t do much more…there simply aren’t many left-over photons at the right wavelengths. For those of you who are mathematically inclined, that diminishing absorption rate follows a logarithmic curve.¶ Who Hid the Carbon Prosecuting Evidence?¶ Since water vapor and clouds are so complex and difficult to model, their influences are neglected in IPCC reports. What about other evidence to support an IPCC claim that “most” mid-century warming can “very likely” be attributed to human greenhouse emissions? Well, if it’s there, it must me very well hidden, since direct measurements seem not to know where it is.¶ For example, virtually all climate models have predicted that if greenhouse gases caused warming, there is supposed to be a telltale “hot spot” in the atmosphere about 10 km above the tropics. Weather balloons (radiosondes) and satellites have scanned these regions for years, and there is no such pattern. It wasn’t even there during the recent warming spell between 1979 (when satellites were first available) and 1999.¶ How have the committed greenhouse zealots explained this? They claim that it’s there, but simply hidden by “fog in the data”…lost in the statistical “noise”. Yet although radiosondes and satellites each have special limitations, their measurements show very good agreement that the “human signature” doesn’t exist. Suggestions to the contrary are based upon climate model data outputs which yield a wide range of divergence and uncertainty…an example of garbage in, gospel out.

#### No impact to warming

Taylor 117/27/2011 [James Taylor, senior fellow for environment policy at The Heartland Institute and managing editor of Environment & Climate News “New NASA Data Blow Gaping Hole In Global Warming Alarmism,” http://www.forbes.com/sites/jamestaylor/2011/07/27/new-nasa-data-blow-gaping-hold-in-global-warming-alarmism/]

NASA satellite data from the years 2000 through 2011 show the Earth’s atmosphere is allowing far more heat to be released into space than alarmist computer models have predicted, reports a new study in the peer-reviewed science journal Remote Sensing. The study indicates far less future global warming will occur than United Nations computer models have predicted, and supports prior studies indicating increases in atmospheric carbon dioxide trap far less heat than alarmists have claimed. Study co-author Dr. Roy Spencer, a principal research scientist at the University of Alabama in Huntsville and U.S. Science Team Leader for the Advanced Microwave Scanning Radiometer flying on NASA’s Aqua satellite, reports that real-world data from NASA’s Terra satellite contradict multiple assumptions fed into alarmist computer models. “The satellite observations suggest there is much more energy lost to space during and after warming than the climate models show,” Spencer said in a July 26 University of Alabama press release. “There is a huge discrepancy between the data and the forecasts that is especially big over the oceans.” In addition to finding that far less heat is being trapped than alarmist computer models have predicted, the NASA satellite data show the atmosphere begins shedding heat into space long before United Nations computer models predicted. The new findings are extremely important and should dramatically alter the global warming debate. Scientists on all sides of the global warming debate are in general agreement about how much heat is being directly trapped by human emissions of carbon dioxide (the answer is “not much”). However, the single most important issue in the global warming debate is whether carbon dioxide emissions will indirectly trap far more heat by causing large increases in atmospheric humidity and cirrus clouds. Alarmist computer models assume human carbon dioxide emissions indirectly cause substantial increases in atmospheric humidity and cirrus clouds (each of which are very effective at trapping heat), but real-world data have long shown that carbon dioxide emissions are not causing as much atmospheric humidity and cirrus clouds as the alarmist computer models have predicted. The new NASA Terra satellite data are consistent with long-term NOAA and NASA data indicating atmospheric humidity and cirrus clouds are not increasing in the manner predicted by alarmist computer models. The Terra satellite data also support data collected by NASA’s ERBS satellite showing far more longwave radiation (and thus, heat) escaped into space between 1985 and 1999 than alarmist computer models had predicted. Together, the NASA ERBS and Terra satellite data show that for 25 years and counting, carbon dioxide emissions have directly and indirectly trapped far less heat than alarmist computer models have predicted. In short, the central premise of alarmist global warming theory is that carbon dioxide emissions should be directly and indirectly trapping a certain amount of heat in the earth’s atmosphere and preventing it from escaping into space. Real-world measurements, however, show far less heat is being trapped in the earth’s atmosphere than the alarmist computer models predict, and far more heat is escaping into space than the alarmist computer models predict. When objective NASA satellite data, reported in a peer-reviewed scientific journal, show a “huge discrepancy” between alarmist climate models and real-world facts, climate scientists, the media and our elected officials would be wise to take notice. Whether or not they do so will tell us a great deal about how honest the purveyors of global warming alarmism truly are.

#### No disease can cause human extinction – they either kill their hosts too quickly or aren’t lethal

**Posner 05** (Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extiinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.

#### Doesn’t solve equality because it creates a separate branch

Sloan et al 8 [Virginia E. Sloan and the panel of The Constitution Project, think tank specializing in constitutional law cases; “A CRITIQUE OF “NATIONAL SECURITY COURTS””; 6/23/2008; http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf]

National security courts for criminal prosecutions are not just unnecessary; they are also dangerous. They run the risk of creating a separate and unequal criminal justice system for a particular class of suspects,6 who will be brought before such specialized courts based on the very allegations they are contesting. Such a system undermines the presumption of innocence for these defendants, and risks a broader erosion of defendants’ rights that could spread to traditional Article III trials.7 It was Justice Frankfurter who wrote that “It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.”8 Committee members strongly believe that the shadow of terrorism must not be the basis for abandoning these fundamental tenets of justice and fairness. In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

#### Those things are specifically violations to due process

Paust 8 [Jordan J. Paust is the Mike & Teresa Baker Law Center Professor at the University of Houston, a former U.S. Army JAG officer and member of the faculty of the Judge Advocate General’s School; “The Case Against a National Security Court”; October 23, 2008; http://jurist.law.pitt.edu/forumy/2008/10/case-against-national-security-court.php]

As documented in Beyond the Law and recognized by the Supreme Court in Hamdan, violations of customary rights to due process would include: (1) preclusion of the accused and defense counsel from learning what evidence was presented in closed hearings, (2) admission of hearsay evidence, (3) admission of unsworn statements, (4) denial of access by an accused and defense counsel to evidence in the form of classified information, (5) denial of confrontation of all witnesses against an accused, (6) use of “evidence obtained through coercion,” (7) denial of the right to be tried in one’s presence (absent disruptive conduct or consent), and (8) denial of review by a competent, independent, and impartial court of law (i.e., an Article III court). It seems unavoidable that a special national security court with special procedures that deviate from the federal rules of criminal procedure would not be designed to enhance fairness, fully meet bilateral and multilateral treaty requirements of equality of treatment, or provide more general equal protection of the law to criminal accused.

# 2NC Round 7

## SS DA

### AT: Add-On

#### U.S. policy has no effect on human rights --- past rejection of international norms proves --- other states don’t pay attention

Moravcisk 02 [Andrew, Professor of International Politics at Princeton, “Why is US Human Rights Policy So Unilateralist?” Multilateralism & US Foreign Policy]

Yet little evidence suggests a close link between U.S. behavior and international norms¸ let alone domestic democratizations. Everywhere in the world, human rights norms have spread without much attention to U.S. domestic policy. Under the European Convention on Human Rights, the Europeans have established the most effective formal system for supranational judicial review of human rights claims, based in Strasbourg, without U.S. participation in the wake of the “third wave” of democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without paying much attention to U.S. domestic practice. Indeed, emerging democracies in the Western Hemisphere are following Europe’s lead in ratifying and accepting compulsory jurisdiction of a regional human rights court, while ignoring U.S. unwillingness to ratify the American Convention on Human Rights, let alone accept jurisdiction of a supranational court. One might argue with equal plausibility that the pride of Latin American democracies in full adherence to the American Convention on Human Rights is strengthened by the unwillingness of the United States, Canada, Mexico, and the stable democracies in the Anglophone Caribbean to adhere. Likewise, 191 countries have ratified the CRC in record time without waiting to see what the United States would do. There is little evidence that Rwandan, Serbian, or Iraqi leaders would have been more humane if the United States had submitted to more multilateral human rights commitments. The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. In sum, the consequences of U.S. nonadherence to global norms, while signaling a weakening in theory, is probably of little import in practice.

