# UGA FB Round 5 USC

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## 1NC

### Off 1

#### Immigration reform will pass – PC is key

Lopez 1/1/14 (Oscar, Latin Times, "New Year 2014: 4 Reasons Immigration Reform Will Pass In 2014," http://www.latintimes.com/new-year-2014-4-reasons-immigration-reform-will-pass-2014-141778)

Immigration reform is set to be the key issue of 2014. Following Mitt Romney's dismal performance among Latino voters in the 2012 election, both sides of the Government woke up to the necessity for comprehensive reform on immigration. Indeed, in his State of the Union address in February, President Obama declared that “the time has come to pass comprehensive immigration reform.” Yet with the House divided over Obamacare and the budget crisis, the Government Shutdown let immigration reform die. 2014 will change that: and here are 4 Reasons Why.¶ 1. Republican Support: A fundamental lack of support from the GOP has always been one of the major obstacles for passing comprehensive reform legislation, and indeed this seemed to be the case this year after the Bill passed by the Senate was struck down by Congress. However, more and more GOP members are realizing the significance of the Latino vote and understanding that passing comprehensive immigration reform is the most significant way of securing support from Latino voters. ¶ A July poll from Latino Decisions found that immigration reform was the most important issue facing the Latino community for 60 percent of those surveyed. The poll also found that 70 percent of those questioned were dissatisfied with the job Republicans were doing on the issue. The survey also found the 39 percent would be more likely to support a Republican congressional candidate if immigration reform was passed with Republican leadership. ¶ Republican candidates have become aware of the significance of immigration reform for the party. Even in traditionally conservative Republican strongholds like Texas, candidates are turning towards immigration reform. According to Republican strategist and CNN en Español commentator Juan Hernandez, "it also wouldn’t surprise me if after the primary, the candidates move to the center and support reform. For Republicans to stay in leadership in Texas, we must properly address immigration.”¶ The March 2014 primaries will be a key moment in determining how reform progresses: Republican Strategist John Feehery suggests, “The timing on this is very important. What was stupid to do becomes smart to do a little bit later in the year.” Once the primaries are over, GOP members will have the chance to implement reform legislation without fear of challenges from the right. ¶ 2. Legalization Over Citizenship: While the Senate’s 2013 immigration reform bill was struck down by Congress, GOP party members have indicated that they will support legislation which favors legalization of undocumented immigrants over a path to citizenship.¶ Meanwhile, a recent survey from Pew Research Hispanic Trends Project demonstrated that 55 percent of Hispanic adults believe that legalizing immigrants and removing the fear of deportation is more important than a pathway to citizenship (although citizenship is still important to 89 percent of Latinos surveyed.)¶ As CBS suggests, “Numbers like these could give leverage to lawmakers who are interested in making some reforms to the legal immigration system, but not necessarily offering any kind of citizenship.”¶ If House Republicans offered legalization legislation for the undocumented community, this could put pressure on the President to compromise. And while this kind of reform would not be as comprehensive as the Senate’s bill, a bipartisan agreemenreert would be a significant achievement towards accomplishing reform.¶ 3. Activism Steps Up: 2013 saw one of the biggest surges in grassroots activism from immigration supporters, and political leaders started to listen. The hunger strike outside the White House was a particularly significant demonstration and drew visits of solidarity from a number of leaders from both sides of Congress, including the President and First Lady.¶ Immigration reform activists have promised "we will be back in 2014." Indeed, 2014 promises to be a year of even greater activism. Activist Eliseo Medina has pledged that immigrant advocacy groups would visit “as many congressional districts as possible” in 2014 to ensure further support.¶ Protests, rallies and marchers are likely to increase in 2014, putting greater pressure on Congress to pass legislation. Such visual, vocal protests will be key in ensuring comprehensive reform.¶ 4. Leadership: As immigration reform comes to the fore, party leaders will step up in 2014 to ensure change is achieved. While President Obama has made clear his support for comprehensive reform, House Speaker John Boehner previously stated that he had “no intention” of negotiating with the Senate on their comprehensive immigration bill. ¶ However, towards the end of 2013, it seemed that Representative Boehner was changing his tune. In November, President Obama revealed that “the good news is, just this past week Speaker Boehner said that he is “hopeful we can make progress” on immigration reform.” As if to prove the point, Boehner has recently hired top aide Rebecca Tallent to work on immigration reform.¶ With bipartisan leadership firmly focused on immigration reform and party members on both sides realizing the political importance of the issue, comprehensive legislation is one thing we can be sure of in 2014.

#### Detention restrictions sap political capital – spills over to other issues

Vladeck 13 (Steve – professor of law and the associate dean for scholarship at American University Washington College of Law, “Drones, Domestic Detention, and the Costs of Libertarian Hijacking”, 3/14, <http://www.lawfareblog.com/2013/03/drones-domestic-detention-and-the-costs-of-libertarian-hijacking/>)

The more I reflect on last week’s drone contretemps–and what effect the efforts of Senator Paul and his followers has had / may still have on U.S. policy–the more I have a profound and distressing sense of déjà vu. After all, it was barely 15 months ago that a hitherto-unheard-of coalition between what can safely be described as the left flank of the Democratic party and the right flank of the Republican party almost halted passage of the FY2012 National Defense Authorization Act. Recall that, back then, the issue was whether Congress was going to authorize military detention of individuals within the United States. After securing passage of section 1021(e) (a.k.a., the “Feinstein Amendment”), which provided that nothing in the NDAA altered existing law in such cases, this coalition largely stood down. The same thing appears to be happening with targeted killings. Whether or not Attorney General Holder’s second letter to Senator Paul actually answered the relevant question, it certainly appeared to mollify the junior Senator from Kentucky, who declared victory and withdrew his opposition to the Brennan nomination immediately upon receiving it. Thus, as with the Feinstein Amendment 15 months ago, the second Holder letter appears to have taken wind out of most of the libertarian critics’ sails, many of whom (including the Twitterverse) have now returned to their regularly scheduled programming. It seems to me that both of these episodes represent examples of what might be called “libertarian hijacking”–wherein libertarians form a short-term coalition with progressive Democrats on national security issues, only to pack up and basically go home once they have extracted concessions that don’t actually resolve the real issues. Even worse, in both cases, such efforts appeared to consume most (if not all) of the available oxygen and political capital, obfuscating, if not downright suppressing, the far more problematic elements of the relevant national security policy. Thus, even where progressives sought to continue the debate and/or pursue further legislation on the relevant questions (for an example from the detention context, consider Senator Feinstein’s Due Process Guarantee Act), the putative satisfaction of the libertarian objections necessarily arrested any remaining political inertia (as Wells cogently explained in this post on Senator Paul and the DPGA from November).

#### Reform Solves inevitable economic collapse

Ozimek 13 (Adam, Contributor, “Does An Aging Population Hurt The Economy?” Forbes, 2/7, http://www.forbes.com/sites/modeledbehavior/2013/02/07/does-an-aging-population-hurt-the-economy/)

The economic benefit of immigration is in part about how big of a problem our aging population is. Immigrants are in general younger, and our best way to fight against a growing ratio of retirees to workers. But this raises the question of how big of a problem is this ratio and our aging population in general. While many are concerned about this, Dean Baker argues it is not a problem. He agrees that the ratio has increased and will continue to increase in the future as the population ages, but he argues that we haven’t seen any problems yet so we won’t see any later: We have already seen a sharp decline in the ratio of workers to retirees, yet even people who follow the economy and economic policy closely, like Klein, were apparently not even aware of this fact. Since this decline is never cited as factor causing our current economic problems, why would we think the comparatively mild decline in this ratio projected for future decades will be a large burden? Dean is wrong that the ratio of workers to retirees is not cited as a factor in the current economic problems. The most prominent example comes from newly appointed Council of Economic Advisors member James Stock and his co-author Mark Watson. In their paper “Disentangling the Channels of the 2007-2009 Recession” they specifically cite demographic trends as a cause of our slow recovery. The variable Stock and Watson ultimately cite is the decline in labor force participation, and they argue it is driven by the aging of the workforce and the overall distribution of workers by age. Dean may argue that this technically isn’t the dependency ratio, but that would be quibbling: changes in these two measures capture the same basic economic phenomenon of the aging population and a lower percentage of the population working. Not only has the aging population contributed to the slow recovery, Stock and Watson argue there is good reason to believe it will mean slow recoveries in the future too: The main conclusion from this demographic work is that, barring a new increase in female labor force participation or a significant increase in the growth rate of the population, these demographic factors point towards a further decline in trend growth of employment and hours in the coming decades. Applying this demographic view to recessions and recoveries suggests that the future recessions with historically typical cyclical behavior will have steeper declines and slower recoveries in output and employment. Furthermore, this is just the impact of the aging population on business cycles, there is also the very serious problem of how it will affect our finances. Dean knows that by increasing the workforce immigration improves Social Security’s finances. In 2006 he wrote that if future immigration was at 2001-2002 levels instead of at around 900,000 per year it would reduce the Social Security trust fund’s long-term shortfall by 12%. A shortfall means we will reduce benefits or pay for it in higher taxes, and either are going to result in lower welfare for someone.

#### 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 2

#### 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.

### Off 3

#### Text: The President of the United States should issue an executive order granting Article III Courts exclusive jurisdiction over the United States’ military indefinite detention policy and providing access to a trial, using the appropriate administrative agencies.

#### 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 4

#### The United States Federal Government should grant Article III courts exclusive jurisdiction over the United States’ military indefinite detention policy and provide access to a trial, on the condition that the Republic of Cuba accepts prisoners released as a result.

#### Solves the case and boosts US-Cuba relations

Landau and Brenner, 13 – Senior Fellow at the Institute for Policy Studies, AND professor of international relations at American University and co-editor of A Contemporary Cuba Reader (Saul and Philip, 8/3. “A Simple Solution.” http://www.huffingtonpost.com/saul-landau/a-simple-solution\_b\_3700652.html)

President Barack Obama has a simple way to solve his Guantánamo dilemma. Five years after the president promised to close the detention center for alleged terrorists the prison remains open and continues to leave a stain on the honor and integrity of the United States and its proclaimed commitment to universal human rights. With a brief and unambiguous message to Cuba's President Raúl Castro, President Obama could offer to return Guantánamo naval base to Cuba on the condition that Cuba accept all of the prisoners. In one act the United States would rid itself of a loathsome prison and prisoners it has been unable to send anywhere else, open the way to repairing a sixty-year old dysfunctional relationship with Cuba, and repatriate territory that all Latin Americans -- not just Cubans -- have long viewed with resentment as a symbol of U.S. imperial behavior in the hemisphere. It would be the single most significant action that could break through the barriers of distrust and misunderstanding both countries have erected. Most Americans don't know the history of Guantánamo. Under the terms of the 1902 Platt Amendment -- a relic of the Spanish-American war that allowed us to control Cuba's affairs -- the United States forced Cuba to give it a 99-year lease for the 47 square-mile territory on which it built the Guantánamo base. In 1934 President Franklin Roosevelt abrogated the Platt Amendment as a good neighbor gesture, but pressured Cuba to sign a new Guantánamo lease, this time with no end date. Following the 1991 Haitian coup, the United States rediscovered Guantánamo's utility, as a refugee camp for escaping Haitians unwanted in the United States. After the 9/11 attacks the military converted the camp to a high security prison. To be sure, several matters would need to be negotiated in order to implement this "simple" solution. Apart from the disposition of the base facilities, the two countries would need to agree on the latitude Cuba would have with regard to the prisoners. For example, the United States might seek assurances that Cuba would prevent the travel of released prisoners to the United States or a U.S. territory. But once positive energy vibrates through U.S.-Cuba diplomacy, many of the disagreements between the two countries would emerge as soluble, as solutions build on one another to engender confidence. It is likely that even before the details of returning the naval base to Cuba were settled, the two countries might be able to overcome the most vexing, immediate source of irritation between them. The United States holds in federal prisons four Cuban agents convicted of espionage, and Cuba holds an employee of a U.S. Agency for International Development subcontractor convicted of "acts against the independence or territorial integrity of the state." Just as we have swapped prisoners with Russia and other adversaries, there is nothing stopping us from exchanging Mr. Gross for the four and allowing them all to return to their homes. Similarly, Cuba has successfully negotiated agreements over expropriated property with every country except the United States. The typical debt-for-equity formula Cuba has used could resolve this fifty-year old issue to the benefit of U.S. citizens and corporations, and might even open the way to new U.S. investment in Cuba. Or consider that the United States and Cuba already have achieved impressive levels of cooperation in areas of mutual concern - such as drug interdiction and natural disaster preparation - which would be even more effective if the engagements could be deepened, institutionalized, and undertaken without fear of domestic repercussions. The U.S.-Cuba relationship has baffled ten previous U.S. presidents. It is source of tension between the United States and nearly all of the countries in Latin America. There is no objective reason for it to continue this way, along a hostile road. Solving the Cuba problem is one certain way that President Obama could keep his promises in 2009 to forge a new relationship with Latin America based on mutual respect and have a positive foreign policy legacy. Cuba has indicated a sincere desire to enter into discussions with the United States on all bilateral issues of concern between the two countries, but until now the United States has responded with a self-defeating aloofness. As dozens of Guantánamo detainees continue their hunger strike, and a ruling about force-feeding them remains in limbo between different federal courts, the moment is ripe for President Obama to act with courage and decisiveness. Guantánamo gives him the opportunity of turning a lemon into lemonade.

#### Boosting US-Cuban relations by engaging the regime is vital to American credibility in Latin America and abroad

Huddleston and Pascual, 9 – visiting fellow at Brookings and co-director of the Brookings Project on U.S. Policy Toward a Cuba in Transition; vice president and director of Foreign Policy at Brookings (Vicki and Carlos, 4/13. "REFRAME U.S. – CUBA RELATIONS.” http://www.brookings.edu/~/media/Research/Files/Reports/2009/4/13%20summit%20americas /0413\_summit\_americas\_huddleston\_pascual.PDF)

Cuba policy should be a pressing issue for the Obama administration because it offers a unique opportunity for the president to transform our relations with the hemisphere. Even a slight shift away from hostility to engagement will permit the United States to work more closely with the region to effectively advance a common agenda toward Cuba. By announcing a policy of critical and constructive engagement at the April Summit of the Americas in Trinidad and Tobago, the president can prove that he has been listening to **the region**. He can underline this commitment by removing all restrictions on travel and remittances on Cuban Americans, and engaging in dialogue with the regime, as promised during his campaign. By reciprocally improving our diplomatic relations with Cuba, we will enhance our understanding of the island, its people, and its leaders. However, while these measures will promote understanding, improve the lives of people on the island, and build support for a new relationship between our countries, they are insufficient to ensure the changes needed to result in normal diplomatic relations over time. If the president is to advance U.S. interests and principles, he will need a new policy and a longterm strategic vision for U.S. relations with Cuba. If he is prepared to discard the failed policy of regime change and adopt one of critical and constructive engagement, he and his administration will lay the foundations for a new approach toward Cuba and the Latin America. Like his predecessors, President Obama has the authority to substantially modify embargo regulations in order to advance a policy of engagement that would broaden and deepen contacts with the Cuban people and their government. He has the popular support—domestic and international—to engage Cuba, and, by so doing, to staunch our diminishing influence on the island and recapture the high road in our relations with the hemisphere. Although it will take Cuban cooperation to achieve a real improvement in relations, we should avoid the mistake of predicating our initiatives on the actions of the Cuban government. The United States must evaluate and act in its own interests. We must not tie our every action to those of the Cuban government, because doing so would allow Cuban officials to set U.S. policy, preventing the United States from serving its own interests. **The majority of Cuban Americans now agree** with the American public **that our half-century-old policy toward Cuba has failed**. For the first time since Florida International University (FIU) began polling Cuban American residents in 1991, a December 2008 poll found that a majority of Cuban American voters favor ending current restrictions on travel and remittances to Cuba, and support a bilateral dialogue and normal diplomatic relations with the Cuban regime by substantial margins. The United States is isolated in its approach to Cuba. **In the 2008 United Nations General Assembly, 185 countries voted against the U.S. embargo and only two, Israel and Palau, supported the U.S. position**. Although the international community is opposed to the embargo, it remains concerned about Cuba’s poor human rights record. At the February 2009 Geneva Human Rights Council, Brazil, Chile, and Mexico asked Cuba to respect the rights of political opponents and give an "effective guarantee’’ of freedom of expression and the right to travel. The European Union has long maintained a policy of critical and constructive engagement in its Common Position yet continues to engage the Cuban government in an effort to obtain the release of political prisoners and ensure greater freedoms for civil society, including access to the Internet. **If the United States were to align its policies with these governments**—with the addition of Canada, **it would enhance our united ability to forcefully make shared concerns known to the Cuban government. The prospect of significant revenues from oil, natural gas, and sugarcane ethanol in the next five years could further integrate Cuba into global and regional markets.** While in the short term Cuba will continue to be heavily dependent on Venezuela for subsidized fuel, in five years offshore oil reserves, developed with Brazil, Spain, Norway, and Malaysia, combined with the potential for ethanol production with Brazil, may increase net annual financial flows to Cuba by $3.8 billion (at $50 per barrel of oil and $2.00 gallon of ethanol). If democratic countries increase their economic stakes in Cuba, they will simultaneously enhance their political influence with its current and future leaders. To be relevant to Cuba, the Obama administration will need to shape its policies now. The April 17, 2009 Summit of the Americas in Trinidad and Tobago provides President Obama with an opportunity to enhance U.S. credibility and leadership in the region by signaling a new direction in U.S.-Cuba policy. Rather than continuing to demand preconditions for engaging the Cuban government in the multilateral arena, the president should encourage the Organization of American States and international financial institutions to support Cuba’s integration into their organizations as long as it meets their membership criteria of human rights, democracy, and financial transparency. If Cuba’s leaders know that Cuba can become a full member upon meeting standard requirements, they could have an incentive to carry out difficult reforms that ultimately benefit the Cuban people. **The United States successfully engaged the Soviet Union and China from 1973 onward. With those governments the policy objective was to further U.S. interests by reducing bilateral tension, expanding areas of cooperation, fostering cultural contacts, and enmeshing the Soviet and Chinese economies in international linkages that created incentives for improved relations with the West. We continued to voice our commitment to democracy and human rights, and enhanced that argument by pressing the Soviet Union to live up to international obligations. By working with the region and the international community, we can do much the same in Cuba.** But as the cases of the Soviet Union and China demonstrated, this approach can only be effective if we are prepared to engage bilaterally and multilaterally. A New U.S. Policy Of Critical And Constructive Engagement The advisory group of the Brookings project on “U.S. Policy toward a Cuba in Transition” came to the unanimous conclusion that President Barack Obama should commit to a long-term process of critical and constructive engagement at all levels, including with the Cuban government. We believe that only through engagement can the president put into place a strategic vision that would permit the United States to protect its interests and advance the desire we share with the hemisphere to help the Cuban people become agents for peaceful change from within the island. A decision by the president to engage the Cuban government would not reflect acceptance of its human rights abuses or approval of its conduct. Instead, it would prove a realistic evaluation and recognition of the extent to which the Cuban government controls Cuba— essential to the implementation of a new policy that would permit us to work with the region, enhance our influence with the Cuban government, and seek to help Cuba’s citizens expand the political space they need to influence their future. **Engagement should serve to enhance personal contacts between Cuban and U.S. citizens and permanent** residents, diminish Cuba’s attraction as a rallying point for anti-American sentiment, and burnish our **standing in the region and the wider international community**. **If we engage, the Cuban government will no longer be able to use the U.S. threat as a credible excuse for human rights abuses and restrictions on free speech, assembly, travel, and economic opportunity. This in turn would encourage the international community to hold the Cuban government to the same standards of democracy, rights and freedoms that it expects from other governments around the world.** The Cuban hierarchy will not undertake openings or respond to pressure from the international community or the United States if it considers that doing so would jeopardize its continued existence**. The key to a new dynamic in our relationship is to embark on a course of a series of strategic actions that aim to establish a bilateral relationship and put the United States on the playing field—to counter our hitherto self-imposed role of critical observer. Our priority should be to serve U.S. interests and values in the confidence that if we do so wisely and effectively, Cubans in the long run will gain as well.** The Way Forward It should be understood that engagement—while having as a goal evolution to a peaceful and democratic Cuba—does not promise an overnight metamorphosis. Rather, **it is a process, a pathway with various detours and obstacles, that over time arrives at its destination.** The roadmap for critical and constructive engagement is a long-term strategic vision made up of baskets of short-, medium-, and long-term initiatives; all are within the authority of the Executive Branch to enact. Each of the initiatives we suggest would advance one or more of the objectives listed in the box below. The conduct and timing of foreign policy remains the prerogative of the president. In order to create a new dynamic in our bilateral relationship, we prefer that all the initiatives in the short-term basket be carried out this year. We acknowledge that it is likely that prior to moving on to the medium- and long-term baskets, the president and his advisers will assess the impact of the new policy on the United States, Cuba, and the international community. Based on their assessment, they will determine how quickly to proceed with the medium- and longterm baskets of initiatives. If the Cuban response is not encouraging, they might carry out only a few of the suggested initiatives or lengthen the time frame. However, **it is important that they continue to move toward a full normalization of relations, because doing so would most effectively create conditions for a democratic evolution in Cuba.** Equally important to the process is garnering the support of Cuban Americans and Congressional leaders**.** Given the strong sentiments and expectations that Cuba engenders, it would be preferable for the Executive Branch to proceed discreetly. The president might first announce the principles he hopes to achieve in Cuba through a policy of engagement that promotes human rights, the wellbeing of the Cuban people, and the growth of civil society. To carry out the president’s vision, the Secretary of the Treasury will then have the responsibility to write and publish the changes to the Cuban Assets Control Regulations by licensing activities designed to achieve these ends. The Secretary of State can quietly accomplish many diplomatic initiatives on a reciprocal basis without any need to publicize them. This quiet diplomacy might be complemented by a refusal to engage in what some refer to as megaphone diplomacy, in which our governments trade insults across the Straits of Florida, and which only contributes to making the United States appear to be a bully. The president’s leadership in carrying out a new Cuba policy is essential because by law and practice it is his responsibility to determine the overall conduct of U.S. foreign policy. In the case of Cuba, he has ample executive authority to put in place a policy of engagement.

#### That’s critical to global dominance – the US needs regional allies

Sabatini and Berger 12

[Christopher Sabatini is the editor-in-chief of Americas Quarterly and senior director of policy at Americas Society/Council of the Americas. Ryan Berger is a policy associate at the Americas Society/Council of the Americas. The views in this article are solely those of Christopher Sabatini and Ryan Berger, Why the U.S. can't afford to ignore Latin America, June 2012, <http://globalpublicsquare.blogs.cnn.com/2012/06/13/why-the-u-s-cant-afford-to-ignore-latin-america/>]

Speaking in Santiago, Chile, in March of last year, President Obama called Latin America “a region on the move,” one that is “more important to the prosperity and security of the United States than ever before.” Somebody forgot to tell the Washington brain trust. The Center for a New American Security, a respected national security think tank a half-mile from the White House, recently released a new series of policy recommendations for the next presidential administration. The 70-page “grand strategy” report only contained a short paragraph on Brazil and made only one passing reference to Latin America. Yes, we get it. The relative calm south of the United States seems to pale in comparison to other developments in the world: China on a seemingly inevitable path to becoming a global economic powerhouse, the potential of political change in the Middle East, the feared dismemberment of the eurozone, and rogue states like Iran and North Korea flaunting international norms and regional stability. But the need to shore up our allies and recognize legitimate threats south of the Rio Grande goes to the heart of the U.S.’ changing role in the world and its strategic interests within it. Here are three reasons why the U.S. must include Latin America in its strategic calculations: 1. Today, pursuing a global foreign policy requires regional allies. Recently, countries with emerging economies have appeared to be taking positions diametrically opposed to the U.S. when it comes to matters of global governance and human rights. Take, for example, Russia and China’s stance on Syria, rejecting calls for intervention. Another one of the BRICS, Brazil, tried to stave off the tightening of U.N. sanctions on Iran two years ago. And last year, Brazil also voiced its official opposition to intervention in Libya, leading political scientist Randall Schweller to refer to Brazil as “a rising spoiler.” At a time of (perceived) declining U.S. influence, it’s important that America deepens its ties with regional allies that might have been once taken for granted. As emerging nations such as Brazil clamor for permanent seats on the U.N. Security Council and more representatives in the higher reaches of the World Bank and the International Monetary Fund, the U.S. will need to integrate them into global decision-making rather than isolate them. If not, they could be a thorn in the side of the U.S. as it tries to implement its foreign policy agenda. Worse, they could threaten to undermine efforts to defend international norms and human rights. 2. Latin America is becoming more international. It’s time to understand that the U.S. isn’t the only country that has clout in Latin America. For far too long, U.S. officials and Latin America experts have tended to treat the region as separate, politically and strategically, from the rest of the world. But as they’ve fought battles over small countries such as Cuba and Honduras and narrow bore issues such as the U.S.-Colombia free-trade agreement, other countries like China and India have increased their economic presence and political influence in the region. It’s also clear that countries such as Brazil and Venezuela present their own challenges to U.S. influence in the region and even on the world forum. The U.S. must embed its Latin America relations in the conceptual framework and strategy that it has for the rest of the world, rather than just focus on human rights and development as it often does toward southern neighbors such as Cuba. 3. There are security and strategic risks in the region. Hugo Chavez’s systematic deconstruction of the Venezuelan state and alleged ties between FARC rebels and some of Chavez’s senior officials have created a volatile cocktail that could explode south of the U.S. border. FARC, a left-wing guerrilla group based in Colombia, has been designated as a “significant foreign narcotics trafficker” by the U.S. government. At the same time, gangs, narcotics traffickers and transnational criminal syndicates are overrunning Central America. In 2006, Mexican President Felipe Calderón launched a controversial “war on drugs” that has since resulted in the loss of over 50,000 lives and increased the levels of violence and corruption south of the Mexican border in Guatemala, El Salvador, Honduras and even once-peaceful Costa Rica. Increasingly, these already-weak states are finding themselves overwhelmed by the corruption and violence that has come with the use of their territory as a transit point for drugs heading north. Given their proximity and close historical and political connections with Washington, the U.S. will find it increasingly difficult not to be drawn in. Only this case, it won’t be with or against governments — as it was in the 1980s — but in the far more complex, sticky situation of failed states. There are many other reasons why Latin America is important to U.S. interests. It is a market for more than 20% of U.S. exports. With the notable exception of Cuba, it is nearly entirely governed by democratically elected governments — a point that gets repeated ad nauseum at every possible regional meeting. The Western Hemisphere is a major source of energy that has the highest potential to seriously reduce dependence on Middle East supply. And through immigration, Latin America has close personal and cultural ties to the United States. These have been boilerplate talking points since the early 1990s. But the demands of the globe today are different, and they warrant a renewed engagement with Latin America — a strategic pivot point for initiatives the U.S. wants to accomplish elsewhere. We need to stop thinking of Latin America as the U.S. “backyard” that is outside broader, global strategic concerns.

#### US primacy prevents global conflict

Brooks et al 13 [Stephen G. Brooks is Associate Professor of Government at Dartmouth College.G. John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs. He is also a Global Eminence Scholar at Kyung Hee University.William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College. “Don't Come Home, America: The Case against Retrenchment”, Winter 2013, Vol. 37, No. 3, Pages 7-51,[http://www.mitpressjournals.org/doi/abs/10.1162/ISEC\_a\_00107](http://www.mitpressjournals.org/doi/abs/10.1162/ISEC_a_00107" \t "_blank)]

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive wartemptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without theAmerican pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins toswing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimismregarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by astill-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on itsparticular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however,undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and theyengage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts thatthe withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war).

### 1NC NATO Frontline

**NSA thumps soft power and allied intel cooperation – impact is long term and a complete disaster**

Ingrid **Wuerth** **10/25**/13 (Professor at Vanderbilt Law School, lawfare, “Dispatch from Berlin on a Diplomatic Disaster” <http://www.lawfareblog.com/2013/10/dispatch-from-berlin-on-a-diplomatic-disaster/>)

A **diplomatic disaster** for the **U**nited **S**tates is currently unfolding in Berlin. The revelation that the NSA may have monitored cell phone conversations and text messages of Chancellor Angela Merkel has led to popular outrage in Germany, as well as unusually pointed language from the Chancellor and other government officials. The U.S. Ambassador was not merely asked but summoned (“einbestellt”) to the German foreign office—a strong verb used until now (if at all) only for the Syrian and Iranian ambassadors. The Chancellor’s phone conversation with President Obama did nothing to ease the tension. Merkel declared such practices totally unacceptable: Between friends and partners such as the United States and Germany, the monitoring of communications by government leaders is a grave breach of trust, her press secretary emphasized. The Obama administration, other than saying the Chancellor’s phone is not now and will not in the future be monitored, has offered nothing: neither apology, nor explanation of what happened in the past, nor any sort of suggestion for **future cooperation** or discussion of a collective solution. Maybe all of this will blow over quickly—just a headline-grabbing news story, made even better by the emerging details of the Chancellor’s two very different cellphones (one secure, one not) and questions about German helicopters flown over the U.S. consulate in Frankfurt in September. But it may not. Chancellor Merkel’s tone is sharp and that of minority parties in Parliament is even sharper. Those parties have been critical of Merkel for failing to react more strongly to prior revelations about the NSA. Mostly, however, the two center parties (Merkel’s CDU and the SPD) are united, rather than divided by their criticism of the United States. The current dispute goes may have **deep roots** as well. Roger Cohen has a nice piece up at the New York Times, detailing the German (and European) perception that the Obama administration has been dismissive, including with respect to possible military intervention in Syria. The Federal Republic of Germany has traditionally been more willing than the United States to sacrifice some civil liberties in order to protect democratic values—their “streitbare” or “aggressive” democracy prohibits, for example, certain political parties that lean extremely far right or left. But totalitarian East Germany—in which spying on and on behalf of the government was very widespread—has left its mark on the popular culture. Listening in on other people’s private phone conversations brings to mind an immediate past of repression and brutality for the Germans. And today the United States is seen as presenting a serious threat to the civil liberties of all Germans, not just Chancellor Merkel. The comparison of Obama to East German state security is explicit. Although U.S.-German relations suffered during the invasion of Iraq, that was widely blamed on the Republican presidency of George W. Bush. With the Democrat Obama at the helm, however, localizing the blame is no longer so easy. **U.S.-German relations may be at their lowest point since the end of World War II.** Even if the German government wanted to overlook U.S. snooping (to avoid too much scrutiny of their own activities), the domestic political costs of looking the other way now have increased here as they have in France and Brazil. What are the potential costs for U.S. foreign policy? In the short term, there is discussion in Europe of **conditioning further European-U.S.** bilateral trade **negotiations** upon a satisfactory solution to the problem of U.S. government data collection from Europe. Moreover, **data sharing of various sorts could be limited**; German or European laws could substantially ramp up data privacy protection, at potential cost to U.S. businesses; German prosecutors and the German Parliament may take up the issue. And, finally of course, there is a cost to U.S. soft power. To limit these costs the U.S. needs to re-pivot toward Europe, as Cohen argues. President Obama also needs to articulate a clear set of policy objectives for, along with a defense of, NSA activities. The current public relations debacle in Europe is, I think, related to the public relations problems within the U.S., both of which stem in part from a failure of leadership, a point noted in the German press. More ambitiously, it is worth recognizing that despite their anger, Germans understand that their national security benefits from some U.S. collection of data, and that the “everyone does it” charge has some force. There might be reason for optimism with respect to collective discussion between Europe and the United States and even modest agreement on some limits to electronic surveillance of foreign nationals and in foreign countries. Assuming, of course, that the United States is willing to provide transparency, to negotiate and make compromises, and—crucially—to provide effective leadership. The costs of the current U.S. unilateral “approach” are growing, and our negotiating power waning, a trend that appears likely to continue.