## Politics

### 2NC Impact Wall

#### Decks US cred, global econ and military power

Ornstein 13 (Norman, resident scholar at the American Enterprise Institute, "Showdowns and Shutdowns," Sept. 1, http://www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama)

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -- with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, with devastating consequences for American credibility and the international economy.¶ Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. Avoiding this end-game bargaining will require the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -- even probability -- of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

#### Growth and globalization are key to solve disease–––enables diffusion of good health practices and knowledge globally that prevent outbreaks

**Mahmoud et al 6** (Adel, Senior Molecular Biologist in the Woodrow Wilson School of Public and International Affairs – Princeton University, Former President – Merck Vaccines, The Impact of Globalization on Infectious Disease Emergence and Control: Exploring the Consequences and Opportunities,” <http://www.nap.edu/openbook.php?record_id=11588&page=80>)

Changes in travel and trade and the disruption of economic and cultural norms have accelerated and made it much more difficult to control the emergence and spread of infectious diseases, as described in Chapters [1](http://www.nap.edu/openbook.php?record_id=11588&page=21#p2000e6299970021001)and [2](http://www.nap.edu/openbook.php?record_id=11588&page=49#p2000e6299970049001) of this report. Even as progress is made, the public health community will likely encounter further setbacks, such as growing antimicrobial resistance. Yet there is a positive side to these developments as well. While globalization intensifies the threat of infectious disease, it also results in stronger tools for addressing that threat. From technological advances in information dissemination (e.g., the Internet) to the growing number of bidirectional infectious disease training programs that are bringing clinicians, scientists, and students from both sides of the equator together, the opportunities made available by globalization appear as endless as the challenges are daunting. At the same time, the opportunities afforded by globalization do not necessarily come easily. Workshop participants identified obstacles that, if not addressed, may prevent or retard the ability to take full advantage of some of these new global tools. Global surveillance capabilities made possible by advances in information and communications technologies, for example, are still fraught with numerous challenges. This chapter summarizes the workshop presentations and discussions pertaining to some of these opportunities and obstacles. One of the most enthusiastically discussed opportunities made available by our increasingly interconnected world is the type of transnational public health research, training, and education program exemplified by the Peru–based Gorgas Course in Clinical Tropical Medicine. This program not only benefits its northern participants, but also helps build a sustainable public health capacity in the developing world. Historically, the goal of many tropical disease training programs was to strengthen the northern country’s capacity for tropical disease diagnosis and treatment. The trend toward a bidirectional, more egalitarian approach that benefits the developing–country partner as much as its northern collaborator reflects a growing awareness that a sustainable global public health capacity can be achieved only with the full and equal participation of the developing world. Thus, not only are the Gorgas Course and other, similar programs becoming more popular, both politically and among students, but their nature is also changing in significant and telling ways. The shifting focus of many of the international training programs of the Fogarty International Center (FIC) within the National Institutes of Health (NIH) further reflects the increased awareness, funding, and efforts needed to strengthen bidirectional international training in epidemiology, public health, and tropical medicine in particular.

#### Turns leadership

Brzezinski 97 (Zbigniew, Former National Security Advisor – The Grand Chessboard, [http://book–case.kroupnov.ru/pages/library/Grand/part\_1.htm](http://book-case.kroupnov.ru/pages/library/Grand/part_1.htm))

America’s economic dynamism provides the **necessary precondition** for the exercise of global primacy. Initially, immediately after World War II, America’s economy stood apart from all others, accounting alone for more than 50 percent of the world’s GNP. The economic recovery of Western Europe and Japan, followed by the wider phenomenon of Asia’s economic dynamism, meant that the American share of global GNP eventually had to shrink from the disproportionately high livels of the immediate postwar era. Nonetheless, by the time the subsequent Cold War had ended, America’s share of global GNP, and more specifically its share of the world’s manufacturing output, had stabilized at about 30 percent, a level that had been the norm for most of this century, apart from those exceptional years immediately after World War II. More important, America has maintained and has even widened its lead in exploiting the latest scientific breakthroughs for military purposes, thereby creating a technologically peerless military establishment, the only one with effective global reach. All the while, is has maintained its strong competitive advantage in the economically decisive information technologies. American mastery in the cutting–edge sectors of tomorrow’s economy suggests that American technological domination is not likely to be undone soon, especially given that in the economically decisive fields, Americans are maintaining or even widening their advantage in productivity over their Western European and Japanese rivals.

### AT: Terror

#### Turns terrorism

Schaub 4 (Drew, Professor of Political Science – Penn State University, Journal of Conflict Resolution, 48(2), April)

Despite the caveats, our analysis suggests important policy implications for the war against terrorism. National governments should realize that economic globalization is not the cause of, but a possible partial solution to, transnational terrorism. Although opening up one’s border facilitates the movement of terrorists and their activities, our results show that the effect of such facilitation appears weak. It does not precipitate a significant rise in transnational terrorist attacks within countries. This is an important lesson for policy makers who are designing antiterrorism policies. More important, economic openness, to the extent that it promotes economic development, may actually help to reduce indirectly the number of transnational terrorist incidents inside a country. Closing borders to foreign goods and capital may produce undesirable effects. Economic closure and autarky can generate more incentives to engage in transnational terrorist activities by hindering economic development. Antiterrorism policy measures should be designed with caution. They should not be designed to slow down economic globalization. Promoting economic development and reducing poverty should be important components of the global war against terrorism. Such effects are structural and system–wide. It is in the best interest of the United States not only to develop by itself but also to help other countries to grow quickly. The effect of economic development on the number of transnational terrorist incidents is large. The role of economic development deserves much more attention from policy makers than it currently enjoys.

### U – A2: Thumper – General

#### Obama has political capital and is using it only on the shutdown

O'Brien 10/1/13 (Michael, Political Reporter @ NBC News, "Winners and losers of the government shutdown," http://nbcpolitics.nbcnews.com/\_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite)

The fiscal fight is a double-edged sword for Obama.¶ Yes, the president won a short-term victory that revitalizes his pull within the Beltway after beating back Republicans and shifting blame primarily to them for a shutdown. But Obama is no less a symbol of Washington dysfunction than Ted Cruz or John Boehner.¶ It might be simplistic, but any president shares in some of the broader opinion toward D.C. just by the very nature of the job. Put another way: as president, Obama is the most visible political leader in the U.S., if not the world. If Americans are dissatisfied with Washington, Obama will have to shoulder some of that burden.¶ Obama's 2011 battles with Republicans over the debt ceiling saw his approval ratings sink to one of the lowest points of his presidency. There are signs this fight might be taking a similar toll: a CNN/ORC poll released Monday found that 53 percent of Americans disapprove of the way the president is handling his job, versus 44 percent who approve.¶ Moreover, after the time and political capital expended on this nasty political fight — and with midterm elections on the docket for 2014 — Obama's top second-term priorities, like comprehensive immigration reform, are on life support.

#### Obama’s using all his political capital on the budget battle now – it’s his singular focus

Allen 9/19/13 (Jonathan, Politico, "GOP battles boost President Obama," http://dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB)

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other.¶ And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve.¶ If House Republicans and Obama can’t cut even a short-term deal

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for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit.¶ For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal.¶ Meanwhile, “on the looming fiscal issues, Democrats — both liberal and conservative, executive and congressional — are virtually 100 percent united,” said Sen. Charles Schumer (D-N.Y.).¶ Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect.¶ The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law.¶ “I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.”¶ While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, it is a return to the narrative arc that the White House was working to build before the Syria crisis intervened.¶ And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning.

### 2NC Link Wall

#### Congressional criticism of war powers saps capital

Kriner 10 (Douglas L. Kriner, assistant professor of political science at Boston University, “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

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c 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.

### U – A2: Thumper - Syria

#### Syria didn’t cost capital – agenda looks the same

Globe and Mail 9/16/13 (“Obama faces fall showdown with Congress,” http://www.theglobeandmail.com/news/world/obama-faces-fall-showdown-with-congress/article14329090/

With war against Syria averted, or perhaps postponed, U.S. President Barack Obama can turn again to September’s anticipated battles against his still-implacable Republican opponents.¶ Looming is a Sept. 30 deadline for Congress to fund ongoing government operations – everything from food stamps to new bullets – and a showdown is shaping up between a weakened President and Republicans riven by their own divisions.