#### NATO fails and EU solves the impacts better

**Hockenos ‘9** (03/09/2009 RETHINKING US-EUROPE RELATIONS Is the EU Better for Obama than NATO? By Paul Hockenos Paul Hockenos is editor of Internationale Politik-Global Edition. His most recent book is "Joschka Fischer andthe Making of the Berlin Republic: An Alternative History o fPostwar Germany".

**The new American administration would be well served to rethink the United States’ relationship** to Europe: It should move toward a strategic partnership of equals with the European Union and entertain the possibility of new fora to address global security threats. In the long-term, a close, respectful working relationship with the European Union would enhance America’s own security and enable it to engage much more effectively in a multipolar world. America’s long-standing preference for NATO as the transatlantic institution of choice has several explanations. For one, it arguably had—at least until Afghanistan—a record of success. It helped the West win the Cold War without firing a shot. NATO’s job, as British secretary-general Lord Ismay famously put it in 1967, was “to keep the Russians out, the Americans in, and the Germans down.” But rather than close up shop with “mission accomplished” in the early 1990s, the 1949-founded pact sought a new purpose. Because the Europeans lacked the military hardware necessary to wage war against the Serb nationalists, NATO led the humanitarian interventions in Bosnia in 1995 and the armed campaign against Milosevic’s Serbia in 1999. That same year, the Czech Republic, Hungary, and Poland became the first former-Warsaw pact countries to join NATO, over Russia’s stiff objections. In the years to follow, the Baltic states and Slovenia, Slovakia, Bulgaria, and Romania also joined. Although the United States and Great Britain circumvented NATO to topple the Taliban government in late 2001, two years later NATO took its operations outside of Europe for the first time in the form of the International Security Assistance Force in Afghanistan. Today the NATO-led force includes 50,000 troops from 40 countries, including all 27 of the NATO allies. Given the East-West stalemate, during the postwar decades it was possible for NATO allies to work together in the name of collective defense, despite the many differences of opinion within the pact. Leaving aside the question of the nature of the Soviet threat (archives in Moscow turned up no plans for an invasion), the United States and the Western Europeans concurred that the Soviet Union was the enemy. Although the United States set the agenda and the Europeans were effectively junior partners, the principle of collective decision-making was formally respected. Moreover, in the aftermath of the Cold War there were no obvious alternatives to keep the United States and Europe close once American troops withdrew and the nuclear umbrella became irrelevant. Creating something new was beyond the imagination of Washington’s foreign policy makers at the time. Lastly, because it was and would remain primarily a military organization, NATO was one institution that the United States, with its nuclear arsenal and vast military superiority, would be certain to continue to dominate. Yet **by transforming the alliance into an agency for addressing international crises of all kinds, NATO’s advocates have only called greater attention to its inadequacy for the 21st century**. NATO’s new “comprehensive approach” to security endows it with a catch-all mandate that changes as new threats or missions arise and has grown to include responsibilities that go far beyond the exercise of military force. **But while its mandate has changed, its tools and thinking have lagged behind.** There is no better example than NATO’s flagship mission in Afghanistan, where the alliance is confronted with civilian, policing, and humanitarian duties that it cannot possibly carry out. Most of the European NATO member states in Afghanistan argue that stability is only going to be achieved through a strategy that combines education, rule of law programs, economic aid, and infrastructure projects. They underscore that the purpose of the international mission is to facilitate a hand over to the Afghans and to create conditions for reconstruction. Germany and Spain point out, for example, that Afghan poppy production—and Afghanistan’s bumper crops—cannot be checked by bombing campaigns, and that air strikes on poor Afghan farmers could well backfire, costing the force even more good will. But “counter-narcotics” is yet another category that has been added to NATO’s to-do list. There is growing consensus that the Afghanistan mission is make-or-break for NATO and that, at the moment, the latter cannot be ruled out. The war in Afghanistan is only the most egregious example of NATO’s dilemma. Whether it is cyberwar, peacekeeping, international terrorism, or energy security, NATO is invoked by Atlanticists as the go-to institution, overburdening it with new responsibilities. In late January, NATO’s secretary general even proposed an alliance presence in the Arctic as global warming melts the northern ice cap and major powers scramble to lay claim to its energy resources. Others see NATO patrolling Gaza’s borders in a new Israel-Palestine peace deal. **As** **the Dutch political scientist Peter van Ham argues, “NATO’s instruments have become blunt and outdated in** the light of today’s non-traditional security challenges and techniques.” Yet, he notes, contrary to expectations its portfolio has only expanded: “Whereas not too long ago the main question was how the European Union could use NATO’s military tools...the debate is now how should NATO draw upon the resources of the European Union, the United Nations, the World Bank, as well as non-governmental organizations.” But this has not caused US foreign policy makers to consider new fora or mechanisms to address the new threats. Nor have the Europeans been enterprising or ingenuous with new ideas. For them this is the path of least resistance: by putting these complex challenges in NATO’s hands, they appear to have addressed the problems without actually doing so. There is also a lingering question of whether NATO is up to the job of keeping the peace in the North Atlantic area, its original raison d'etre. Today, the threats to European security are strikingly different from those of the Cold War years. They include ethnic conflict on Europe's frontiers, mass migration and refugee flows, energy crises, nuclear proliferation, and transnational terrorism. Particularly in Europe, many experts see security challenges in global warming, international trafficking, resource scarcity, and failing states. A recent EU study concluded that increased tensions over falling water supplies in the Middle East will affect the continent's energy security and economic interests. In addition, global warming will exacerbate poverty and spur mass migration from Africa. **Neither NATO's instruments nor its framework is right for these kinds of problems.** Under the Bush administration this did not matter -- it saw NATO's role exclusively as part of the war on terrorism. The August 2008 conflict in Georgia, however, underscored that there are still threats to Europe's security within and on its borders that the continent's powers will have to respond to with instruments other than pure force. It is no secret that Russia feels deeply threatened by the alliance's expansion eastward, which it has consistently protested since the early 1990s. Moscow perceives as hostile the advance to its borders of a foreign military alliance that was designed to resist the Soviet Union and still sees Russia as a competitor. Although not solely accountable for Russia's authoritarian turn, **NATO's expansion into East Central Europe --contrary to US and German promises to Gorbachev in 1989 -- has expedited the aggressive nationalism and assertiveness of Putin-era Russia**. **It has fueled a new arms race and aggravated a security threat in Europe** that has far-reaching implications for the Europeans. Likewise, the further eastward enlargement of NATO to include Ukraine and Georgia, which Obama specifically advocated in his July 2008 Berlin address, will not engender greater security -- neither for Western Europe nor for Georgia and Ukraine. Admitting Georgia could draw NATO into a direct confrontation with Russia. Would the alliance really risk war with Russia over Georgia's breakaway enclaves in the Caucasus? Unlikely. The Georgians should have no illusions: they have already paid a high price for the false sense of security that American advisors gave to them prior to the recent conflict. The European Union in the World As great as the gap across the Atlantic has been in recent years, the United States still has much more in common with the Europeans than it does with new powers China or Russia. Europe could and should be America's closest partner in world affairs. But this relationship would be immensely different than the current one. It must be a partnership of equals across the Atlantic and this will require real compromises from the United States as well as the Europeans. To make this possible, the Obama administration must begin to think anew about the European Union. For one, the Union is not teetering on the brink of disintegration, regardless of how some American commentators interpret its disunity on many issues and the recent failures to pass a constitution. Though institutional reform is absolutely necessary, **even in its current condition the European Union is healthy**, admired by the overwhelming majority of Europeans, and will continue to perform as it has in the recent past -- but no better than that until a constitution or new reform treaty is approved. The European Union is already a major, capable power in world affairs. It has global interests and a sense of responsibility that goes beyond narrow self-interest. Its size and international economic might alone make it globally relevant, especially since much of the Union's power comes from its conditionally linked trade policies. The single market includes 450 million people, and ranks as the world's largest exporter of goods and the second leading importer worldwide behind the United States. When the ongoing financial crisis peaked this fall, President Bush's first call of help abroad was to the European Union. The Europeans also contribute over half the world's foreign aid to developing countries, including €300 million a year to the Palestinian Authority, triple the resources the United States provides. Diplomatically**, the European Union has led international negotiations with Iran over its nuclear program since 2003. In** 2004 European diplomacy helped bring about a peaceful resolution to Ukraine's Orange Revolution and, more recently, European negotiators brokered a peace in Georgia **that sent peacekeeping troops and monitors to the Caucasus. Its greatest success by far has been to stabilize the Western Balkans in the aftermath of the wars of the 1990s**. **Thus, even though European Union foreign policies are in their infancy, they already make a significant contribution to global security**. Although the European Union in its various incarnations has long been involved in matters beyond its borders, this took new form in 1992 with the Common Foreign and Security Policy. Since then, its ability to engage in the wider world was boosted significantly, first with the 1999 European Security and Defense Policy (ESDP) and then with the 2003 adoption of the European Security Strategy. ESDP endowed the European Union with military capabilities, enabling it to launch its first mission in Macedonia in March 2003.

#### Status quo solves stability

DOD, 12 (Department of Defense, December, “Report on Progress Toward Security and Stability in Afghanistan”, Report to Congress, http://www.defense.gov/news/1230\_Report\_final.pdf)

EXECUTIVE SUMMARY1

During the reporting period of April 1 to September 30, 2012, the Coalition and our Afghan partners blunted the insurgent summer offensive, continued to transition the Afghan National Security Forces (ANSF) into security lead, pushed violence out of most populated areas, and coalition member nations signed several international agreements to support the long-term stability and security of Afghanistan. In May, President Obama and President Karzai signed a Strategic Partnership Agreement, reflecting the two governments’ desire for an enduring partnership. At the May 2012 Chicago Summit, North Atlantic Treaty Organization (NATO) - International Security Assistance Force (ISAF) nations also pledged to support Afghanistan through 2017. This was followed in July by the Tokyo Conference, at which the international community declared its support for Afghanistan by linking specific reforms in governance and rule-of-law by the Afghan government with sustained financial assistance through 2015.

During the reporting period enemy-initiated attacks (EIAs) were up one percent compared to the same period last year, due in large part to a shortened poppy harvest employing low-level insurgents far less than in past years. However, EIAs are down 3 percent from January to September 2012 compared to the same period in 2011, after dropping nine percent in 2011 compared to 2010. EIAs are now disproportionately occurring outside of populated areas, and the security of many of Afghanistan’s largest cities increased substantially during the reporting period.

Security progress and the development of the ANSF during the reporting period have enabled the security transition process to continue in accordance with the framework agreed to at the 2010 Lisbon Summit. As of the end of September 2012, roughly 76 percent of Afghans are living in areas where the ANSF has begun to assume the lead for security.

Despite these and other positive trends during the reporting period, the campaign continued to face challenges, including a rise in insider attacks. The rise in insider attacks has the potential to adversely affect the Coalition’s political landscape, but mitigation policies and a collective ISAF-ANSF approach are helping to reduce risks to coalition personnel, and to sustain confidence in the campaign. The cause of and eventual solution to this joint ISAF and ANSF problem will require continuous assessment; it remains clear that the insider threat is both an enemy tactic and has a cultural component. The many mitigation policies recently put in place will require additional time to assess their effects, although the number of insider attacks has dropped off sharply from the peak in August.

The insurgency’s safe havens in Pakistan, the limited institutional capacity of the Afghan government, and endemic corruption remain the greatest risks to long-term stability and sustainable security in Afghanistan. The Taliban-led insurgency and its al-Qaida affiliates still operate from sanctuaries in Pakistan, however, the insurgency and al-Qaida continue to face U.S. counterterrorism pressure within the safe havens. U.S. relations with Pakistan have begun to improve following the re-opening of Pakistani Ground Lines of Communication (GLOCs), and there has been nascent improvement with respect to cross-border cooperation between Pakistan and Afghanistan.

#### Regional cooperation deescalates conflict

Innocent, foreign policy – Cato, ‘9

(Malou, <http://www.cato.org/pubs/wtpapers/escaping-graveyard-empires-strategy-exit-afghanistan.pdf>)

Additionally, regional stakeholders, especially Russia and Iran, have an interest in a stable Afghanistan. Both countries possess the capacity to facilitate development in the country and may even be willing to assist Western forces. In July, leaders in Moscow allowed the United States to use Russian airspace to transport troops and lethal military equipment into Afghanistan. Yet another relevant regional player is the Collective Security Treaty Organization, made up of Russia, Kazakhstan, Tajikistan, Kyrgyzstan, Uzbekistan, Armenia, and Belarus. At the moment, CSTO appears amenable to forging a security partnership with NATO. CSTO secretary general Nikolai Bordyuzha told journalists in March 2009 of his bloc’s intention to cooperate. “The united position of the CSTO is that we should give every kind of aid to the anti-terror coalition operating in Afghanistan. . . . The interests of NATO and the CSTO countries regarding Afghanistan conform unequivocally.”83

Mutual interests between Western forces and Afghanistan’s surrounding neighbors can converge on issues of transnational terrorism, the Caspian and Central Asia region’s abundant energy resources, cross-border organized crime, and weapons smuggling. Enhanced cooperation alone will not stabilize Afghanistan, but engaging stakeholders may lead to tighter regional security.

#### Allied terror coop is high now, despite frictions

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### Drones are a massive alt cause

Devin Streeter, Liberty University Strategic Intelligence Society, Director of Activities, Public Relations, and Recruitment, 4/19/2013, http://www.academia.edu/3523639/U.S.\_Drone\_Policy\_Tactical\_Success\_and\_Strategic\_Failure

In essence, the United States has sparked a miniature arms race and has intimidated nations with the threat of a new, superior technology. Governments that have begun pursuing their own UAV programs have shown a notable bitterness to the United States for its unchecked use of drones. 34 Nations such as China, Japan, Russia, and Brazil all disapprove of United States drone policies by over 30 percentage points. 35 To them, the United States seems heavy handed and brutish; holding back technology while indiscriminately using it against our enemies. The lack of consideration and cooperation is a negative influence on world leaders. At the same time, other nations feel that drones violate their airspace and are used without approval from the international community. 36 The majority of these nations fall within the boundaries of the European Union, and while their disapproval is not as notable as the first group, it often reaches the double digits rate. 37 Germany, Great Britain, Poland, and other European Union members do not understand the ‘fire from the hip’ mentality of drone strikes. 38 The European Council on Foreign Relations noted “it [United States] seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with.” 39 The European Union fully supports drones in combat support and reconnaissance roles, but has issues with the concept of targeted killings, which often result in collateral damage. 40 European leaders desire an international consensus on how drones should be operated, before more civilians become casualties. 41 The European Council on Foreign Relations further notes: The Obama administration has so far chosen to operate by analogy with inter-state war, but in an era marked by the individualization of conflict, this seems like an outdated approach. 42 Europe does not share the mentality of drone strikes with "acceptable" collateral damage and apolicy that is not accountable to the international community. As a result, relations with Europe have reached a critical point. 43 European nations, alienated by the Obama administration’s progressive dialogue but aggressive drone policy, 44 are ready to try and take the lead in international relations. 45 Germany in particular will be a key nation as it increases in prominence among European states. 46 Hans Kundnani, a well-known journalist and political pundit, notes, “Obama is extremely popular in Germany, but Berlin’s deeply-held views on the use of military force… have the potential to create a Europe-America split.” 47 Kundnani also states, “A ‘special relationship’ is developing between China and Germany.” 48 Because of anti-drone sentiment, long-time U.S. allies grow increasingly distant, to the point of forming new relationships with China. This is a direct threat to the United States’ place in international relations and a direct challenge to its hegemony. If the relations with Europe are to be fixed, a change in drone protocol is needed.

#### Even with relations, Bureaucratic obstacles overwhelm national policy

**Ara 11**

Martin J. Ara 11, Lieutenant, United States Navy M.S., London School of Economics, AND Thomas Brand Lieutenant, Colonel, German Army B.S., University of the German Federal Armed Forces Munich, , AND Brage Andreas Larssen, Major, Norwegian Army B.S., Norwegian Military Academy, Oslo, December 2011, “HELP A BROTHER OUT: A CASE STUDY IN MULTINATIONAL INTELLIGENCE SHARING, NATO SOF,” <http://www.dtic.mil/dtic/tr/fulltext/u2/a556078.pdf>

\*Note: SOF = Special Operation Forces

One school of thought on why intelligence sharing does not happen as readily as it should in an international context is that while it may be official state policy to share intelligence, intelligence bureaucracies in individual countries actively resist direction to share intelligence. Authors who argue in favor of this reach a conclusion similar to ”mutual interests” authors as Walsh and LeFebvre, but for different reasons.

Björn Fägersten is one of the scholars arguing for bureaucratic resistance as one of the key challenges of intelligence sharing. Building on Graham Allison’s studies of bureaucratic roles in policymaking, Fägersten doubts policy makers’ ability to direct outcomes in intelligence sharing. Fägersten uses the example of Europol to demonstrate that while European policy makers repeatedly stated that they wanted intelligence shared among Europol members, intelligence and security services refused to provide valuable intelligence.

#### Relations aren’t the problem- Intel failures are inevitable- 1AC author

**Ara 11**

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\*Note: SOF = Special Operation Forces

Special operations often test the limits of both equipment and personnel. This extremity introduces a significant degree of uncertainty or “fog of war.” Success in special operations dictates that the uncertainty associated with the enemy, weather, and terrain must be minimized through access to best available intelligence.10 Most special operations conducted nationally benefit from access to the best national intelligence available. However, because of classification issues, special operations by international coalitions often lack access to the best available intelligence. This absence increases the likelihood of operational failure and further risks the personal safety of the operators.

**No water wars—their ev is hype.**

**Katz** **11**—Lecturer of Geography and Environmental Studies @ University of Haifa [Dr. David Katz (PhD in Natural Resource Policy & MA in Applied Economics @ University of Michigan), “Hydro-Political Hyperbole: Examining Incentives for Overemphasizing the Risks of Water Wars,” Global Environmental Politics, Volume 11, Number 1, February 2011, pp. 12-35]

Evidence and Perception

In sum, despite some instances of violent conflict over water, there is little systematic evidence of war over water resources. Evidence for a deterministic relationship between water scarcity and the outbreak of armed conflict is **particularly weak**. Less ambitious claims that water shortages will contribute to insecurity, which can, in turn, lead to violent conflict, have more empirical support. Even here, however, the importance of water as a causal variable is questionable. Several studies have found that variables such as regime type and institutional capacity are much more important indicators of conflict potential, 43 and may have mitigating effects on any water-conflict link. As a consequence of **accumulated research**, many scholars have concluded that **risks of water wars are low**, 44 and others have toned down or qualified their statements about the likelihood of future water wars.45 Some governmental reports have limited their contentions to highlighting that water scarcity can aggravate conflicts and increase insecurity,46 and many studies now emphasize water as a tool for **cooperation**.47 Warnings and predictions of imminent water wars continue to be commonplace, however. In a review of published academic literature, Gupta and van der Zaag find that articles on water conflict outnumber those on cooperation by nearly three to one, and are five times more likely to be cited.48 This article will now turn to offering possible explanations for the persistence and popularity of such declarations despite the bulk of expert opinion downplaying the risks of water wars. Incentives to Stress a Water War Scenario Incentives Presented in Existing Literature Observers have noted that various actors may have incentives to stress or even **exaggerate** the risks of water wars. Lonergan notes, for instance, that in “many cases, the comments are little more than **media hype**; in others, statements have been made for **political reasons**.”49 Beyond mere acknowledgement of the possibility of such incentives, however, little research has attempted to understand what these incentives are and how they may differ between actors. An understanding of the different motivations of various groups of actors to stress the possibility of imminent water wars can help explain the continued seemingly disproportionate popularity of such messages and help to evaluate such warnings more critically.pg. 17-18 //1nc

### 1NC Democracy

**Democracy doesn’t cause peace – statistical models are spurious and don’t assume economic growth\*\*\***

Mousseau, 12 (Michael – Professor IR Koç University, “The Democratic Peace Unraveled: It’s the Economy” International Studies Quarterly, p 1-12)

Model 2 presents new knowledge by adding the control for economic type. To capture the dyadic expectation of peace among contract-intensive nations, the variable Contract- intensive EconomyL (CIEL) indicates the value of impersonal contracts in force per capita of the state with the lower level of CIE in the dyad; a high value of this measure indicates both states have contract-intensive economies. As can be seen, the coefficient for CIEL ()0.80) is negative and highly significant. This corroborates that impersonal economy is a highly robust force for peace. The coefficient for DemocracyL is now at zero. There are no other differences between Models 1 and 2, whose samples are identical, and no prior study corroborating the democratic peace has considered contractintensive economy. Therefore, the standard econometric inference to be drawn from Model 2 is the nontrivial result that all prior reports of democracy as a force for peace are probably spurious, since this result is predicted and fully accounted for by economic norms theory. CIEL and DemocracyL correlate only in the moderate range of 0.47 (Pearson’s r), so the insignificance of democracy is not likely to be a statistical artifact of multicollinearity. This is corroborated by the variance inflation factor for DemocracyL in Model 2 of 1.85, which is well below the usual rule-of-thumb indicator of multicollinearity of 10 or more. Nor should readers assume most democratic dyads have both states with impersonal economies: While almost all nations with contract-intensive economies (as indicated with the binary measure for CIE) are democratic (Polity2 > 6) (Singapore is the only long-term exception), more than half—55%—of all democratic nation-years have contract-poor economies. At the dyadic level in this sample, this translates to 80% of democratic dyads (all dyads where DemocracyBinary6 = 1) that have at least one state with a contract-poor economy. In other words, not only does Model 2 show **no evidence of causation from democracy to peace** (as reported in Mousseau 2009), but it also illustrates that this absence of democratic peace includes the vast majority—80%—of democratic dyad-years over the sample period. Nor is it likely that the causal arrow is reversed—with democracy being the ultimate cause of contract-intensive economy and peace. This is because correlations among independent variables are not calculated in the results of multivariate regressions: Coefficients show only the effect of each variable after the potential effects of the others are kept constant at their mean levels. If it was democracy that caused both impersonal economy and peace, then there would be some variance in DemocracyL remaining, after its partial correlation with CIEL is excluded, that links it directly with peace. The positive direction of the coefficient for DemocracyL informs us that no such direct effect exists (Blalock 1979:473–474). Model 3 tests for the effect of DemocracyL if a control is added for mixed-polity dyads, as suggested by Russett (2010:201). As discussed above, to avoid problems of mathematical endogeneity, I adopt the solution used by Mousseau, Orsun and Ungerer (2013) and measure regime difference as proposed by Werner (2000), drawing on the subcomponents of the Polity2 regime measure. As can be seen, the coefficient for Political Distance (1.00) is positive and significant, corroborating that regime mixed dyads do indeed have more militarized conflict than others. Yet, the inclusion of this term has no effect on the results that concern us here: CIEL ()0.85) is now even more robust, and the coefficient for DemocracyL (0.03) is above zero.7 Model 4 replaces the continuous democracy measure with the standard binary one (Polity2 > 6), as suggested by Russett (2010:201), citing Bayer and Bernhard (2010). As can be observed, the coefficient for CIEL ()0.83) remains negative and highly significant, while DemocracyBinary6 (0.63) is in the positive (wrong) direction. As discussed above, analyses of fatal dispute onsets with the far stricter binary measure for democracy (Polity = 10), put forward by Dafoe (2011) in response to Mousseau (2009), yields perfect prediction (as does the prior binary measure Both States CIE), causing quasi-complete separation and inconclusive results. Therefore, Model 5 reports the results with DemocracyBinary10 in analyses of all militarized conflicts, not just fatal ones. As can be seen, the coefficient for DemocracyBinary10 ()0.41), while negative, is not significant. Model 6 reports the results in analyses of fatal disputes with DemocracyL squared (after adding 10), which implies that the likelihood of conflict decreases more quickly toward the high values of DemocracyL. As can be seen, the coefficient for DemocracyL 2 is at zero, further corroborating that even very high levels of democracy do not appear to cause peace in analyses of fatal disputes, once consideration is given to contractintensive economy. Models 3, 4, and 6, which include Political Distance, were repeated (but unreported to save space) with analyses of all militarized interstate disputes, with the democracy coefficients close to zero in every case. Therefore, the conclusions reached by Mousseau (2009) are corroborated even with the most stringent measures of democracy, consideration of institutional distance, and across all specifications: The **democratic peace appears spurious**, with contract-intensive economy being the more likely explanation for both democracy and the democratic peace.

#### Relations collapse inevitable

Kupchan 12 (Charles, Whitney Shepardson Senior Fellow, 8/21/12, <http://www.cfr.org/russian-fed/russia-joins-wto-amid-continuing-tensions-us/p28858>)

Russia’s accession to the WTO this Wednesday marks the successful end of a long and tortuous road of negotiations. Washington played an important role in paving the way, in the end game helping to remove the final hurdle by pressing Georgia to acquiesce to Russian membership despite the continuing acrimony between Tblisi and Moscow. Russia’s admission to the WTO should thus mark a significant advance in U.S.-Russian relations – a major step forward in the so-called “reset.” But the opposite is true. Relations between Washington and Moscow have been particularly strained of late, with the Obama administration justifiably angry over the Kremlin’s intransigent alignment with a Syrian regime using brute force against its own people. Meanwhile, the U.S. Congress has yet to graduate Russia from Jackson-Vanik restrictions – economic sanctions put in place in the 1970s intended to pressure the Soviet Union to allow emigration of its Jews. Congress is also considering legislation which would link normal trade relations with Russia to the country’s readiness to improve its record on human rights. The so-called Magnitsky Bill and related proposals envisage the public disclosure of a blacklist of human rights violators and the imposition of a visa ban on such individuals. Sergei Magnitsky was a Russian whistleblower who was imprisoned and then died while under policy custody in 2009. Without Russia’s graduation from Jackson-Vanik, commerce between the U.S. and Russia will not fully benefit from Russia’s accession to the WTO. And the Kremlin has expressed outrage that Congress is linking trade and human rights, claiming that Washington has no right to interfere in Russia’s domestic affairs. Senior Russian officials have threatened to retaliate with their own restrictions on visas for Americans, a move that could impair economic cooperation. Congress’ reluctance to repeal Jackson-Vanik stems in part from partisan wrangling amid the home stretch of the presidential race. Mitt Romney is positioning himself as the foreign policy hardliner in the contest, seeking to portray Obama as insufficiently tough in his conduct of statecraft. Romney is reserving his best rhetoric for the Kremlin, going so far as to declare that Russia is America’s chief foe. Although such claims bear little semblance to reality, the Republicans are ready to pounce if Democrats appear to be too accommodating of the Kremlin. As a result, the effort to move Russia past the Jackson-Vanick era has bogged down on Capitol Hill. Moreover, although Congress is more than justified in criticizing Russia on matters of human rights, there is also a counterproductive Russophobia on Capitol Hill that is best explained as a hangover from the Cold War. It is appears probable that Congress will be finally be ready to graduate Russia from Jackson-Vanik during the lame duck session that follows the November election. But even so, this episode is revealing America’s schizophrenic view of Russia and casting an unfortunate shadow over what should be an auspicious moment in commercial ties between the two countries. For its part, Russia has played right into the hands of American voices arguing that the Kremlin should be kept at arm’s length. The Russian government continues to trample on political freedoms; last week’s conviction of the punk band Pussy Riot is a case in point. The Kremlin’s **repression of political opponents** is not only distasteful, but also unnecessary; Putin’s political machine and personal popularity are more than sufficient to give him a strong hand. Putin’s more **confrontational foreign policy** is also costing him dearly in Washington. Initially, many American observers presumed that his more blustery tone was aimed at shoring up support in preparation for the presidential election. But Putin’s provocations have not abated, especially when it comes to NATO’s plans for **missile defense and**, most importantly, the crisis in **Syria**. Putin was arguably justified in reacting with pique to the NATO operation in Libya on the grounds that it brought about regime change under the cover of a UN mandate intended to protect civilians. But smarting over the Libya mission provides Putin no reason whatsoever to embrace a government in Syria that is mercilessly killing its own citizens. Indeed, the Kremlin seems to have backed itself into a corner, stuck supporting a regime that has lost its legitimacy and decency in the court of world opinion. Russia gains nothing from standing with Assad – and the chilling effect on U.S.-Russian relations will last a long time. Indeed, the Kremlin’s policy toward Syria is raising troubling questions in Washington about Russian intentions and its suitability as a strategic partner. Even in the absence of these tensions in U.S.-Russian relations, the implications of Russia’s accession to the WTO should not be overstated. To be sure, there will be significant economic benefits to Russia and its trading partners. But WTO membership has only modest potential to foster ambitious economic and political reforms or to encourage Russia to more fully embrace Western norms. After all, China has been a WTO member since 2001, but its inclusion has done little to dismantle state capitalism or encourage political reform. Russia takes an important step in the right direction on Wednesday. But when it comes to consolidating rapprochement between Washington and Moscow and more fully anchoring Russia in Western markets and institutions, there is still much hard work to be done.