Then, some time in October, the U.S. Treasury will face another crisis as it reaches its borrowing limit. Without an increase, which some Republicans want to block, the U.S. government could face default. Meanwhile, hopes for progress on major policy initiatives such immigration reform, long expected to be the big legislative issue this fall, are fading.¶ As hostile as relations are, some observers suggest **the****averted showdown over Syria** – it’s now widely accepted that Congress would have rejected Mr. Obama’s call for an authorization of force had it gone to a vote – didn’t make things any worse**.**¶ “We don’t know what September would have looked like in the absence of the Syria issue but my guess is that it would have looked an awful lot like it looks today,” said Sarah Binder, a senior fellow at the Brookings Institutionwho watches Congress closely.¶ “These divisions over spending and size of government have been with us all along and the [Republican] opposition to Obama has been quite strong all along. … **Set aside the issue of Syria and really nothing has changed.”**

### 2NC Uniqueness Wall

#### Shutdown will be short now – Boehner will likely cave after one week

Collender 10/1/13 (Stan, budget expert at Qorvis communications, "#Cliffgate Begins: Why The Shutdown Will Last At Least A Week," http://capitalgainsandgames.com/blog/stan-collender/2772/cliffgate-begins-why-shutdown-will-last-least-week)

It also means that the question has now changed from "Will there be a shutdown?" to "How long will it last?".¶ Here's what you need to know about the logistics of the shutdown.¶ Federal agencies and departments will have until noon today EDT to lock the doors and shutter the windows, so if there's some resolution of the situation by lunch time there will be no appreciable impact of the lapse in appropriations that began at midnight October 1. For example, although few will realize it and the buildings are likely to be empty, you should still be able to get into the Smithsonian.¶ The real impact will start to be felt at 12:01 pm October 1 as agencies and departments cease operating. Calls will no longer be returned, visas and passports applications will no longer be accepted, tax refund checks will no longer be processed, invoices from contractors will stop being paid, etc. That will continue until the shutdown ends.¶ As I said 10 days ago, I'm projecting that the shutdown will last at least a week because it will take that long for the impact of the shutdown to start to be felt and, therefore, to make ending it more politically acceptable.¶ Consider the following:¶ 1. The impact of the shutdown will barely start to be felt by noon today for the reasons noted above. There likely will even be some silly public statements by some elected officials that the shutdown is having no effect whatsoever.¶ 2. From noon today until the close of business on Wednesday, there will be more amusement with the spectacle of the shutdown -- such as video of federal employees leaving their buildings, "closed" signs on department offices, people being turned away from national parks, less traffic on the roads in areas with high concentrations of federal employees -- than inconvenience with the lack of government services.¶ 3. The inconvenience and, therefore, frustration, will grow steadily through the week. It will subside a bit over the weekend when most federal agencies are closed anyway and few people typically have any dealings with them. National parks and recreation areas will be obvious exceptions.¶ 4. As the weekend comes to a close, the frustration will change to anger as anyone who works for or needs to deal with the government realizes that they are facing another week without a paycheck, an answer to their question, a tax refund, an invoice payment, access to the campsite they reserved a year ago at Yosemite or Yellowstone, etc.¶ 5. This is the point at which there will start to be real pressure on members of Congress as the impact of the shutdown finally hits home for many people and the prospect of lost wages and less business becomes a reality.¶ 6. This is also the point that contractors and businesses that rely indirectly on the federal government -- like the restaurants across the street from the big IRS facility in Fresno and the suppliers those restaurants use for everything from napkins to hamburgers -- start to realize how much this could hurt them if it's not resolved soon. Many will tell employees to stay home and those that get paid by the day will suffer.¶ 7. Assuming the Democrats stay as united as they have been the past week, only 16 House Republicans will need to feel this pressure from their voters. When that happens, House Speaker John Boehner (R-OH) will have a tougher time convincing his members to stay together.¶ 8. And that's the point at which at least a short-term break in the shutdown will be politically acceptable, or possibly even mandatory.

#### Shutdown will end quickly – vote counts now for clean CR

Howerton 10/2/13 (Jason, Columnist @ The Blaze, "NOW 20 HOUSE REPUBLICANS ARE READY TO THROW IN THE TOWEL IN OBAMACARE FIGHT – DEMS HAVE THE LEVERAGE AND ONLY JOHN BOEHNER CAN STOP THEM," http://www.theblaze.com/stories/2013/10/02/now-17-house-republicans-are-ready-to-throw-in-the-towel-in-obamacare-fight-dems-have-the-leverage-and-only-john-boehner-can-stop-them/)

There are now reportedly a total of 20 House Republicans ready to throw in the towel in the current battle over Obamacare in order to end the first government shutdown in 17 years. As TheBlaze reported on Tuesday, Democrats needs just 17 GOP lawmakers to defect from the majority of Republicans in the House to pass a “clean” continuing resolution that fully funds both Obamacare and the federal government.¶ “If all 200 Democrats stick together and team up with those Republicans, they have the votes to pass a clean funding bill,” the Huffington Post reports.¶ However, House Speaker John Boehner (R-Ohio) would still have to bring the bill to the floor in order for a vote to take place. In other words, he’s the only person standing in the way of Democrats getting exactly what they have wanted all along.¶ It was recently revealed that Boehner’s chief of staff Mike Sommers may have worked with Senate Majority Leader Harry Reid (D-Nev.) to exempt Congress from Obamacare, further diminishing the Ohio Republican’s support among conservatives.

#### Shutdown will end quickly - GOP support to pass a CR increasing now

FITS News 10/3/13 ("#SHUTDOWN: THE GREAT GOP “CAVE” BEGINS," http://www.fitsnews.com/2013/10/03/shutdown-the-great-gop-cave-begins/)

After only two days of a partial government shutdown, eighteen “Republican” members of the U.S. House of Representatives are already wanting to throw in the towel and vote for a “clean” spending bill which includes funding for Barack Obama’s socialized medicine law.¶ Along with the House’s 200 Democratic members, that’s more than enough votes to pass such a measure.¶ Wow … we knew the GOP was going to cave on the whole shutdown “crisis” but we had no idea so many lawmakers would abandon their prior opposition to Obamacare so quickly.¶ These fiscally liberal “Republicans” were roundly (and rightly) rebuked for their treachery.¶ “Supporting a continuing resolution that allows funding for Obamacare is the same as supporting Obamacare,” Nathan Mehrens of Americans for Limited Government said. “These House Republicans are undermining the negotiating position of House leadership in the middle of a major confrontation over what to do about the implementation of the health care law.”¶ For those of you keeping score at home, the eighteen GOP sellouts are Reps. Lou Barletta (RINO-Pennsylvania), Charlie Dent (RINO-Pennsylvania), Mario Diaz-Balart (RINO-Florida), Mike Fitzpatrick (RINO-Pennsylvania), Randy Forbes (RINO-Virginia), Jim Gerlach (RINO- Pennsylvania), Michael Grimm (RINO-New York), Peter King (RINO-New York), Frank LoBiondo (RINO-New Jersey), Pat Meehan (RINO-Pennsylvania), Devin Nunes (RINO-California), Eric Paulson (RINO- Minnesota), Scott Rigell (RINO-Virginia), Jon Runyan (RINO-New Jersey), Mike Simpson (RINO-Idaho), Rob Wittman (RINO-Virginia), Frank Wolf (RINO-Virginia) and Bill Young (RINO-Florida).¶ Another four “Republicans” – Reps. Shelly Moore Capito (R-West Virginia), Leonard Lance (R- New Jersey). Dennis Ross (R-Florida), and Steve Womack (R-Arkansas) – are leaning toward caving, according to The Washington Post.

### At: ww

#### Obama’s Velcro---only blame sticks to him---means winners lose---healthcare proves

Nicholas & Hook 10 Peter and Janet, Staff Writers---LA Times, “Obama the Velcro president”, LA Times, 7-30, http://articles.latimes.com/2010/jul/30/nation/la-na-velcro-presidency-20100730/3

If Ronald Reagan was the classic Teflon president, Barack **Obama is made of Velcro**.¶ Through two terms, Reagan eluded much of the responsibility for recession and foreign policy scandal. In less than two years, Obama has become **ensnared in blame**.¶ Hoping to better insulate Obama, White House aides have sought to give other Cabinet officials a higher profile and additional public exposure. They are also crafting new ways to explain the president's policies to a skeptical public.¶ But Obama remains **the colossus of his administration** — to a point where trouble anywhere in the world is often his to solve.¶ The president is on the hook to repair the Gulf Coast oil spill disaster, stabilize Afghanistan, help fix Greece's ailing economy and do right by Shirley Sherrod, the Agriculture Department official fired as a result of a misleading fragment of videotape.¶ **What's not sticking to Obama is a legislative track record that his recent predecessors might envy. Political dividends from passage of a healthcare overhaul or a financial regulatory bill have been fleeting.¶** Instead, voters are measuring his presidency by a more immediate yardstick: Is he creating enough jobs? So far the verdict is no, and that has taken a toll on Obama's approval ratings. Only 46% approve of Obama's job performance, compared with 47% who disapprove, according to Gallup's daily tracking poll.¶ "I think the accomplishments are very significant, but I think most people would look at this and say, 'What was the plan for jobs?' " said Sen. Byron L. Dorgan (D-N.D.). "The agenda he's pushed here has been a very important agenda, but it hasn't translated into dinner table conversations."

### Impact – Extended Shutdown Hurts Econ

#### Extended shutdown decks the European and global economies

NYT 10/1/13 ("Europeans Express Concern Over Shutdown," http://www.nytimes.com/news/fiscal-crisis/2013/10/01/europeans-express-concern-over-shutdown/)

Europeans reacted to the shutdown of the American federal government with a mix of astonishment and concern that the economic fallout could adversely affect their countries’ own sputtering recovery.¶ For millions of European tourists, the closure of all national parks, monuments and museums – including the Statue of Liberty and the Grand Canyon — was viewed as the biggest disappointment. Le Monde warned its readers that 400 national parks and museums across the United States would be affected, and that could translate into millions of dollars of losses for the tourism sector.¶ Writing in Britain’s Independent newspaper, Simon Calder, a senior travel editor, noted that all 17 Smithsonian museums in Washington, as well as the National Zoo, would also be closed indefinitely. He lamented that British travelers would not be able to visit the Grand Canyon and other parks, and warned that British tourists could face extended lines at airports if the Transportation Security Administration was forced to reduce staffing.¶ European Union Web sites noted that American consular services could also be affected, causing difficulties for citizens of five European countries still subject to United States visa requirements. The citizens of Bulgaria, Croatia, Cyprus, Romania and Poland still require visas to enter the United States.¶ The Economist said, “The economic impact of all this depends entirely on how long the shutdown lasts, which, given that few people expected it to occur, is hard to gauge.”¶ The Financial Times sought to minimize the impact of the shutdown, saying that investors did not seem overly bothered. It predicted that the shutdown would be brief and the consequences minimal. It cited Goldman Sachs’s assessment that a one-week shutdown would knock just 0.3 percentage points off third-quarter growth.¶ The German press was far more pessimistic, warning of severe consequences and even of another global economic crisis. “A superpower has paralyzed itself,” said Spiegel Online. But it said that politicians in Washington were working to resolve the crisis and that there was still hope of a resolution.¶ Die Welt warned that the shutdown put the world economy in danger. “The fear is real that the tender U.S. recovery will be damaged,” it said. Many Germans appeared to empathize with President Obama, who they saw as being held hostage by what the Zeit called a “handful of radicals” unwilling to compromise.

#### Damage becomes worse with time – multiplies in effect and decks investor confidence

Xinhua 10/3/13 ("On guard against spillover of irresponsible US politics," http://www.globaltimes.cn/content/815419.shtml#.Uk2wJYasiSo)

The US government was partially shut down for the first time in 17 years Tuesday, exposing again the ugly side of partisan politics in Washington.¶ With Republican and Democratic lawmakers sticking to their partisan interests and refusing to compromise on a funding bill, the US government started the 2014 fiscal year with no budget.¶ As a result, about 800,000 federal workers were forced into unpaid furlough, and many non-essential government operations, such as national parks, museums, and monuments, were closed.¶ The shutdown not only disappointed voters, whom the people on Capitol Hill represent, but also made the outside world uneasy.¶ Global markets have so far reacted moderately to the bizarre but anticipated development, with investors still hoping for a quick solution.¶ As US President Barack Obama warned, the shutdown could damage the world's largest economy, which is still struggling to cement its recovery. Though its immediate impact looks limited, the damage will multiply if the drama drags on for days or even weeks, arousing concerns over its spillover effect.

## Legitimacy

### 2NC Hegemony

#### Heg doesn’t solve war – Fettweis cites better data – forces don’t do anything to help relative power shifts and an activist US cannot be attributed to solving conflict.

#### Ikenberry says we need to work directly

John G. Ikenberry 11, Albert G. Milbank Professor of Politics and International Affairs at Princeton, Spring, “A World of Our Making”, http://www.democracyjournal.org/20/a-world-of-our-making.php?page=all

The United States should embrace the tenets of this liberal public philosophy: Lead with rules rather than dominate with power; provide public goods and connect their provision to cooperative and accommodative policies of others; build and renew international rules and institutions that work to reinforce the capacities of states to govern and achieve security and economic success; keep the other liberal democracies close; and let the global system itself do the deep work of liberal modernization. As it navigates this brave new world, the United States will find itself needing to share power and rely in part on others to ensure its security. It will not be able to depend on unipolar power or airtight borders. It will need, above all else, authority and respect as a global leader. The United States has lost some of that authority and respect in recent years. In committing itself to a grand strategy of liberal order building, it can begin the process of gaining it back.

#### Heg solves nothing- past two decades prove

**Mearsheimer 2011** (John J., R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, The National Interest, Imperial by Design, lexis)

One year later, Charles Krauthammer emphasized in "The Unipolar Moment" that the United States had emerged from the Cold War as by far the most powerful country on the planet.2 He urged American leaders not to be reticent about using that power "to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them." Krauthammer's advice fit neatly with Fukuyama's vision of the future: the United States should take the lead in bringing democracy to less developed countries the world over. After all, that shouldn't be an especially difficult task given that America had awesome power and the cunning of history on its side. U.S. grand strategy has followed this basic prescription for the past twenty years, mainly because most policy makers inside the Beltway have agreed with the thrust of Fukuyama's and Krauthammer's early analyses. The results, however, have been disastrous. The United States has been at war for a startling two out of every three years since 1989, and there is no end in sight. As anyone with a rudimentary knowledge of world events knows, countries that continuously fight wars invariably build powerful national-security bureaucracies that undermine civil liberties and make it difficult to hold leaders accountable for their behavior; and they invariably end up adopting ruthless policies normally associated with brutal dictators. The Founding Fathers understood this problem, as is clear from James Madison's observation that "no nation can preserve its freedom in the midst of continual warfare." Washington's pursuit of policies like assassination, rendition and torture over the past decade, not to mention the weakening of the rule of law at home, shows that their fears were justified. To make matters worse, the United States is now engaged in protracted wars in Afghanistan and Iraq that have so far cost well over a trillion dollars and resulted in around forty-seven thousand American casualties. The pain and suffering inflicted on Iraq has been enormous. Since the war began in March 2003, more than one hundred thousand Iraqi civilians have been killed, roughly 2 million Iraqis have left the country and 1.7 million more have been internally displaced. Moreover, the American military is not going to win either one of these conflicts, despite all the phony talk about how the "surge" has worked in Iraq and how a similar strategy can produce another miracle in Afghanistan. We may well be stuck in both quagmires for years to come, in fruitless pursuit of victory. The United States has also been unable to solve three other major foreign-policy problems. Washington has worked overtime-with no success-to shut down Iran's uranium-enrichment capability for fear that it might lead to Tehran acquiring nuclear weapons. And the United States, unable to prevent North Korea from acquiring nuclear weapons in the first place, now seems incapable of compelling Pyongyang to give them up. Finally, every post-Cold War administration has tried and failed to settle the Israeli-Palestinian conflict; all indicators are that this problem will deteriorate further as the West Bank and Gaza are incorporated into a Greater Israel. The unpleasant truth is that the United States is in a world of trouble today on the foreign-policy front, and this state of affairs is only likely to get worse in the next few years, as Afghanistan and Iraq unravel and the blame game escalates to poisonous levels. Thus, it is hardly surprising that a recent Chicago Council on Global Affairs survey found that "looking forward 50 years, only 33 percent of Americans think the United States will continue to be the world's leading power." Clearly, the heady days of the early 1990s have given way to a pronounced pessimism.