#### 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.

No backsliding now – your ev only lists namibia

#### Plan causes a shift – impact is 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.

#### No Russia War – politics, military superiority, economic concerns, and nuclear security all check war

Graham 7 – **National Security Advisor**

Thomas Graham, senior advisor on Russia in the US National Security Council staff 2002-2007, 9- 2007, “The Dialectics of Strength and Weakness,” Russia in Global Affairs, pg. 19

An astute historian of Russia, Martin Malia, wrote several years ago that “Russia has at different times been demonized or divinized by Western opinion less because of her real role in Europe than because of the fears and frustrations, or hopes and aspirations, generated within European society by its own domestic problems.” Such is the case today. To be sure, mounting Western concerns about Russia are a consequence of Russian policies that appear to undermine Western interests, but they are also a reflection of declining confidence in our own abilities and the efficacy of our own policies. Ironically, this growing fear and distrust of Russia come at a time when Russia is arguably less threatening to the West, and the United States in particular, than it has been at **any time** since the end of the Second World War. Russia does not champion a totalitarian ideology intent on our destruction, its military poses no threat to sweep across Europe, its economic growth depends on constructive commercial relations with Europe, and its strategic arsenal – while still capable of annihilating the United States – is under more reliable control than it has been in the past fifteen years and the threat of a strategic strike approaches zero probability. Political gridlock in key Western countries, however, precludes the creativity, risk-taking, and subtlety needed to advance our interests on issues over which we are at odds with Russia while laying the basis for more constructive long-term relations with Russia.

#### Alt causes to relations – Syria, BMD, the election.

#### empirical evidence proves no modeling

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It is widely assumed among scholars and the general public alike that the United States remains "the hegemonic model" for constitutionalism in other countries.7 The U.S. Constitution in particular continues to be described as "the essential prototype of a written, single-document constitution."5 There can be no denying the popularity of the Constitution's most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism.9 Today, almost 90% of all countries possess written constitutional documents backed by some kind of judicial enforcement.10 As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state.11¶ There are growing suspicions, however, that America's days as a constitutional hegemon are coming to an end.12 It has been said that the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights.15 Indeed, to the extent that other countries still look to the United States as an example, their goal may be less to imitate American constitutionalism than to avoid its perceived flaws and mistakes.14 Scholarly and popular attention has focused in particular upon the influence of American constitutional jurisprudence. The reluctance of the U.S. Supreme Court to pay "decent respect to the opinions of mankind"15 by participating in an ongoing "global judicial dialogue"16 is supposedly diminishing the global appeal and influence of American constitutional jurisprudence.17 Studies conducted by scholars in other countries have begun to yield empirical evidence that citation to U.S. Supreme Court decisions by foreign courts is in fact on the decline.15 By contrast, however, the extent to which the U.S. Constitution itself continues to influence the adoption and revision of constitutions in other countries remains a matter of speculation and anecdotal impression.

# 2NC Round 5 USC

## DA

### 2NC Overview

#### 100% conceded deterrence impact – Green evidence says the plan is key to that

#### 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.

#### Counterplan avoids 100% of the link – internal oversight doesn’t require publicizing or submitting classified information to Congress/Courts – that means the state secret privilege stands under the counterplan but is eroded by the plan

#### Russia is revisionist – nuclear deterrence is the only thing preventing a first strike

**Chandler 8**, (Robert, PhD in political science, former political strategist with the Air Force, Defense Department and the CIA, Shadow World: Resurgent Russia, the Global New Left, and Radical Islam, pg 59- 61)

Russia looms as a major global geopolitical competitor to establish a one-world government system sometime in the second half of the twenty-first century. Unless the United States allows its deterrent posture to erode over time of a strike by militant Islamists so weakens the country that Americans drop their guard, a Russia nuclear attack will remain unlikely. It is important to remember, however, that not much has changed between yesterday’s strategic objectives of the Soviet Union and those of Russia today. One former Soviet KGB officer was quoted by J.R. Nyquist as saying his training identified Soviet geopolitical goals as being “…the vast infiltration of agents all over the globe. The communist plan, based on Lenin’s teachings, was to take over the world without physical struggle.” Nyquist quoted Cold War defectors as saying Soviet objectives were to extinguished capitalism and “socialize” [Marxize] the United States, separate Europe from America, defeated the U.S. with a superior strategy backed by propaganda and disinformation, and reconcile with China to develop a “scissor strategy.” The Andropov Plan to put into motion by Mikhail Gorbachev in 1988 maintained these goals but flipped the Soviet-Russia geopolitical strategy from open Marxism-Leninism and confrontation again the West to Antonio Gramsci’s stealthy approach of cooperation and promotion of a quiet cultural transformation of capitalist countries. Moreover, reconciliation with China, close relations with Iran and Cuba/Brazil/Venezuela, and engaging “progressive” supporters inside the United States, have collectively positioned Russia for long-term geopolitical competition with the capitalism West and militant Islam. Hidden deeply in the darkness of Russia’s shadow world is a strategy that some in the west have called the “Andropov Plan,” named after Yuri Andropov, KGB chief from 1967 to 1982 and General Secretary of the Communist Part from 1982 until his death in February 1984. Many in the West remain skeptical about the Plan’s existence and label it a “legend.” But there is a funny thing about hindsight, especially when seeing the whole of events from the tumultuous 1980s leading to the death of twentieth century Marxism-Leninism, followed by the chaos and mayhem of the 1990s, and finally stumbling into President Vladimir Putin’s regressive years in the new millennium. A multitude of new facts have become evident from the writings of numerous journalists, researchers, and commentators of the world scene since the implosion of the Soviet Union. Collectively, when their perspectives are integrated with the *Glasnost* (“openness”) and *Perestroika* (“restructuring”) initiatives of the Communist Party chairman Mikhail Gorbachev in the late 1980s, it becomes quite evident that come kind of a plan was in place and that the KGB played a key political role in executing a wide-range of covert operations necessary to implement it. Since the Andropov Plan was born under the cover of great secrecy, the covert actions that put it into motion were shrouded in a shadow world of deception and disinformation. The sheer enormity of the shift in the Soviet Russia long-range deception strategy makes it a difficult story to tell. Yet, by comparing the Andropov Plan’s strategic framework with key points of an alleged new disinformation strategy, old facts, as seen through the light of new evidence, make an informed historical interpretation possible. Former KGB officer Anatoliy Golitsyn’s Memoranda for the CIA in the 1980s detailed the bold transformation of Soviet Russia’s grand strategy that was designed to bring about a “…convergence of the capitalist West with the communist East on Soviet terms and the creation of a socialist World Government as a solution to the arms race and nuclear confrontation.” Golitsyn’s warnings, however, were largely ignored by CIA analysts and swept under the rug as being useless disinformation. The evolution of the initial ideas rooted in today’s Russia grand strategy to achieve global power and influence began as long ago as the late 1950s and 1960s. While striving to put the Stalin years begind them, it has become obvious to Soviet leaders that, despite their substantial industrial and military advances, Western economies would eventually outstrip their troubled economy and frustrate the attainment of the Kremlin’s global goals. Something has to give. A new grand strategy was needed. With a boldness characteristic of the Russian character, the strategy developed through the Khrushchev and Brezhnev years in the 1960s and 1970s outlined an approach entailing an enormous realignment of the political and economic systems inside the Soviet Union to strengthen its long-term competition with the West.

#### Deterrence stops conflict escalation

Spulak 97 (Robert G., Senior Analyst at Strategic Studies Center at Sandia National Laboratories, “The Case in Favor of US Nuclear Weapons,” Parameters, Spring, p. 106, http://carlisle-www.army.mil/usawc/Parameters/97spring/spulak.htm)

Even those who emphasize other aspects of the historical superpower standoff must include nuclear deterrence high on the list of factors. Nuclear deterrence does not ensure peace, but, short of nuclear war, places a limit on the level of violence. In fact, among great powers the nuclear era has been a most peaceful time. Nuclear weapons appear to have ended the terrible era of ever-more-devastating total war and substituted a relatively less-destructive era of limited war. It was largely the United States' nuclear deterrent that prevented the Soviet Union from realizing the expansionist ambitions it proclaimed to be its obligation as the vanguard of world communism.

#### Always works

Vaidyanatha 00 (G.V., Research Scholar in the Centre for International Politics, Organisation & Disarmament, School of International Studies, Jawaharlal Nehru University, “Conventional War in the Nuclear Age,” Matrix: The E-Journal of International Studies, September, http://members.tripod.com/jnu-matrix/conv-war.html)

But, faced with the threat of nuclear weapons, states are willing to sacrifice of some national interests provided it did not involve threat of the state's survival. Thus, China realising even after having a deterrent capability against United States is not willing to wage a war to annex Taiwan. Soviet Union during the Taiwan Straits crisis of 1957-58 refused to support China. Clearly, Soviet Union did not want to risk the alteration of status quo, as it did not contribute any of its vital security interests. For China, Taiwan is part of unfinished history but trying to rectify it might even risk its present. This is also the reason why Sino-Soviet border remained quite for twenty years after the 1969 clashes. Thus, the presence of nuclear weapons definitely deters nuclear wars but the same may not be true of 'limited wars'. The logic of nuclear weapons is different from the logic of conventional world. Nuclear weapons have only 'deterrence by punishment', that is, the threat and capacity to inflict nuclear punishment. In the conventional world it is deterrence by denial, "the capability to deny territorial gains", which are more important. In general, 'deterrence by punishment' should deter all wars. But when a vital interest of a state is involved the alternative might also involve similar costs. Thus, a conventional conflict may start when a change in status quo involves vital interests. But the threat of escalation almost always works to end the war, provided status quo is restored. Thus, even while nuclear weapons helps to reserve status quo, nuclear deterrence is also a condition of the same status quo.

### AT: Obama wants Courts

#### Not a thing

### Link Wall – 2NC – Congress

#### 1NC Windsor says that courts only give deference to the state secrets privilege due to the congressional authorization – plan changes that authorization using specific legislation that spillsover to reinterpret the requirements

#### Courts will get involved – the only method of enforcing legislation

Tien 10 (Lee – Senior Staff Attorney, Electronic Frontier Foundation, “THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FIS) AND FISA REFORM: Article: Litigating the State Secrets Privilege”, 2010, 42 Case W. Res. J. Int'l L. 675, lexis)

It is difficult to imagine how courts could proceed more carefully than the Ninth Circuit and the district courts in Al-Haramain did. Congress clearly intended FISA and the section 1806(f) procedures to operate as a mechanism by which courts could manage litigation over the legality of warrantless surveillance. Thus, the first lesson here is probably for Congress: any legislative preemption or reform of the state secrets privilege must anticipate the various procedural hurdles that a highly resistant Executive will use to delay or frustrate litigation. Perhaps more importantly, Congress cannot itself enforce individual rights, statutory or constitutional; it needs litigants to bring cases, and it needs courts to hear them. Yet the Government's position on "need to know" essentially asserts that litigation authorized by Congress precisely in [\*698] order to check unlawful government surveillance is not a "governmental function." Al-Haramain thus presents a vision of sweeping Executive power that ignores Congress and the courts even when they are working together to protect individual rights against Executive abuse.

#### Statutory guidelines alter the state secrets doctrine

Blazey 10 (Elizabeth – J.D. Candidate, Class of 2011, “Controlling Government Secrecy: A Judicial Solution to the Internal and External Conflicts Surrounding the State Secrets Privilege”, 2010, 58 Buffalo L. Rev. 1187, lexis)

First, this Comment explores internal conflict using legal and historical traditions as a framework to determine which branch or branches of the government have the legitimate power and competency to define and control the state secrets privilege. The current democratic majority in Congress views the privilege as a common law rule of evidence, malleable to legislation. n15 To prove its point, both houses have introduced legislation to define and control the privilege, with the goal of removing decision-making power from the hands of the executive by requiring judicial oversight and review in all cases. n16 The Obama administration opposes these bills; indeed, it has aligned itself with past administrations by arguing that the privilege falls under the foundational powers given [\*1191] exclusively to the executive through Article II of the Constitution. n17 The judiciary recognizes a qualified constitutional privilege for the executive subject to judicial review under certain circumstances. n18 The circumstances for such review depend on the type of information at issue. For instance, the courts accord great deference to the executive for military and foreign relations secrets, n19 while the courts treat disclosure for other types of secrets under statutory guidelines set by Congress. n20

#### Statutory limits enable court oversight of executive programs – undermines state secrets

Frost 7 (Amanda – Assistant Professor of Law, American University Washington College of Law, “THE STATE SECRETS PRIVILEGE AND SEPARATION OF POWERS”, 2007, 75 Fordham L. Rev. 1931, lexis)

The executive's assertion of the privilege thus undermines Congress's authority to assign federal jurisdiction and simultaneously to enlist the courts as its partner in executive oversight. When a litigant claims that the executive has violated a statute or engaged in unconstitutional conduct - as is alleged in the challenges to both the warrantless wiretapping and extraordinary rendition programs - courts serve as a check on the potential abuse of executive authority. They do so because Congress gave the federal judiciary the authority to hear cases in which executive power is challenged by enacting 28 U.S.C. §1331, which grants courts broad federal question [\*1955] jurisdiction, and by enacting specific statutory limits on executive power in the area of national security, such as in the Foreign Intelligence Surveillance Act. If the judiciary agrees with the executive branch that it must dismiss these cases to protect state secrets, it is abdicating its congressionally assigned task to restrain executive power. For this reason, the executive's assertion of the state secrets privilege in the cases outlined in Part I cannot be equated with the use of the privilege in either Reynolds or Totten. In the latter two cases, the plaintiffs were seeking damages for negligence and breach of contract, respectively; they made no claims that the executive had overstepped its constitutional authority. Although the Totten bar was recently affirmed in Tenet v. Doe, in which the plaintiffs did allege that their constitutional rights were violated by the government's failure to adhere to the terms of their contract, Tenet did not involve any ongoing executive branch program or practice and the dispute was limited to the parties before the Court. The executive's assertion of the privilege in all of these cases was not part of a broad pattern under which it raised the privilege to bar any case of this type from being heard in court. Certainly, Reynolds, Totten, and Tenet all involved legal claims that Congress had granted federal courts jurisdiction to hear and decide. But the judicial role in these cases was to determine whether an individual deserved a remedy, and not to act as Congress's deputy in curbing ongoing abuse of executive power. In its post-9/11 assertions of the state secrets privilege, the executive branch acknowledges that it is seeking to eliminate judicial oversight of some executive programs, but contends that the legality of executive action is better addressed by the "political branches" and not the courts. n111 That argument overlooks the primary role that Congress - one of the "political branches" - plays in granting federal courts jurisdiction in the first instance. Indeed, for the reasons described above, the "political branch" solution to the problem might well be to permit courts to determine the legality of such executive conduct.

### Spillover – 2NC

#### Two framing issues they have to answer to win no spillover –

#### 1) Err negative on the spillover debate – we don’t have to win the doctrine spills over to literally every government secret – just immediate secrets related to war power areas – areas the plan obviously is related to

#### 2) If the aff cannot put forth a legal argument that can be used in court that distinguishes why the plan’s state secrets are released but others aren’t – then you shouldn’t distinguish the two for them because judges make these decisions, not policymakers

#### The state secrets privilege has no exceptions – it is an all or nothing proposition – the plan must overturn it in its entirety

Page 8 (Michael H. – J.D. Candidate, Cornell Law School, “JUDGING WITHOUT THE FACTS: A SCHEMATIC FOR REVIEWING STATE SECRETS PRIVILEGE CLAIMS” 2008, 93 Cornell L. Rev. 1243, lexis)

Reynolds\*= Refers to US v. Reynolds, case that established the state secrets privilege

The cost of Reynolds and Ellsberg's misplaced analysis is not worth the benefit of the absolute privilege it creates. The benefit of the privilege's absolute nature is largely illusory--more valuable symbolically than in its legal effect. The qualifier only means that where the privilege applies, it applies without exception. The real question is under what conditions does the privilege apply. Admittedly, differences between the state secrets privilege and the executive privilege, for example, do support making the former less qualified than the latter. Whereas an individual's need might outweigh a weak showing of need for executive privilege, an individual's need can never outweigh the public's safety. n158 But it is not true that a very remote probability of harm to the public should always outweigh an individual's interest. Therefore, the requesting party's interest should more appropriately join the magnitude and likelihood of harm to the public in the initial trigger test. n159 The amount of information a judge should review before affirming an executive official's privilege claim ought to track the rationale driving judicial deference, an area this Note explores below. 3. Deference: How Much Despite Reynolds's instruction that deference is a function of the requesting party's need, the lower courts have generally taken their guidance from a different source, employing a static "utmost deference" in all contexts. n160 Although the popularity of this standard is further evidence of the inadequacy of Reynolds's deference calculus, the standard's rigidity ignores its own driving rationale. [\*1265] The modern source of guidance regarding judicial deference in the state secrets privilege context is United States v. Nixon. n161 Prior to Nixon, courts were not clear how the state secrets privilege related to the better-known executive privilege. n162 In Nixon, the President claimed the inherent power to withhold documents from the court. n163 In response to this claim, the Court stated: "[President Nixon] does not place his claim of privilege on the ground they are military or diplomatic secrets. As to these areas of Art. II duties the courts have traditionally shown the utmost deference to Presidential responsibilities." n164 Those two words, "utmost deference"--pure dicta themselves--swept through the lower courts. Three years after Nixon, they surfaced in a state secrets privilege case for the first time. In Jabara v. Kelley, the Eastern District of Michigan stated:

#### Either the plan doesn’t solve or it overturns the whole doctrine because the ruling has to be antithetical to the decision in Reynolds and undermines the whole framework – national security cases are particularly dangerous

Rapa 6 (Anthony – J.D. Candidate, 2007, Seton Hall University School of Law, “When Secrecy Threatens Security: Edmonds v. Department of Justice and a Proposal to Reform the State Secrets Privilege”, 2006, 37 Seton Hall L. Rev. 233, lexis)

In almost all of the cases noted above, the government invoked the state secrets privilege and prevailed. n207 Though some courts were [\*259] more demanding than others, the end result was that each of these potentially explosive cases was stalled, halted, or outright dismissed. These cases presented a challenge to the Reynolds framework. The surveillance cases, in particular, moved state secrets case law out of the black-and-white workability of Reynolds itself and commercial litigation cases, and confronted courts with the likelihood that victims of egregious constitutional violations were remediless. For the first time the possibility of bad faith in invoking the privilege crept into the picture - the possibility that government officials, tangled in allegations of mass invasions of privacy and political intimidation, were crouching behind the shield of the state secrets privilege. n208 In fact, the D.C. Circuit found an overreach in Ellsberg v. Mitchell when the government claimed it need not produce the names of the Attorneys General who authorized the allegedly unconstitutional surveillance. n209 The panel, unimpressed by the conjurations of broad national security interests, ordered the names be produced. n210 Bound by Supreme Court precedent, the most courts could do in these cases was wring their hands at the mass of alleged potential violations that were going by the boards. n211 Reynolds, with its holding that the interests of a private litigant can never outweigh the properly asserted interests of the government, n212 forbade them from even considering that the interests of the plaintiffs in the surveillance cases approached those of the government. Yet, it can be argued that these plaintiffs invoked interests that equaled, or even outweighed, the potential harm to national security that the government decried. [\*260] If correct in their allegations, they were standing up against threats to the Bill of Rights and supplying the political process with subjects for discourse. Yet, in the ultimate evaluation the plaintiffs alleged no government wrongdoing that directly threatened national security. Perhaps most notably, the government has invoked the state secrets privilege in a number of cases in which the plaintiffs have alleged they were the targets of warrantless electronic surveillance initiated by the National Security Agency. n213 Moreover, the suit of Khalid El-Masri, a German citizen who alleges he was abducted and "rendered" to Afghanistan for four months of torture, ran into the buzzsaw of the privilege. n214 The Global Relief Fund, a charity that [\*261] sued after the government allegedly conducted warrantless searches and froze its assets, met the same fate. n215 Sibel Edmonds leads the charge of national security whistleblowers, but remains the only such plaintiff to encounter the state secrets privilege. Other whistleblowers include: Coleen Rowley, one of Time magazine's 2002 Persons of the Year, n216 who blasted the FBI for throwing up roadblocks in the investigation of Zacarias Moussaoui; n217 Bogdan Dzakovic, a member of the Federal Aviation Administration (FAA) "Red Team" who told the September 11 Commission that the FAA knew before September 11th that the nation's commercial airplanes were vulnerable to hijackings; n218 Robert Wright, who alleged FBI intelligence agents thwarted counterterrorism investigations in order to protect their sources; n219 John Vincent, an FBI agent who sued the Bureau after it forbade him to talk to New York Times reporter Judith Miller about a bungled terrorism investigation; n220 Diane Kleiman, who alleges rampant corruption in the U.S. Customs Service and is suing for wrongful termination; n221 and Russ Tice, an NSA analyst who was fired after going to Capitol Hill with allegations that a Chinese spy worked with him at his former post at the Defense Intelligence Agency (DIA). n222 Courts and commentators may shuffle the Arar, Global Relief Fund, and no-fly list cases into the same category as the surveillance cases (even though Arar alleges he was tortured in Syria!). The Edmonds [\*262] case and the particular brand of national security whistleblower litigation that may follow, however, pose a unique challenge to the viability of the Reynolds framework. More than any other type of state secrets case, a national security whistleblower case carries the possibility that the public interest in disclosure, or at least allowing a case to go forward with judicial controls, outweighs the interest in secrecy. After all, in such a case a plaintiff necessarily alleges government wrongdoing (either malfeasance or nonfeasance) that threatened or is threatening national security. n223 On the one hand the government may argue that military or diplomatic secrets are at stake, but on the other hand are allegations that espionage rings and organized crime have infiltrated the FBI, n224 that terrorist investigations have been diverted, n225 that massive amounts of cocaine have been smuggled into the U.S. through corruption, n226 and that foreign intelligence operates at the DIA. n227 Dismissing these cases may protect some aspects of national security, but leave others extremely vulnerable.

#### Rulings spill over – multiple opinions prove

Donohue 10 (Laura – Associate Professor of Law, Georgetown University Law Center, “The Shadow of State Secrets”, 2010, 159 U. Pa. L. Rev. 77, lexis)

The telecommunications cases related to the NSA's warrantless wiretapping program stand apart from the general third-party cases. Here the government has acted variously as plaintiff, intervenor, and defendant. Although none of the forty-six cases dismissed under the MDL turned on the invocation of state secrets, the privilege played a key role throughout. The executive's decision to invoke state secrets in this set of cases rested on a closely held executive branch jurisprudence - suggesting that this body of opinions may be relevant to understanding operation of the privilege. This set of suits also reveals a parallel effect: when invoked in one case, courts may treat similarly positioned cases as though the state secrets privilege has been asserted, even in the absence of a formal invocation thereof. The telecommunication suits also bring to the fore the major battles between the branches that mark invocations of the privilege.

#### **The doctrine can be overturned literally at any point by either Congress or the Supreme Court**

CCR 13 (Center for Constitutional Rights, “FAQs: What Are State Secrets”, Accessed 10/19/2013)

How is the Bush administration abusing the SSP? The Bush administration is using the state secrets privilege far more than any administration and is using it to cover up its own illegal behavior. So far, it has invoked the privilege to dismiss cases that fight illegal government spying on American citizens, challenge the government’s use of torture and rendition, and other cases that seek to hold the Bush administration accountable for abusing executive power and violating the human rights of both citizens and non-citizens. Instead of merely employing the privilege to deny attorneys access to evidence (as it was used in the past), the Bush administration is using the state secrets privilege to get courts to dismiss cases at their very beginning stages. In doing so, the Bush administration is trying to disarm the courts from being able to check the power of the executive branch. What can I do? We need to remember that the state secrets privilege can be overturned at any point by Congress or the Supreme Court. Any push to end the use of this relic of the British monarchy must start with educating others about the Bush administration’s abuse of the state secrets privilege. You can help by handing out this factsheet to your family and friends.

#### Err Neg – the doctrine is easily shaped – little US case law

Setty 9 (Sudha – Associate Professor of Law, Western New England College School of Law, “Litigating Secrets Comparative Perspectives on the State Secrets Privilege”, 2009, 75 Brooklyn L. Rev. 201, lexis)

Reynolds is the only instance in which the Supreme Court has articulated a standard for the state secrets privilege; given the dearth of U.S. precedent, n36 the Court based its reasoning on numerous other sources, including the English case of Duncan v. Cammel, Laird, & Co. n37 decided in 1942. n38 Cammel, Laird's acknowledgement of a robust evidentiary privilege available to the executive was not, however, the only basis on which the Reynolds court made its decision; the Court also considered other sources, such as earlier U.S. cases involving various privileges n39 and Wigmore's treatise on evidence. n40 Wigmore noted the need for a state secrets privilege, but cautioned--even then, in 1940--that the privilege "has been so often improperly invoked and so loosely misapplied that a strict definition of its legitimate limits must be made," n41 and that courts, not the executive branch itself, were the appropriate decision-makers regarding the privilege. n42 [\*209] In Reynolds, the Supreme Court established a standardized doctrine by which to evaluate claims of a state secrets privilege; this doctrine balanced national security matters with adherence to the rule of law and attention to rights of individual litigants. n43 However, the balancing test set forth in Reynolds has often been subsumed by a judicial tendency to uphold claims of privilege without engaging in a meaningful analysis of the underlying evidence or the government's claimed need for nondisclosure. n44 In recent years, that tendency has come under scrutiny as the current war on terror has led to numerous lawsuits in which national security programs have been implicated.

#### Status quo rulings haven’t clarified the legal debate---the plan does

Entlin 12 (Jonathan L. Entin 12, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations, 45 Case W. Res. J. Int'l L. 443)

To be sure, the Supreme Court has decided some well-known national security cases. Among them are the Steel Seizure case, Youngstown Sheet & Tube Co. v. Sawyer; n2 the Pentagon Papers case, New York Times Co. v. United States; n3 the Iranian hostage case, Dames & Moore v. Regan; n4 and some notable First Amendment cases arising out of World War I, such as Schenck v. United States n5 and Abrams v. United States. n6 Then there are the Japanese internment decisions during World War II, notably Korematsu v. United States, n7 as well as Ex parte Quirin, n8 which upheld the use of military commissions to try German agents who landed in the United States as part of a sabotage mission. Most recently, the Supreme Court has addressed questions arising from the government's response to the attacks of September 11, 2001, in such cases as Hamdi v. Rumsfeld, n9 Hamdan v. Rumsfeld, n10 and Boumediene v. Bush. n11 These cases do matter, but they have not clearly resolved the constitutional and other legal issues that pervade the debate about presidential power and foreign affairs.

Beyond the limitations of the Supreme Court rulings, the judiciary probably will not contribute very much to the debate. Various procedural and jurisdictional obstacles make it difficult for courts to address the merits of disputes about war powers and foreign affairs. Even if those obstacles can be surmounted, those who decry what they view as presidential excess should note that the judiciary typically has taken a deferential role in reviewing challenges to executive action.

#### Precedent dictates use of state secret doctrine

Ziegler 8 (Margaret, “No Attention to the Man Behind the Curtain: The Government's Increased Use of the State Secrets Privilege to Conceal Wrongdoing”, Berkeley Technology Law Journal, 2008, 23 Berkeley Tech. L.J. 691, lexis)

With respect to the second and third approaches to state secrets identified in the opinion, Judge Walker said it would be premature to conclude that state secrets privilege would bar evidence that would keep Hepting from establishing his prima facie case or preclude AT&T's defense. n41 The court said its decision to allow the case to proceed followed precedent in other state secret cases where the courts allowed them to "proceed to discovery sufficiently to asses the state secrets privilege in light of the facts." n42

### 2NC AT: Def

#### No uniqueness for this

#### Card is old

#### Other decisions

#### Judicial deference still strong

Scheppele 12 -- Laurance S. Rockefeller Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University (Kim Lane, 2012, "THE NEW JUDICIAL DEFERENCE," Boston Univ Law Review, 92(89), http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SCHEPPELE.pdf)

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. 9 Suspected terrorists have received from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive prac tices 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.

#### Deference will continue into the future

O'Conner 12 -- Partner, Steptoe & Johnson LLP. B.A., University of Rochester; M.S.Sc., Syracuse University; J.D., University of Maryland School of Law (John F., 10/25/2012, "Statistics and the Military Deference Doctrine: a Response to Professor Lichtman," Maryland Law Review 66(3), http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3303&context=mlr)

Ultimately, however, I have come to the conclusion that Pro- fessor Lichtman’s analysis of the military deference doctrine is flawed in several important respects, all of which result in a fundamental mis- understanding of the doctrine. In my estimation, the principal flaws in Professor Lichtman’s analysis include: focusing on “win-loss” records rather than on the analytical framework in which those wins and losses occurred; failing to perceive that the military deference doctrine should—and does—apply only to a narrow category of “mili- tary” cases; incorrectly casting the military deference doctrine as a longstanding and relatively stable doctrine that has only subtly evolved since the early twentieth century; determining that subject matter, rather than timing, is the proper variable around which to organize an analysis of military deference decisions; and concluding that the military deference doctrine does not—and should not—apply to stat- utes and regulations burdening civilians instead of military personnel. The military deference doctrine is, at once, both historically im- mature and limited, yet potent when applicable. After the disruption that occurred in the course of the Court’s prior rejection of the doc- trine of noninterference, the Court ultimately landed on the military deference doctrine as an appropriate analytical framework, where ap- plicable, in the mid-1970s, and **the Court has largely remained in the same place with its military jurisprudence ever since**. The Court’s re- jection of its noninterference policy beginning in the mid-1950s likely came about as a result of what the Court perceived as overreaching by the political branches in subjecting persons—military and civilian—to courts-martial in a willy-nilly fashion. If the military deference doc- trine were to recede in importance in the future, it would be a good bet that it happens because some collection of Supreme Court Justices perceives that Congress and the President are overreaching in the ex- ercise of their constitutional powers to raise armies and regulate the armed forces. At present, though, there is no sign that such an **up- heaval is anywhere on the horizon**.

## NATO

### 2NC Alt Causes

#### European Public backlash and Differing views

MacGregor, 9(Col. MacGregor, Retired US Army Col., 3/30/2009 (Douglas, “NATO At 60: Birthday Party Or Funeral?” National Journal Expert Blogs on National Security, <http://security.nationaljournal.com/2009> /03/nato-at-60-birthday-party-or-f.php)

The North Atlantic Treaty Organization has not only survived well beyond the demise of the Soviet State and the Warsaw Pact, it's also seemingly flourished despite the absence of a unifying threat to its members. Yet appearances are deceiving. To force cohesion on an alliance without an existential threat, American national strategy after 1991 turned to sanctions, no-fly zones, periodic strikes in Iraq, missile strikes into Afghanistan and Sudan, and an anti-Serb intervention in Bosnia, until it reached its highpoint in the air war against Serbia in Kosovo. European reactions to these operations were very mixed, but with the disastrous results in Iraq and the widening anti-Pashtun war in Afghanistan and Pakistan, European public opinion is growing more and more resistant to American demands for European contributions to military operations in Central Asia and the Middle East. European governments tend to chase European public opinion rather than shape it, but it is increasingly obvious that people in Central-East Europe hold views on everything from economics to out-of-area operations that are fundamentally different from the views of Europeans in the West and South of the continent. The question now is just how much longer the NATO alliance will survive in a form that is politically and militarily meaningful?