### 2NC Must Read

#### Trial systems don’t solve – courts will grant enormous leeway to the executive

Scheppele, 12—Professor of Sociology and Public Affairs @ Princeton University (Kim Lane, January. “The New Judicial Deference,” Boston University Law Review, 92 B.U.L. Rev. 89. Lexis.)

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won. Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very qui

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ckly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question. Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead. [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives. Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference. This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases. This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

## Legit

### 2NC = Worse

#### Doesn’t solve equality because it creates a separate branch

Sloan et al 8 [Virginia E. Sloan and the panel of The Constitution Project, think tank specializing in constitutional law cases; “A CRITIQUE OF “NATIONAL SECURITY COURTS””; 6/23/2008; http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf]

National security courts for criminal prosecutions are not just unnecessary; they are also dangerous. They run the risk of creating a separate and unequal criminal justice system for a particular class of suspects,6 who will be brought before such specialized courts based on the very allegations they are contesting. Such a system undermines the presumption of innocence for these defendants, and risks a broader erosion of defendants’ rights that could spread to traditional Article III trials.7 It was Justice Frankfurter who wrote that “It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.”8 Committee members strongly believe that the shadow of terrorism must not be the basis for abandoning these fundamental tenets of justice and fairness. In addition, these proposals are alarmingly short on details with respect to the selection of judges for these national security courts. Although there is a history of creating specialized federal courts to handle particular substantive areas of the law (e.g., taxation; patents), unlike tax and patent law, there is simply no highly specialized expertise that would form relevant selection criteria for the judges. Establishing a specialized court solely for prosecutions of alleged terrorists might also create a highly politicized process for nominating and confirming the judges, focusing solely on whether the nominee had sufficient “tough on terrorism” credentials — hardly a criterion that lends itself to the appearance of fairness and impartiality.

#### Those things are specifically violations to due process

Paust 8 [Jordan J. Paust is the Mike & Teresa Baker Law Center Professor at the University of Houston, a former U.S. Army JAG officer and member of the faculty of the Judge Advocate General’s School; “The Case Against a National Security Court”; October 23, 2008; http://jurist.law.pitt.edu/forumy/2008/10/case-against-national-security-court.php]

As documented in Beyond the Law and recognized by the Supreme Court in Hamdan, violations of customary rights to due process would include: (1) preclusion of the accused and defense counsel from learning what evidence was presented in closed hearings, (2) admission of hearsay evidence, (3) admission of unsworn statements, (4) denial of access by an accused and defense counsel to evidence in the form of classified information, (5) denial of confrontation of all witnesses against an accused, (6) use of “evidence obtained through coercion,” (7) denial of the right to be tried in one’s presence (absent disruptive conduct or consent), and (8) denial of review by a competent, independent, and impartial court of law (i.e., an Article III court). It seems unavoidable that a special national security court with special procedures that deviate from the federal rules of criminal procedure would not be designed to enhance fairness, fully meet bilateral and multilateral treaty requirements of equality of treatment, or provide more general equal protection of the law to criminal accused.

# 1NR

## XO

### Solvency – 2NC – Congress

#### Only the CP solves – the President will refuse the plan’s limitation

Prakash 8 (Saikrishna – Herzog Research Professor of Law, University of San Diego School of Law, “The Executive's Duty To Disregard Unconstitutional Laws”, 2008, Georgetown Law Journal, 96 Geo. L.J. 1613, lexis)

Perhaps most ominously, Presidents might decline to abide by statutes that are meant to constrain presidential authority. Citing a duty to disregard unconstitutional statutes, a President might elude all manner of constraints that Congress imposed upon presidential power. n28 Indeed, such complaints have been made against President George W. Bush. n29 When Congress has tried to tie his hands, the President has declared an unwillingness to abide by such statutory limitations on the grounds that they are unconstitutional.

### 1AC Authors

#### Oversight is what’s key and your author concludes that previous steps were made by the executive

{green is what the 1ac read}

Glenn Sulmasy 9, Associate Professor of Law at the United States Coast Guard Academy and was a National Security and Human Rights Fellow at the Carr Center, Harvard Kennedy School, April 13, “THE NEED FOR A NATIONAL SECURITY COURT SYSTEM”, PDF

THE WAY FORWARD The President, Secretary Gates and Secretary Rice have all declared that Guantanamo must close.16 Virtually 80% of the members of Congress have also declared that Guantanamo must close. Both major presidential candidates have called for its closure.17 The problem we face, however, is what to do once we close the facility. It is easy now in hindsight to be critical of the decision initially made by the administration and the way that things are currently being handled, but America’s next true challenge is to devise a way in which to deal with these terror suspects that will garner respect and admiration both domestically and abroad. Similar to changes in military strategy to win the war in Iraq and the war against al Qaeda, where the recognition was made that this new type of conflict required new tactics, the legal approach to handling terror suspects must change as well. The solution is best seen through the lens of an evolutionary process, developing over time from the period of the Revolution, through the Civil War, through the First and Second World Wars and now into the realities we face in 21st century warfare. The Order of November 13, 2001, with all it warts and hairs, was undertaken with good intentions, but was later struck down by the Supreme Court. Recognizing the importance of trying these individuals, the President went to Congress for assistance, and subsequently Congress passed the Military Commissions Act of 2006,18 with warts and hairs of its own, but again making progress. A National Security Court System seems to be the next logical step in the natural progression of this “maturity” of justice. As we are fighting hybrid warriors, in a hybrid war—a mix of law enforcement and combat—a hybrid court should be created to adjudicate the alleged war crimes committed by these hybrid warriors. Obviously, the key is to balance the needs of national security and to achieve our simultaneous goal of promoting human rights. Attaining that delicate balance is certainly critical. The success of this proposed new court system will depend upon its acceptance by Congressional and administration leaders who truly want to strike a balance between security and the rule of law. Clearly, the devil will be in the details in creating such a court through statutes. The political branches have tough decisions to make in the next Congress and Presidency when it comes time for the actual closing of Guantanamo and the inevitable transfer of detainees. The most practical way of detaining and adjudicating these cases is to locate the National Security Court system on a number of military bases across the country. Detention and physical security issues would still exist, but these bases would be better suited to handle these situations than courts in downtown districts in major cities within Congressional districts. While the detention and trial of these suspects would take place on American military bases, the key distinction from the existing military commissions system is that military oversight of the process would be transferred to civilian control. The Department of Justice would replace the Department of Defense in this new system, and specialized Article III judges would try the cases. The Justice Department would develop a pool of litigators out of their national security division branch to prosecute the suspects. Current military JAGs would defend the suspects with funding provided by outside sources. Having the civilian Department of Justice oversee the national security court is crucial to the success of the system and would help restore America’s image abroad. The new proposed system would also remove the tainted impression that the rest of the world receives by watching U.S. military officers in a U.S. military courtroom adjudicate cases against quasi-warriors. In this new system, the President would appoint the system’s judges with the advice and consent of the Senate. The judges would be life tenured Article III judges, selected for possessing specialized knowledge of the substantive law surrounding issues of terrorism and a high level of practical experience. Most importantly, the new system needs to be created as an adjudicatory system rather than part of a preventative detention scheme. Others, including my friend Ben Wittes, have argued in favor of using a national security court for detention and preventative detention schemes. I oppose this completely because using a national security court in this way would only transport the familiar problems from Gitmo into the United States. Trying the detainees in a properly constructed National Security Court, within a reasonable time frame, is the best means for the U.S. to regain some moral authority in world affairs. The United States must be active in ensuring that the cases go forward. The only way that the United States is going to gain credibility within the international legal community is to demonstrate that it is dedicated to the administration of justice and to upholding the rule of law.

### Executive CP – 2nc Solvency

#### Executive-led national security court solves

McCarthy and Velshi 11 (Andrew and Alykhan, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies + Fellows @ American Enterprise Institute, "We Need a National Security Court," http://www.defenddemocracy.org/stuff/uploads/documents/national\_security\_court.pdf)

Symmetrically, the executive branch would form an NSC unit combining Justice ¶ Department attorneys who specialize in terrorism and other national security cases with ¶ military lawyers drawn from the services’ Judge Advocate General’s offices, selected by ¶ the Secretary of Defense (or, perhaps, the Defense Department’s General Counsel). This ¶ unit would be the NSC’s liaison with the affected executive branch agencies and would ¶ represent the government before the NSC. The NSC would also have its own panel of ¶ defense counsel, which would mirror what now exists in the military system: a chief ¶ defense counsel drawn from the Judge Advocate General’s office of one of the armed ¶ services, and other judge advocates and qualifying civilian defense counsel who would ¶ have appropriate security clearances and experience in national security litigation. (Some, ¶ of course, would also have expertise in capital litigation).

#### Executive led efforts through federal courts effectively addresses detention

Wittes and Peppard 9 (Benjamin and Colleen, member of the Task Force on National Security and Law + Fellows @ Hoover Institution, "Designing Detention," http://www.hoover.org/publications/defining-ideas/article/5295)

Second, we assume that relying solely on domestic criminal law to incapacitate transnational terrorists is untenable. The rules of procedure and evidence for criminal trials create too high a bar to detain terrorists arrested in the far corners of the earth under circumstances less than favorable for the collection of evidence. People against whom evidence may not come close to proving criminal culpability may still pose an unacceptable danger as a result of frankly acknowledged allegiance to enemy organizations, evidence that would be inadmissible in criminal proceedings or evidence that cumulatively falls short of proof beyond a reasonable doubt of criminal conduct. Efforts to shoehorn terrorism cases into the criminal justice system may also have serious negative repercussions for the conduct of domestic criminal trials more generally. We assume, in short, that the appropriate detention regime for counterterrorism purposes will draw on both the criminal-law and law-of-war traditions but will ultimately be very much its own animal.¶ At its core, the model law is designed to provide the executive branch with a Italics detention authority supplemental to the authority provided by the laws of war. This authority is aimed principally at those suspected terrorists captured outside zones of active military operations, such as Iraq or Afghanistan. We take as a given that individuals captured within zones of military operations may continue to be held pursuant to the Geneva Conventions and the customary laws of war. That said, the model law contains no impediment to the executive branch’s use of it with respect to battlefield detainees if it so chooses. By design, in fact, we make no attempt whatsoever to define the legal parameters of law-of-war detentions or to police the line between the authority created by the model law and the authority residing within the laws of war. Faced with a captive who the military might plausibly argue is subject to detention under the laws of war, the executive branch would have a choice as to which legal regime to invoke. If it wished to proceed under the laws of war, and thereby risk further extensions of federal habeas jurisdiction into military affairs, it would be free to do so under this proposal.¶ On the other hand, this detention authority is designed to offer an alternative, one under which the executive branch would accept up-front review by the courts, using more rigorous procedures, in exchange for the safe harbor of detentions Italicssupported by both clear and detailed congressional authorization and preapproval by a federal judge based on factual findings.¶ In short, we rely on the incentive structure facing the executive branch today to police the boundaries between detentions under this system and detentions under the laws of war. Our hope is that the continuing litigation risk the government faces in habeas cases for nonbattlefield detainees held under the laws of war will create a significant incentive for the government to use this detention system. This would provide significant benefits to the detainees, who would get timelier, more probing, and more frequent federal court review. It would also benefit the government, which could better insulate law-of-war detentions from federal court review by removing the detention cases most likely to make adverse law—those involving suspects captured far from overt hostilities—to a federal court environment that proceeds on more certain, better-defined grounds and with the judiciary implicated in detentions from the outset.¶ This latter point is critical and informs an important structural judgment in the model law. Current habeas review of detentions proceeds, loosely speaking, on an administrative law model. The executive branch uses internal procedures to decide whether detainees are properly held. The detainee then challenges his detention, and habeas litigation—often years later—reviews the designation. The judges who hear these habeas cases had no involvement in the initial detention decision, which was often made with only a limited sense of how robustly it would later stand up in federal court. Thus, when the courts finally confront detentions, the records tend to be weak and the elapsed time long; and the judiciary has no investment in their integrity. This structure differs significantly from other preventive detention judgments supervised by U.S. courts: for the seriously mentally ill, for sex offenders, and in pretrial detentions, for example. Under those regimes, the judicial approval authorizes the detention at the front end, rather than reviewing its propriety at the back end.¶ We aim to bring terrorist detentions into line with this more sensible approach. As a consequence, the model law places judicial review at the outset of a long-term detention and forces the government to go through it again and again on a regular basis as long as the detention persists. This would serve several purposes. It would, first, clarify for the executive that it is speaking to a federal court from the very opening of a covered detention case. Second, it would implicate the judiciary in that decision from the beginning. The appellate courts would not be asked to defer to executive discretion in approving a detention but to a considered set of factual findings by a federal district court judge. The result should be more professional evidentiary collection and presentation on the part of the government and less of a tendency on the part of the judiciary to move the goal posts.¶ It is unclear at this stage how much application the model law would have for the residual Guantánamo population. Not having access to classified material—or even unclassified habeas returns, which remain under seal—we do not know whether the procedures we describe here would help resolve a substantial number of the Guantánamo cases. That said, it is easy to imagine the model law’s invocation with respect to a bloc of detainees at the naval base—specifically, those who cannot be released, who cannot plausibly face criminal trial, and for whom the prospect of further habeas litigation has the potential to render adverse precedential decisions. Our goal in the model law is to offer a fair set of procedures aimed primarily at future captures with the hope that it may also provide a useful and fair mechanism for the disposition of some nontrivial number of current cases.

### A2: Not solve legitimacy

#### Executive internal restraint encourages judicial fill-in – solves oversight

Metzger 9 (Gillian – Professor of Law, Columbia Law School, “ ARTICLE & ESSAY: THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, Emory Law Journal, 2009, 59 Emory L.J. 423, lexis)

I therefore see benefits from paying greater attention to internal administrative design and in particular to analyzing what types of administrative structures are likely to prove effective and appropriate in different contexts. n9 But I believe that attending to internal constraints alone is too narrow a focus because it excludes the crucial relationship between internal and external checks on the Executive Branch. Internal checks can be, and often are, reinforced by a variety of external forces - including not just Congress and the courts, but also state and foreign governments, international bodies, the media, and civil society organizations. Moreover, the reinforcement can also work in reverse, with internal constraints serving to enhance the ability of external forces, in particular Congress and the courts, to [\*426] exert meaningful checks on the Executive Branch. Greater acknowledgment of this reciprocal relationship holds import both for fully understanding the separation of powers role played by internal constraints and for identifying effective reform strategies. One aspect of this dynamic meriting additional attention is the link between internal Executive Branch constraints and external legal doctrine. Contemporary separation of powers doctrine makes little effort to reinforce internal constraints on the Executive Branch; instead it largely focuses on whether internal constraints intrude too far on presidential power, to the extent it considers such constraints at all. This stands in contrast to administrative law doctrine, which focuses primarily on behavior internal to the Executive Branch and often seeks to encourage Executive Branch adherence to constraints on agency action. This division of labor is not coincidental; the availability of administrative law restrictions on agencies is one reason why the courts have not sought to link internal and external constraints as a matter of separation of powers analysis. Judicial concerns about unduly intruding into congressional and presidential choices in structuring administration, and about the courts' limited competency on questions of institutional design, are likely in play as well. Yet greater exploration of how separation of powers doctrine could be used to reinforce internal Executive Branch constraints appears justified, especially given the important separation of powers function that internal constraints can serve.