### 2NC Afghanistan

#### Instability is inevitable but wont escalate

Finel 9 [Dr. Bernard I. Finel, an Atlantic Council contributing editor, is a senior fellow at the American Security Project, “Afghanistan is Irrelevant,” Apr 27 http://www.acus.org/new\_atlanticist/afghanistan-irrelevant]

It is now a deeply entrenched conventional wisdom that the decision to “abandon” Afghanistan after the Cold War was a tragic mistake. In the oft-told story, our “abandonment” led to civil war, state collapse, the rise of the Taliban, and inevitably terrorist attacks on American soil. This narrative is now reinforced by dire warnings about the risks to Pakistan from instability in Afghanistan. Taken all together, critics of the Afghan commitment now find themselves facing a nearly unshakable consensus in continuing and deepen our involvement in Afghanistan. The problem with the consensus is that virtually every part of it is wrong. Abandonment did not cause the collapse of the state. Failed states are not always a threat to U.S. national security. And Pakistan’s problems have little to do with the situation across the border. First, the collapse of the Afghan state after the Soviet withdrawal had little to do with Western abandonment. Afghanistan has always been beset by powerful centrifugal forces. The country is poor, the terrain rough, the population divided into several ethnic groups. Because of this, the country has rarely been unified even nominally and has never really had a strong central government. The dominant historical political system in Afghan is warlordism. This is not a consequence of Western involvement or lack thereof. It is a function of geography, economics, and demography. Second, there is no straight-line between state failure and threats to the United States. Indeed, the problem with Afghanistan was not that it failed but rather that it “unfailed” and becameruled by the Taliban. Congo/Zaire is a failed state. Somalia is a failed state. There are many parts of the globe that are essentially ungoverned. Clearly criminality, human rights abuses, and other global ills flourish in these spaces. But the notion that any and all ungoverned space represents a core national security threat to the United States is simply unsustainable. Third, the problem was the Taliban regime was not that it existed. It was that it was allowed to fester without any significant response or intervention. We largely sought to ignore the regime — refusing to recognize it despite its control of 90% of Afghan territory. Aside from occasional tut-tutting about human rights violations and destruction of cultural sites, the only real interaction the United States sought with the regime was in trying to control drugs. Counter-drug initiatives are not a sound foundation for a productive relationship for reasons too numerous to enumerate here. Had we recognized the Taliban and sought to engage the regime, it is possible that we could have managed to communicate red lines to them over a period of years. Their failure to turn over bin Laden immediately after 9/11 does not necessarily imply an absolute inability to drive a wedge between the Taliban and al Qaeda over time. Fourth, we are now told that defeating the Taliban in Afghanistan is imperative in order to help stabilize Pakistan. But, most observers seem to think that Pakistan is in worse shape now — with the Taliban out of power and American forces in Afghanistan — than it was when the Taliban was dominant in Afghanistan. For five years from 1996 to 2001, the Taliban ruled Afghanistan and the Islamist threat to Pakistan then was unquestionably lower. This is not surprising actually. Insurgencies are at their most dangerous — in terms of threat of contagion — when they are fighting for power. The number of insurgencies that actually manage to sponsor insurgencies elsewhere after taking power is surprising low. The domino theory is as dubious in the case of Islamist movements as it was in the case of Communist expansion. There is a notion that “everything changed on 9/11.” We are backing away as a nation from that concept in the case of torture. Perhaps we should also come to realize that our pre-9/11 assessment of the strategic value and importance of Afghanistan was closer to the mark that our current obsession with it. We clearly made some mistakes in dealing with the Taliban regime. But addressing those mistakes through better intelligence, use of special forces raids, and, yes, diplomacy is likely a better solution than trying to build and sustain a reliable, pro-Western government in Kabul with control over the entire country.

### 2NC Allied Co-Op

#### Even if they leave intel is still fine.

Barton Gellman and Greg Miller, 8-29-2013, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

“The United States has made a considerable investment in the Intelligence Community since the terror attacks of 9/11, a time which includes wars in Iraq and Afghanistan, the Arab Spring, the proliferation of weapons of mass destruction technology, and asymmetric threats in such areas as cyber-warfare,” Director of National Intelligence James Clapper said in response to inquiries from The Post. “Our budgets are classified as they could provide insight for foreign intelligence services to discern our top national priorities, capabilities and sources and methods that allow us to obtain information to counter threats,” he said. Among the notable revelations in the budget summary: Spending by the CIA has surged past that of every other spy agency, with $14.7 billion in requested funding for 2013. The figure vastly exceeds outside estimates and is nearly 50 percent above that of the National Security Agency, which conducts eavesdropping operations and has long been considered the behemoth of the community. The CIA and NSA have launched aggressive new efforts to hack into foreign computer networks to steal information or sabotage enemy systems, embracing what the budget refers to as “offensive cyber operations.” The NSA planned to investigate at least 4,000 possible insider threats in 2013, cases in which the agency suspected sensitive information may have been compromised by one of its own. The budget documents show that the U.S. intelligence community has sought to strengthen its ability to detect what it calls “anomalous behavior” by personnel with access to highly classified material. U.S. intelligence officials take an active interest in foes as well as friends. Pakistan is described in detail as an “intractable target,” and counterintelligence operations “are strategically focused against [the] priority targets of China, Russia, Iran, Cuba and Israel.” In words, deeds and dollars, intelligence agencies remain fixed on terrorism as the gravest threat to national security, which is listed first among five “mission objectives.” Counterterrorism programs employ one in four members of the intelligence workforce and account for one-third of all spending. The governments of Iran, China and Russia are difficult to penetrate, but North Korea’s may be the most opaque. There are five “critical” gaps in U.S. intelligence about Pyongyang’s nuclear and missile programs, and analysts know virtually nothing about the intentions of North Korean leader Kim Jong Un. Formally known as the Congressional Budget Justification for the National Intelligence Program, the “Top Secret” blueprint represents spending levels proposed to the House and Senate intelligence committees in February 2012. Congress may have made changes before the fiscal year began on Oct 1. Clapper is expected to release the actual total spending figure after the fiscal year ends on Sept. 30. The document describes a constellation of spy agencies that track millions of individual surveillance targets and carry out operations that include hundreds of lethal strikes. They are organized around five priorities: combating terrorism, stopping the spread of nuclear and other unconventional weapons, warning U.S. leaders about critical events overseas, defending against foreign espionage and conducting cyber operations. In an introduction to the summary, Clapper said the threats now facing the United States “virtually defy rank-ordering.” He warned of “hard choices” as the intelligence community — sometimes referred to as the “IC” — seeks to rein in spending after a decade of often double-digit budget increases. This year’s budget proposal envisions that spending will remain roughly level through 2017 and amounts to a case against substantial cuts. “Never before has the IC been called upon to master such complexity and so many issues in such a resource-constrained environment,” Clapper wrote. The summary provides a detailed look at how the U.S. intelligence community has been reconfigured by the massive infusion of resources that followed the Sept. 11 attacks. The United States has spent more than $500 billion on intelligence during that period, an outlay that U.S. officials say has succeeded in its main objective: preventing another catastrophic terrorist attack in the United States. The result is an espionage empire with resources and reach beyond those of any adversary, sustained even now by spending that rivals or exceeds the levels reached at the height of the Cold War.

### 2NC AT: indo pak

#### Indo-Pak relations are on the rise and both sides recognize conflict is unfavorable

The Frontier Post 11/18/12 [“Shahbaz says Indo-Pak relations improving,” an English-language newspaper based in Peshawar, Khyber Pakhtunkhwa in Pakistan. <http://www.thefrontierpost.com/article/192587/>]

LAHORE: Punjab Chief Minister, Muhammad Shahbaz Sharif has said that ties between Pakistan and India are improving and both the countries can accelerate the process of development in the region by establishing peace. He said wars gave nothing and now the peace is only option. He said that both the countries will have to march forward by taking concrete steps for eliminating poverty, unemployment and starvation and bring a positive change in the region's situation by promoting economic and cultural relations. He stressed the need of solving Kashmir, Siachin, water and other issues through meaningful dialogue. He said that due to the recent visits of Deputy Chief Minister of Indian Punjab and Chief Minister of Bihar will help promote trade, cultural and economic relations between Pakistan and India. Shahbaz Sharif said that a joint business council has been constituted between Pakistani and Indian Punjab due to which economic relations between both the provinces will increase considerably.

# 1NR

## CP

### Overview

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

Siegel 97 (Jonathan R. – Associate Professor of Law, George Washington University Law School, “SUING THE PRESIDENT: NONSTATUTORY REVIEW REVISITED”, October, 97 Colum. L. Rev. 1612, lexis)

If an executive official refuses to obey a court's judgment, the court can order the official jailed for contempt. But who puts the official in jail? Not the judges personally. And the Marshals Service works for the President. n320 If the President really wanted to resist to the fullest a judgment against any federal official, he could order the marshals not to enforce any contempt judgment against that official. n321 The courts, therefore, are always dependent on the President for the enforcement of their judgments against executive officials. n322 The fact that a court's judgment will be unenforceable if the President chooses to [\*1688] defy it does not, however, prevent the court from issuing a judgment against any other executive official. A court's dependence on the President's willingness to enforce their judgments may be particularly poignant in a case against the President himself, but the situation is not, in reality, any different from the situation a court faces in any case against any executive official. The episode of President Lincoln's resistance to court decrees, often cited in support of the argument that courts cannot enjoin the President, n323 in fact illustrates very clearly why the identity of the defendant is irrelevant to the extent of a court's power. During the Civil War, Lincoln took it upon himself to suspend the writ of habeas corpus. Congress ratified his power to suspend the writ, but only after he had already been doing so for two years. n324 In Ex parte Merryman, n325 Chief Justice Taney, sitting as a circuit justice, issued a writ of habeas corpus with regard to a person being detained by military officers. The writ was ignored. The Chief Justice issued an order of attachment based on contempt, but that too was ignored, and, ultimately, the writ of habeas corpus went unenforced.

### Solvency – Detention

#### Only executive action solves the aff

Joscelyn 13 (Thomas, “Obama, Not Congress, Is the Reason Guantánamo Is Still Open” , 5/3, http://www.thedailybeast.com/articles/2013/05/03/obama-not-congress-is-the-reason-guantanamo-is-still-open.html)

Congressional restrictions have made it more difficult to transfer or relocate Guantánamo detainees. But congressional opposition is not the only reason Guantánamo’s cells are occupied. Closing Guantánamo has always been a tricky proposition—one that is far more difficult than the president’s rhetoric implies.¶ Consider the findings of Obama’s own Guantánamo Review Task Force, which reviewed the files on the 240 detainees held as of January 2009. The task force’s final report, issued in January 2010, outlined the various national security challenges closing Guantánamo entails. Indeed, the report goes a long way toward explaining why 166 detainees remain in their cells to this day.¶ The task force split the detainee population into three general categories: those who will stay in indefinite detention, those who should be prosecuted, and detainees who have been approved for transfer. Forty-eight detainees were placed in the first category, as they were “determined to be too dangerous to transfer but not feasible for prosecution.” They will stay in indefinite detention at Guantánamo or some other location for the foreseeable future.¶ Oddly, the president’s discussion of Guantánamo this week was at odds with his own task force’s recommendations. The president ticked off the reasons why he believes indefinite detention is unnecessary. “Why are we doing this?” Obama asked rhetorically. “I mean, we’ve got a whole bunch of individuals who have been tried who are currently in maximum-security prisons around the country. Nothing’s happened to them. Justice has been served.”¶ But the Obama administration has determined that dozens of men must remain in detention without prosecution. Moving them to a maximum-security prison without trial simply substitutes Gitmo North for Gitmo South.¶ The task force referred a second category of detainees, 36 in all, “for prosecution either in federal court or a military commission.” These proceedings have progressed far too slowly, and few trials have been brought to a close. Still, the task force slated these detainees for prosecution, not freedom.¶ The precise counts have changed since the task force issued its final report in 2010, but about half of today’s detainee population falls into these first two categories. According to a recent article published by Reuters, 80 of the 166 detainees are held in indefinite detention, awaiting prosecution, or have already been either charged or convicted by a military commission.¶ The final 86 detainees have been “approved for transfer,” but their status is widely misunderstood. The press frequently reports that these detainees have been “cleared for release.” The implication is that these detainees have been deemed innocent and can be safely released without any cause for concern. If that were true, of course it would be outrageous for the U.S. government to continue holding them. It is not true, however. Obama’s task force made it clear that other than 17 Chinese Uighur detainees, most of whom have since been released from Guantánamo, “no detainees were approved for ‘release’ during the course” of its review. Instead, the task force “approved for transfer” 126 detainees “subject to security measures.” Dozens of the detainees “approved for transfer” have since left Cuba, but 86 of them remain in detention.¶ The task force did not “clear” these men of any wrongdoing, nor does the Obama administration think transferring them out of Guantánamo is a risk-free endeavor.¶ “There were considerable variations among the detainees approved for transfer,” the task force wrote in its final report. “For a small handful of these detainees, there was scant evidence of any involvement with terrorist groups or hostilities against Coalition forces in Afghanistan.” However, “for most of the detainees approved for transfer, there were varying degrees of evidence indicating that they were low-level foreign fighters affiliated with al-Qaida or other groups operating in Afghanistan.”¶ The task force stressed “that a decision to approve a detainee for transfer does not reflect a decision that the detainee poses no threat or no risk of recidivism.” On the contrary, the task force concluded that “any threat posed by the detainee can be sufficiently mitigated through feasible and appropriate security measures in the receiving country.”¶ And there’s the rub. Mitigating the threat posed by transferred detainees is an inherently difficult proposition. The Obama administration worked hard to transfer detainees, to both their home countries and allied nations. But 56 of the remaining 86 detainees who have been “approved for transfer” are from Yemen. The task force approved 30 of the 56 Yemeni detainees for “conditional” detention. They can only be transferred home if security conditions improve and other measures are met. That isn’t happening anytime soon.¶ Obama himself issued a moratorium on transfers to Yemen on Jan. 5, 2010. The move was in response to al Qaeda in the Arabian Peninsula’s attempted attack on a Detroit-bound airliner on Christmas Day 2009. The White House said this week that the moratorium “remains in place,” despite the president’s pledge “to go back at this.”¶ Look at the numbers again. Obama’s task force slated 80 of the current detainees for indefinite detention or prosecution. An additional 56 Yemeni detainees have been approved for transfer but are in custody because of al Qaeda’s rise in their home country and the president’s subsequent moratorium on transfers.¶ The bottom line is that most of the Guantánamo detainees—136 out of 166—are in U.S. custody because that is where the Obama administration thinks they belong.