### A2: Perm

#### They say perm, but perm turn, just kidding

#### Executive orders spur congressional modeling – shapes public opinion and innovation

Sovacool 9 (Benjamin – Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization and Assistant Professor at the Lee Kuan Yew School of Public Policy at the National University of Singapore, “Preventing National Electricity-Water Crisis Areas in the United States”, 2009, 34 Colum. J. Envtl. L. 333, lexis)

In each of these circumstances, Executive Orders were used to cut through partisanship and implement important and needed [\*388] changes. Furthermore, such Executive Orders often catalyzed media and public attention to the degree that they later persuaded Congress to endorse with eventual legislation. Bruce N. Reed, a special advisor to President Clinton, put it succinctly by stating that "in our experience, when the administration takes executive action, it not only leads to results while the political process is stuck in neutral, but it often spurs Congress to follow suit." n303 Analogously, Executive Orders, notes two political scientists, "facilitate innovations in the legislative process, codify ideological commitments, and drive social change." n304

### A2: Perm – Do CP

#### -- Severs the mechanism –

#### Statutory restrictions require congressional statutes

Barron and Lederman 8 (David J. – Professor of Law, Harvard Law School, and Martin S. – Visiting Professor of Law, Georgetown University Law Center, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING”, January, 121 Harv. L. Rev. 689, lexis)

2. Congress (Almost) Always Wins Under the Separation of Powers Principle. - We must also consider a related argument for congressional supremacy. This claim is based on the doctrinal test that generally governs separation of powers issues arising from clashes between the President and the Congress in the domestic setting. n149 Under this test, the "real question" the Court asks is whether the statute "impedes the President's ability to perform" his constitutionally assigned functions. n150 And even if such a potential for disruption of executive authority is present, the Court employs a balancing test to "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." n151 Thus, under the general separation of powers principle, even a "serious impact ... on the ability of the Executive Branch to accomplish its assigned mission" might not be enough to render a statute invalid. n152 This approach appears to have a pro-congressional tilt; yet it actually does little more than relocate the dilemma it is impressed to avoid. Even under this deferential test, it is well understood that certain statutes can infringe the President's constitutionally assigned authority to exercise discretion; a statutory restriction on the pardoning of a given category of persons is an obvious example. Nothing in the application of the separation of powers test, then, explains why certain core executive powers (including merely discretionary authorities, rather than obligatory duties) cannot be infringed, even though it is generally understood that such inviolable cores might exist. For this reason, the general separation of powers principle does not actually resolve the question that arises in a Youngstown Category Three case. In all [\*739] events, the question remains whether the President possesses an illimitable reserve of wartime authority. Insofar as the separation of powers principle is thought to provide affirmative support for congressional control, it seems objectionable because it, too, fails to require the analyst to explain why the particular wartime power the President is asserting is not one that Congress can countermand. It simply asserts that it is not.

#### Statutes are enacted by legislative action

Ballentine’s 10 (Ballentine’s Law Dictionary, “Act”, 2010, lexis)

1. Verb: To perform; to fulfill a function; to put forth energy; to move, as opposed to remaining at rest; to carry into effect a determination of the will. Holt v Middlebrook (CA4 Va) 214 F2d 187, 52 ALR2d 1043. To simulate; to perform on stage, screen or television. 2. Noun: A thing done or established; a part of a play or musical comedy; a deed or other written instrument evidencing a contract or an obligation. A statute; a bill which has been enacted by the legislature into a law, as distinguished from a bill which is in the form of a law presented to the legislature for enactment.

#### “Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287" \l "marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or *immediately effective*, as opposed to something that *will* or *would* become effective *in the future [in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

## Terror

### 2NC Nuclear Terrorism

#### No terror impact

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

In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8¶ This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme.¶ In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as incompetent, ineffective, unintelligent, idiotic, ignorant, inadequate, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.”¶ In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. ¶ In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12¶ The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are operationally unsophisticated, short on know-how, prone to making mistakes, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14¶ In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, far beyond the plotters’ capacities however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15

#### Our statistics are for the most plausible scenarios-anything else is even less likely.

Mueller 8, John, Prof. Pol. Sci. @ Ohio State, 1/1/ (<http://polisci.osu.edu/faculty/jmueller/APSACHGO.PDF>)

These odds are for the most plausible scenario by means of which a terrorist group might gain a bomb: constructing one from HEU obtained through illicit means. As noted, there are other routes to a bomb: stealing a fully constructed one (or the HEU needed to make one) or being given one as a gift by a nuclear state. However, as also noted, those routes are generally conceded, even by most alarmists, to be considerably less likely than the one outlined in Table 1 to be successful for the terrorists. Additionally, if there were a large number of concerted efforts, policing and protecting would presumably become easier because the aspirants would be exposing themselves repeatedly and would likely be stepping all over each other in their quest to access the right stuff. Also, the difficulties for the atomic terrorists are likely to increaseover time because of much enhanced protective and policing efforts by self-interested governments--there is considerable agreement, for example, that Russian nuclear materials are much more adequately secured than they were ten or fifteen years ago (Pluta and Zimmerman 2006, 257). Moreover, all this focuses on the effort to deliver a single bomb. If the requirement were to deliver several, the odds become, of course, even more prohibitive.

#### Couldn’t get the bomb in

Mueller 9 - John Mueller, Woody Hayes Chair of National Security Studies, Mershon Center  
Professor of Political Science 30 April 2009 “THE ATOMIC TERRORIST?” <http://www.icnnd.org/research/Mueller_Terrorism.pdf>

The finished product could weigh a ton or more.31 Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, and smuggled into, the relevant target country. The conspirators could take one of two approaches. Under one of these, they would trust their precious and laboriously-fabricated product to the tender mercies of the commercial transportation system, supplying something of a return address in the process, and hoping that transportation and policing agencies, alerted to the dangers by news of the purloined uranium, would remain oblivious. Perhaps more plausibly, the atomic terrorists would hire an aircraft or try to use established smuggling routes, an approach that, again, would require the completely reliable complicity of a considerable number of criminals, none of whom develops cold feet or becomes attracted by bounteous reward money. And even if a sufficient number of reliable co-conspirators can be assembled and corrupted, there is still no guarantee their efforts will be successful. There is a key difference between smuggling drugs and smuggling an atomic weapon. Those in the drug trade assume that, although a fair portion of their material will be intercepted by authorities, the amount that does get through will be enough to supply them with a tidy profit. That may be tolerable for drug smugglers, but distinctly unsettling for terrorists seeking to smuggle in a single, large, and very expensively-obtained weapon.32 However transported, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The IND would then have to be moved over local roads by this crew to the target site in a manner that did not arouse suspicion. And, finally, at the target site, the crew, presumably suicidal, would have to set off its improvised and untested nuclear device, one that, to repeat Allison’s description, would be “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.” While doing this they would have to hope, and fervently pray, that the machine shop work has been perfect, that there were no significant shakeups in the treacherous process of transportation, and that the thing, after all this effort, doesn’t prove to be a dud.

### 2NC Bioweapons

#### No likelihood of acquisition – cites empirics and the last noted bioterror attack – since then measures have been put up to secure every major source—that’s Leitenbeg.

#### Prefer our ev – theirs inflates the threat

Reynolds 5—Senior Fellow at the Cato Institute. Formerly Director of Economic Research at the Hudson Institute. AB in economics from UCLA. (Alan, The Fear Industry, 6 May 2007, http://www.cato.org/pub\_display.php?pub\_id=8234)