#### The President has the authority to determine who must be detained – that solves the case

Klein and Wittes 11 (Adam – Third year J.D. candidate at Columbia Law School, and Benjamin – senior fellow in Governance Studies at The Brookings Institution, “Preventive Detention in American Theory and Practice”, 2011, Harvard National Security Journal, 2 Harv. Nat'l Sec. J. 85, lexis)

B. The Enemy Alien American law does not stop at permitting the long-term detention of the enemy fighter. A lesser known authority, still in force, also authorizes the detention of the nationals of countries with which the United States finds itself at war. This power, like the power to detain enemy combatants, is overtly preventive in nature and not especially discriminating. And like the power to detain the combatant, it evolved from far broader powers to hold prisoners in wartime. 1. Requirements for Detainability The President's wartime authority for dealing with alien citizens of enemy powers is set out in Chapter 3 of Title 50 of the U.S. Code, colloquially known as the Alien Enemies Act (or the Enemy Aliens Act). Specifically, 50 U.S.C. § 21 authorizes the President to detain an alien under the following circumstances: First, a state of war or threatened hostilities must exist, and not just any such state will do. The powers are triggered only in case of "a declared war between the United States and any foreign nation or government, or [an] invasion or predatory incursion . . . attempted, or threatened against the territory of the United States by any foreign nation or government . . . ." n62 By the statute's terms, they could not be invoked in a conflict with a non-state actor. Nor could the Act's powers be activated in a conflict with a state that has not attacked or threatened attack on the United States, absent a formal declaration of war. n63 In [\*101] practice, the law has been invoked in circumstances of declared war only. Second, the subjects must be "natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward . . . ." n64 The statute on its own requires no individualized determination of dangerousness or threat. The government may subject even qualifying aliens who demonstrate no active hostility to measures instituted pursuant to the law. Merely by being from a particular country, people are "liable to be apprehended, restrained, secured, and removed as alien enemies." n65 The statute authorizes the President to determine "the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety." n66 Under the statute, the President must make a public proclamation to trigger these authorities. n67 Sections 22 to 24 discuss ancillary procedures tasking federal judges and marshals to assist with implementing measures under the Act, but they do not constrain the President's discretion under § 21. n68 Judicial review has historically been limited to assessing whether the conditions for detainability listed above have been met, and whether the detention [\*102] complies with the terms of the presidential proclamation triggering the Act. n69 2. Historical Roots and Evolution of Alien Enemy Detention As noted above, the President's power to detain alien enemies during wartime rests on explicit statutory authority -- not, in contrast to combatant detention, as an incident to the political branches' constitutional war powers. n70 This section first describes the history of that statute, the Alien Enemies Act of 1798. It then considers the historical roots of the power to detain enemy aliens during wartime and the permissibility of this practice under modern international law.

#### NDAA isnt a problem

**Posner 13** (Eric, professor at the University of Chicago Law School, co-author of The Executive Unbound: After the Madisonian Republic and Climate Change Justice, “President Obama Can Shut Guantanamo Whenever He Wants,” <http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/05/president_obama_can_shut_guantanamo_whenever_he_wants_to.html>)

The NDAA does not, however, ban the president from releasing detainees. Section 1028 authorizes him to release them to foreign countries that will accept them—the problem is that most countries won’t, and others, like Yemen, where about 90 of the 166 detainees are from, can’t guarantee that they will maintain control over detainees, as required by the law.¶ There is another section of the NDAA, however, which has been overlooked. In section 1021(a), Congress “affirms” the authority of the U.S. armed forces under the AUMF to detain members of al-Qaida and affiliated groups “pending disposition under the law of war.” Section 1021(c)(1) further provides that “disposition under the law of war” includes “Detention under the law of war without trial until the end of the hostilities authorized by” the AUMF. Thus, when hostilities end, the detainees may be released.¶ The president has the power to end the hostilities with al-Qaida—simply by declaring their end. This is not a controversial sort of power. Numerous presidents have ended hostilities without any legislative action from Congress—this happened with the Vietnam War, the Korean War, World War II, and World War I. The Supreme Court has confirmed that the president has this authority.

### Solves Ilaw perc

Buys 7 (Cindy G – Assistant Professor at Southern Illinois University School of Law, “Burying Our Constitution in the Sand? Evaluating the Ostrich Response to the Use of International and Foreign Law in U.S. Constitutional Interpretation”, 2007, 21 BYU J. Pub. L. 1, lexis)

Additionally, the United States is bound by any relevant customary international law separate and apart from its treaty obligations. n250 Despite this long-established principle, some scholars and judges are uncomfortable with the application of customary international law, perhaps because customary international rules are not written "positive" laws, or because they can be vague and rest on diffuse sources that are hard to find. n251 Treaties often contain very vague and broadly worded obligations as well, yet they are still considering binding "law." Furthermore, while it is laudable that the law be known and available to [\*44] any interested person, difficulty in finding the law cannot be determinative of its character as law. And while it is true that customary international law often cannot be found in one place like a treaty, the rules of customary international law are often written down in diplomatic correspondence, executive orders, and similar documents. In fact, the U.S. government has often made public statements officially accepting the binding nature of certain rules of customary international law that have been codified in treaties which the United States has not ratified, such as the Vienna Convention on the Law of Treaties n252 and the U.N. Convention on the Law of the Sea. n253 Some judges and scholars also have expressed concern about the political foundations of customary international law, believing that is not well grounded because it is not expressly made the law of the land in the Constitution and is not approved by the Senate or Congress more generally. n254 While it is true that the Supremacy Clause of the Constitution only mentions treaties and not customary international law, the Constitution does take into account customary international law in at least one other place, i.e., its reference to offenses against the laws of nations in Article I. n255 Furthermore, the Executive Branch, which is charged with taking a primary role in foreign affairs, is daily involved in the creation of the rules of customary international law through its practices and pronouncements. Thus, it is perfectly appropriate for U.S. courts to continue to ascertain and apply customary international law just as they have for more than two centuries.

### A2: PDB

#### Judicial restrictions are imposed by courts – means no aff solvency

Kang 6 (Michael – Assistant Professor, Emory University School of Law, “De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform”, 2006, 84 Wash. U. L. Rev. 667, lexis)

The Court's general reluctance to restrict partisan gerrymandering appeared motivated by a lack of judicial confidence. Judicial restriction of gerrymandering would draw courts, which are putatively nonpartisan and apolitical institutions, n39 into the untenable position of managing what is fundamentally a political exercise. Justice Kennedy emphasized the difficulty for courts of "acting without a legislature's expertise" and the unwelcome task of removing from the democratic process "one of the most significant acts a State can perform to ensure citizen participation in republican self-governance." n40 Indeed, challenges to gerrymanders demand more of courts than simply striking down excessively partisan plans. Today, judicial intervention against gerrymandering almost necessarily brings with it active judicial management of the redistricting process. A court that strikes down a redistricting plan, for whatever reason, n41 invariably is drawn into authorship of a new redistricting plan to replace it, or a close interaction with legislators working to formulate a new plan (or both). n42 Courts "become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections." n43 When courts have involved themselves in redistricting matters, namely in racial gerrymandering and one person, one vote cases, [\*675] the courts have drawn heavy criticism. n44 Even so, Justice Stevens predicted that "the present "failure of judicial will' will be replaced by stern condemnation of partisan gerrymandering." n45 Greater judicial direction of the redistricting process is a price that Justice Stevens and reformers seem happy to pay. They are more than willing to trade the costs of judicial entanglement for the perceived benefits of judicial oversight in redistricting. I further discuss the costs of this approach in Part III.

### Enforcement

#### Yes enforcement – internal checks are comparatively more effective

Rasdan 10 (Afsheen, Professor @ William Mitchell College of Law, "Presidential Power in the Obama Administration: Early Reflections: BUSH AND OBAMA FIGHT TERRORISTS OUTSIDE JUSTICE JACKSON'S TWILIGHT ZONE," 26 Const. Commentary 551, lexis)

Back to my focus on the CIA, not only do I question the usefulness of Jackson's categories on issues of executive power, I challenge whether Congress is a significant check on intelligence activities. n35 More promising as checks on the intelligence community are the patrolling entities within the executive branch: the lawyers, the inspectors general, and the review boards within the clandestine service. Internal checks, in other words, are more effective than external checks on the CIA's manifestations of executive power. Congress's express or implied approval of intelligence activities, whether by appropriations or by more specific statutes, is superficial compared to deeper trends within the executive branch. In a sort of paradox, however, the most important checks are the most difficult to measure; empirical data on the CIA's Office of General Counsel, the Office of Inspector General, and the Accountability Review Boards are thin - and often classified. This paradox applies to both Presidents Bush and Obama.¶ So while Congress is not irrelevant, the importance of the congressional variable should not be overstated in the presidential formula. An academic's familiarity with the Jackson categories does not make them always relevant to reality. [\*564] Internal checks are much more important than the Jackson categories in understanding how Presidents Bush and Obama ensure that intelligence activities stay effective and legal.

#### Comparative risk of delay and circumvention is higher with the plan

**Metzger 9** (Gillian E., professor of law at Columbia, “THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS”, 59 Emory L.J. 423, Lexis)

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they **avoid** the **delay** in application that can hamper both judicial and congressional oversight. n76 Second, internal mechanisms often operate **continuously**, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. n77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. n78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. n79

### Rollback

#### you vote on presumption because the plan gets rolled back too

Salter 13 (Mark, “Amid Immigration Reform Cacophony, Passage Looms”, 6/14, http://www.realclearpolitics.com/articles/2013/06/14/amid\_immigration\_reform\_cacophony\_passage\_looms\_118816.html)

Future Congresses aren’t bound by the actions of past Congresses. If five or 10 years from now Congress decides the bill didn’t achieve its objectives, it can pass new legislation. But it ought to do it by regular order, facing the same difficulties and political risks this Congress faces as it tries to pass this one.

#### Self-binding executive orders such as the counterplan are extremely durable – momentum and political costs deter future presidents

Posner and Vermeule 7 (Eric A. – Kirkland & Ellis Professor of Law, The University of Chicago Law School, and Adrian – Professor of Law, Harvard Law School, “The Credible Executive”, 2007, 74 U. Chi. L. Rev. 865, lexis)

IV. Executive Signaling: Law and Mechanisms We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations. This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895] Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types. We begin with some relevant law, then examine a set of possible mechanisms -- emphasizing both the conditions under which they might succeed and the conditions under which they might not -- and conclude by examining the costs of credibility. A. A Preliminary Note on Law and Self-Binding Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A [\*896] president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of self-binding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated [\*897] presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal. B. Mechanisms What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators, and judges that his policies rest on judgments about the public interest, rather than on power maximization, partisanship, or other nefarious motives? 1. Intrabranch separation of powers. In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels "internal separation of powers" within the executive branch. n78 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger employment protections for civil servants, and internal adjudication of executive controversies by insulated "executive" decisionmakers who resemble judges in many ways. n79

#### Courts defer to the executive – err neg on the question of rollback

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)

In Jenkins v. Collard, the Supreme Court ruled that executive orders are indeed valid when based on a constitutional or statutory grant of power to the President, and that such executive orders are equivalent to laws. [n248](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n248) In Youngstown, the Supreme Court held that executive orders that lack constitutional or statutory power are invalid. [n249](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n249) The Court also noted that  [\*365]  longstanding judicial doctrine holds that when an executive order conflicts with a statute, the statute preempts the order. [n250](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n250) Nevertheless, unless the conflict is stark, the courts will attempt to interpret an executive order under the presumption that there is no such conflict. [n251](http://www.lexisnexis.com.proxy-remote.galib.uga.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1368490653913&returnToKey=20_T17387983447&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.397939.9757858271" \l "n251)

#### Executive orders aren’t overturned – reluctance, collective action, and data prove

Krause and Cohen 00 (George and David – Professors of Political Science at South Carolina, “Opportunity, Constraints, and the Development of the Institutional Presidency: The Issuance of Executive Orders” The Journal Of Politics, Vol. 62, No. 1, February 2000, JSTOR)

We use the annual number of executive orders issued by presidents from 1939 to 1996 to test our hypotheses. Executive orders possess a number of properties that make them appropriate for our purposes. First, the series of executive orders is long, and we can cover the entirety of the institutionalizing and institutional-ized eras to date.6 Second, unlike research on presidential vetoes (Shields and Huang 1997) and public activities (Hager and Sullivan 1994), which have found support for presidency-centered variables but not president-centered factors, executive orders offer a stronger possibility that the latter set of factors will be more prominent in explaining their use. One, they are more highly discretionary than vetoes.7 More critically, presidents take action first and unilaterally. In ad-dition, Congress has tended to allow executive orders to stand due to its own collective action problems and the cumbersomeness of using the legislative process to reverse or stop such presidential actions. Moe and Howell (1998) report that between 1973 and 1997, Congress challenged only 36 of more than 1,000 executive orders issued. And only two of these 36 challenges led to overturning the president's executive order. Therefore, presidents are likely to be very successful in implementing their own agendas through such actions. In fact, the nature of executive orders leads one to surmise that idiopathic factors will be relatively more important than presidency-centered variables in explaining this form of presidential action. Finally, executive orders have rarely been studied quantitatively (see Gleiber and Shull 1992; Gomez and Shull 1995; Krause and Cohen 1997)8, so a description of the factors motivating their use is worth-while.9 Such a description will allow us to determine the relative efficacy of these competing perspectives on presidential behavior.10

#### Most executive orders aren’t overturned – it’s highly unlikely so err neg

Murray 99 (Frank, “Clinton’s Executive Orders are Still Packing a Punch: Other Presidents Issued More, but His are Still Sweeping” Washington Times <http://www.englishfirst.org/13166/13166wtgeneral.html>)

Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them. Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction." "President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary. Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

#### Presidents make it impossible to reverse their executive orders

Branum 2 (Tara – Associate, Fulbright & Jaworski L.L.P., Houston, Texas. J.D. University of Texas, “PRESIDENT OR KING? “THE USE AND ABUSE OF EXECUTIVE ORDERS IN MODERN-DAY AMERICA”, 2002, 28 J. Legis. 1, lexis)

Congressmen and private citizens besiege the President with demands [\*58] that action be taken on various issues. n273 To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. n274 Many were controversial and the need for the policies he instituted was debatable. n275 Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. n276 A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

#### Institutional capacity protects executive orders – ensures resilience

Mayer 1 (Kenneth – Professor of Political Science at the University of Wisconsin-Madison, “With the Stroke of a Pen: Executive Orders and Presidential Power”, pg. 208)

The resilience of affirmative action programs during the Reagan years confirms a central premise of the new institutional economics paradigm: institutions, once they are created, can resist attempts to impose significant change. Institutional creation is a double-edged sword: presidents can create new administrative capabilities, and they will exert control over these new capabilities more often than not, but there is no guarantee that they will be able to do so. The case of affirmative action also demonstrates how executive orders can bind successive presidents. In this instance, change was blocked by the emergence of an institutional capacity to protect existing programs. Within the executive branch, those who favored altering 11246 ran into opposition from the Department of Labor and its congressional allies, the Equal Employment Opportunities Commission (EEOC, created in the Civil Rights Act to enforce language in the act banning workplace discrimination), and the broader civil rights community. Surprisingly, even the business community expressed ambivalence about changing the 11246 program, with many CEOs indicating that their companies would retain affirmative action programs no matter what the government did (although some groups, such as the Chamber of Commerce, favored repeal). The 1985-1986 dispute between Labor and Justice engendered a contentious, public, and cabinetwide split, and Regan ultimately refused to step in. This episode tells us that "intuition notwithstanding, preexisting executive orders are not always so easy to change. Ronald Reagan was a popular president whose view of civil rights was most definitely in conflict with an executive order program inherited from previous administrations. Yet despite having the legal and constitutional wherewithal to bring the order in line with his own administration’s views on civil rights issues, [he] apparently felt obligated to maintain the status quo."

#### Momentum constrains future administrations - establishes a stable framework

Brecher 12 (Aaron P. – J.D. Candidate, May 2013, University of Michigan Law School, “Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations”, 2012, 111 Mich. L. Rev. 423, lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of constraining future administrations or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, the inertia following adoption of an order may help constrain future administrations, which may be more or less trustworthy than the current one. Creating a presumption through an executive order also establishes a stable legal framework for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.