Neither gentleman has been at all apologetic about his role in grossly exaggerating the likely risks of biological terrorism. Mr. Wolfowitz once claimed Iraq had enough ricin to kill a million people, enough botulism to kill tens of millions and enough anthrax "to kill hundreds of millions." Terrorists throughout the world have managed to kill only five people with anthrax, one with ricin and zero with botulism or aflatoxin (added to the list by former Secretary of State Colin Powell). This not because terrorists don't want to kill people, but because killing is much easier to accomplish with bombs, guns and crashing airplanes. Even today, however, bureaucrats and politicians still remain easily persuaded to assign a higher priority (and bigger budgets) to extremely unlikely risks than to mundane but palpable threats to health and safety. I wrote a series of columns about the formidable obstacles to effectively delivering biological weapons, often quoting Mr. Wolfowitz or the CIA as examples of extreme gullibility or deception. I revealed many holes in the WMD fable before the Iraq invasion in, "The economics of war," "Hazy WMD definitions" and "The duct tape economy." Those were followed by "Intelligence without brains" in June 2003, "The CIA and WMD" in June 2004, "WMD Doomsday distractions" in April 2005 and "The cost of war in retrospect" in March 2006. Those columns can be found by sifting through archives under my bio at cato.org. The legacy of the 2002 WMD hoax lives on today in "Operation Bioshield" and other federal programs for doling out tax dollars to the multibillion-dollar fear industry. The fear industry begins by hiring lobbyists and subsidizing academics who, in turn, persuade journalists to write scary stories about hypothetical weapons. This science fiction game is not played for fun. It is played for money. It involves what Dale Rose of the University of California at San Francisco described as, "A cottage industry of risk analysts, disaster preparedness experts, psychologists, and others [who] have produced an array of theoretical work and conceptual grids around the issue of low probability, high consequence events." In response to pressure from academic centers whose main mission was to hype bioterrorism (including the infamously erroneous "Dark Winter" scenario of mid-2001), President Bush warned of "the use of the smallpox virus as a weapon of terror" in December 2002. The administration then spent hundreds of millions of dollars on smallpox vaccine for first responders and the military, but both groups (notably, physicians) shunned the risky shots. That was the most costly fiasco of its type since the swine flu vaccination program of 1976, which killed more people than swine flu did. Continuing the tradition, the U.S. government just contracted with Sanofi Pasteur to produce $100 million worth of avian flu vaccine -- of dubious effectiveness against avian flu acquired from birds, much less from any hypothetical pandemic strain that leaps to humans. Whether or not these programs save even one life per $100 million spent is irrelevant. The point is the millions spent. After most federal loot from research grants and vaccine stockpiles has been received, the mission is accomplished and the fear industry moves on to greener pastures. The scare stories about Danger A disappear, replaced with new stories about Danger B, then C and so on. The most reliable cash cow for the fear industry has been the five deaths from inhaling anthrax in October 2001. For those in the business of providing high-cost solutions to minuscule risks, this has been an endless bonanza. A recent news item provides a typical tip for fear investors: "Emergent BioSolutions of Rockville (Md.) said the U.S. government planned to order as many as 22.75 million doses of its anthrax vaccine." The government has spent at least $877 million on anthrax vaccine so far, or $175.4 million per death from anthrax. Sensing that sum may be pressing the limits, the fear industry is busily assembling new threats to scare up some more cash. The Health and Human Services Department reportedly plans to up its spending by more than $100 million on additional anthrax and smallpox vaccines. And it plans to spend more than $100 million to deal with radiation poisoning -- not even on this luxury list until former Russian spy Alexander Litvinenko was assassinated. Compared with anthrax vaccine, $100 million per death sounds cheap, even if he wasn't an American. But they did say "more than" $100 million, didn't they? The plan also "listed as a near-term priority the development of antibiotics for threats such as the plague or tularemia." Sure, why not? There was one unconfirmed case of plague in Texas in 1956. And in the summer of 2000, an outbreak of tularemia from lawn mowing in Martha's Vineyard resulted in one fatality. Whenever you hear the word "bioterrorism" in connection with large sums of federal money, just remember "WMD." Bioterrorism is just a different word for the same old WMD story retold in purely hypothetical terms, without even pretending someone actually has such agents or knows how to kill more than five people with them.

#### If they win everything it’s still survivable.

Posner 5—Senior Lecturer, U Chicago Law. Judge on the US Court of Appeals 7th Circuit. AB from Yale and LLB from Harvard. (Richard, Catastrophe, http://goliath.ecnext.com/coms2/gi\_0199-4150331/Catastrophe-the-dozen-most-significant.html)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease.

#### Their evidence assumes state capabilities and applies it to terrorism but non state actors are not as sophisticated.

Leitenberg ‘5 (Milton, Senior research scholar at the University of Maryland, Trained as a Scientist and Moved into the Field of Arms Control in 1966, First American Recruited to Work at the Stockholm International Peace Research Institute, Affiliated with the Swedish Institute of International Affairs and the Center for International Studies Peace Program at Cornell University, Senior Fellow at CISSM, ASSESSING THE BIOLOGICAL WEAPONS AND BIOTERRORISM THREAT, <http://www.cissm.umd.edu/papers/files/assessing_bw_threat.pdf>)

Now the entire subject became subsumed under “bioterrorism.” That simple switch in language made it easy to transfer levels of state capability to “terrorists.” Everything became and was referred to as “bioterrorism.” This wiped out any discrimination, or attempt to discriminate, between the relevant capabilities of state programs and existing terrorist groups as they are known to date. The possibility of incidents involving low numbers of casualties evolved in 2 or 3 years to “**mass casualty**” terrorism, and in several more years to “**apocalyptic terrorism**.” Generic terrorist groups (excluding the perpetrator of the U.S. anthrax events)—none of which had yet shown the ability to master their microbiological A, B, C’s in the real world—were endowed with the prospective ability to genetically engineer pathogens. Yet the resources and capabilities available to states and to terrorist groups are **vastly different**.

#### Bioterrorism does not outweigh other threats – our evidence is comparative.

Clark ‘8 (William R., Chair Emeritus of the Immunology Department of UCLA, *Bracing for Armageddon?, The Science and Politics of Bioterrorism in America*, Oxford University Press, Accessed Via Emory)

Bioterrorism in Context Bioterrorism is a threat in the twenty-first century, but it is by no means, as we have so often been told over the past decade, the **greatest threat we face**. The best way to look at bioterrorism is from a terrorist's **point of view**. If the aim is to kill as many people as possible, there are better—and, more importantly, simpler—ways to do it. If our leaders didn't draw the correct conclusions from Aum Shinrikyo, the terrorists probably have. After spending two years and millions of dollars trying to develop an effective bioweapon, the Aum people just gave up and used gas. Even that wasn't terribly effective, but it worked. If the aim is to cause social and economic disruption, bioterrorism could do the trick, but there is nothing to suggest that the level of disruption, the level of fear and uncertainty sowed, would be **any greater** as a result of an attack with bioweapons than with well-placed bombs, or even gas. Alarmist rhetoric may have been necessary to push the issue of bioterrorism out into the open where it could be examined, and appropriate steps taken to meet the challenge. We have examined it, somewhat compulsively, and we have responded—rather exces-sively. Undoubtedly, in the process, there were those who saw an opportunity to enhance their personal wealth or power. But clearly most of those raising the alarm were motivated by genuine concern for our national well-being. It was a real issue; it is a real issue. And it is pointless to blame the politicians who overreacted. As we said in the last chapter, they may have had little choice. But it is time" to move on now to a more realistic view of bioterrorism, to tone down the rhetoric and see it for what it actually is: one of many difficult and potentially dangerous situations we-and the world—face in the decades ahead. And it is certainly time to examine closely just how wisely we are spending billions of dollars annually to prepare for a bioterrorist attack. No nation has infinite resources, and we must accept that we will not be able to make ourselves completely safe from every threat we face. So we will have to make rational assessments of those threats we can identify, and apportion our resources as intelligently and effectively as we can. Here are just two of the things beside bioterrorism we will need to consider.

#### Terrorists won’t use them.

Parachini 1 (John, Policy Analyst, Rand Corporation, http://www.rand.org/pubs/testimonies/2005/CT183.pdf, AD: 7/7/10) jl

Despite the incentives for seeking and using biological weapons, there are a number of even more compelling disincentives. As noted earlier, terrorists may hesitate in using biological weapons specifically because breaking the taboo on their use may evoke considerable retaliation. In addition, state sponsors of terrorist groups may exert restraint on the weapons the group uses. State sponsors have a great incentive to control the activities of the groups they support, because they fear that retaliation may be directed against them if they are connected to a group that used biological weapons. Moreover, terrorists may be drawn to explosives like arsonists are drawn to fire. The immediate gratification of explosives and the thrill of the blast may meet a psychological need of terrorists that the delayed effects of biological weapons do not.

## 2nr

#### Winners don’t win

Eberly 13 - assistant professor in the Department of Political Science at St. Mary's College of Maryland

Todd, “The presidential power trap,” Baltimore Sun, 1/21/13, Lexis

Only by solving the problem of political capital is a president likely to avoid a power trap. Presidents in recent years from have been unable to prevent their political capital eroding. When it did, their power assertions often got them into further political trouble. Through leveraging public support, presidents have at times been able to overcome contemporary leadership challenges by adopting as their own issues that the public already supports. Bill Clinton's centrist "triangulation" and George W. Bush's careful issue selection early in his presidency allowed them to secure important policy changes — in Mr. Clinton's case, welfare reform and budget balance, in Mr. Bush's tax cuts and education reform — that at the time received popular approval.¶ However, short-term legislative strategies may win policy success for a president but do not serve as an antidote to declining political capital over time, as the difficult final years of both the Bill Clinton and George W. Bush pres idencies demonstrate.

**MARKED**

None of Barack Obama's recent predecessors solved the political capital problem or avoided the power trap. It is the central politic al challenge confronted by modern presidents and one that will likely weigh heavily on the current president's mind today as he takes his second oath of office.