# 1NC

## 1NC

#### The plan collapses intelligence gathering --- sources dry up when their intelligence is used in court --- destroys the heart of counter-terror policy

Delery **Et.al**. ’12 - Principal Deputy, Assistant Attorney General, Civil Division, DOJ

Principal Deputy, Assistant Attorney General, Civil Division, STUART F. DELERY

Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

Third. Plaintiffs' claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that "the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny" are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, "'even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to close up like a clam."'1 Id. (quoting Tenet v. Doe, 544 U.S. 1,11 (2005)). And where litigation of a plaintiffs allegations "would inevitably require an inquiry into "classified information that may undermine ongoing covert operations,"\* special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at "8 ("When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.11); Lebron, 670 F.3d at 554 (noting that the "chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplomatic initiatives at the heart of counterterrorism policy1' are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the "extraordinary rendition" context).

#### Credible US intelligence security measures are crucial to intelligence sharing

Anna-Katherine **McGill 12**, School of Graduate and Continuing Studies in Diplomacy, Norwich University, David Gray, Campbell University, Summer 2012, “Challenges to International Counterterrorism Intelligence Sharing,” <http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf>

It is clear that diplomacy will continue to be a key component in US counterterrorism coalition building. Intelligence sharing, as a by-product of these efforts, will likely improve for as long as trust is maintained or improved and compromises are made in the greater interest of combating the shared threat of terrorism. However, the US is also likely to face continuing foreseeable challenges from the ever expanding breadth of its international allies, its increasing dependence on its counterterrorism coalitions, and unpredictable setbacks to international trust like WikiLeaks. There are ways, however, to allay the impact of these challenges if not overcome them all together. ¶ With regards to traditional allies the United States must continue to negotiate a close working relationship with its NATO, EU, and 5 EYES partners. Great strides have been made but future disagreements on policy, tactics, and strategy for the war on terrorism are inevitable. The best way to prepare for such future issues is to continue to foster a positive collaborative relationship with these nations so that mutual trust will prevent arguments from threatening the survival of the alliance. This means that the US must carefully manage its international position. It cannot exploit legal loopholes like exporting suspects to other nations for questionable interrogations; it cannot bully its friends nor act unilaterally against their wishes; and it must hold itself to high moral standards befitting a liberal democracy.¶ For new and non-traditional allies, Reveron states that “the long-term challenge for policymakers will be to convert these short-term tactical relationships into meaningful alliances while protecting against counterintelligence threats” (467). Traditional alliances have to start somewhere and over time these new relationships can turn in to tried and tested cooperation. In order to further develop these relationships the US should attempt to iron out policy differences in other arenas rather than turn a blind eye to them and continue providing technical and material support to their development of effective intelligence programs. The US should not however hold CT cooperation supreme over other critical issues such as nuclear and conventional arms proliferation and human rights violations. Nations like Iran and Syria may be helpful in the short term and for limited purposes but this does not negate their less desirable practices.¶ Finally, the US will also need to look inward to prevent more classified information leaks. The US needs to be more critical in the issuance of security clearances, employ digital monitoring of who is downloading information and in what amount to prevent mass dumps, and give greater importance to curtailing the “insider threat” of US citizens leaking information overall. Improving intelligence security will help to mitigate the blowback from WikiLeaks and will go a long way to advancing US credibility and trust building.

#### Intelligence sharing is key to NATO effectiveness—solves war

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

NATO’s essential purpose is to safeguard the freedom and security of all its members via political and military means in accordance with the North Atlantic Treaty and the principles of the United Nations Charter.3 “There is a common perspective among a variety of defense and security establishments around the world that the nature of the current and future security environment we face presents complex and irregular challenges that are not readily apparent and are difficult to anticipate.”4 SOF is being singled out and recognized as a key component of the North Atlantic Treaty Organization (NATO) alliance in the fight against contemporary and future threats, because SOF is “ideally suited to [the] ambiguous and dynamic irregular environment” facing NATO.5¶ SOF has traditionally been considered a national asset. NATO had no history of utilizing SOF in the Alliance when NATO nations first assumed responsibility for the conflicts in the Balkans. However the lessons learned during those conflicts were not applied due to a lack of a central NATO SOF entity until the NATO Riga summit of 2006. On December 22, 2006, Admiral William McRaven was appointed Director of the NATO SOF Coordination Center (NSCC) and ordered to start the transformation process. Three years later, on March 1, 2010, the NATO SOF Headquarters (NSHQ) was formally established as a three-star headquarters within the Alliance in Mons, Belgium.6¶ According to its mission statement, the purpose of NSHQ is twofold. First, it must optimize the employment of SOF by the Alliance. NSHQ further describes this as “the intention to make the employment of SOF as perfect, efficient, and effective as possible, so as to deliver to the Alliance a highly agile Special Operations capability across the range of military operations.”7 Second, it must provide a command capability when so directed by Supreme Allied Commander Europe (SACEUR). NSHQ further describes this as “the ability to deploy a robust C4I capability and enablers for the support and employment of SOF in NATO operations.”8 To be able to carry out successful special operations in support of the current and future operating environments, the Alliance needs adequate interoperability, command and control, and intelligence structures. ¶ Even amongst the closest allies, challenges in intelligence sharing remain. During the early years of Operation Iraqi Freedom, British operators were denied access to intelligence fused by the U.S. that the British had gathered themselves. The issue became so contentious that it had to be raised by British and Australian Prime Ministers with the U.S. President to be resolved.9 Having realized that intelligence sharing is always a compromise between the need to share and the need to protect (even with the best-designed organizations, much less a large, multinational, bureaucratic organization), the NSHQ has developed an innovative approach to solving its intelligence deficiencies. It has created its own organic intelligence collection, analysis, and exploitation capability. It has also acquired its own equipment and created a robust NATO SOF training facility and training program to supplement intelligence flow to NATO SOF forces.!¶ B. BACKGROUND ¶ 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. ¶ NATO (and many of the individual member states) foresees a future threat environment shaped by unconventional threats such as transnational crime, terrorist attacks, and the proliferation of weapons of mass destruction.11 There are so many similarities in threats projected by the NATO member states and by official NATO strategy it is easy to conclude that a common enemy exists: transnational problems require transnational solutions. The complexities in the international order and the “significant challenges to the intelligence system [that] arise in targeting groups such as al-Qaeda due to their networked and volatile structure”12 make multinational intelligence sharing requisite. There is much to gain from multinational cooperation. The expected continued decline in military budgets and limited SOF human resources make burden-sharing and proper division of labor even more appropriate. ¶ C. PURPOSE AND SCOPE ¶ Intelligence is a decisive factor, sometimes the decisive factor, in special operations. As such, the NSHQ’s ultimate success will rely on its ability to solve some of the perennial problems related to intelligence sharing within coalitions. The newly established NSHQ in Mons, Belgium serves as an excellent testing ground to analyze SOF intelligence sharing issues within a coalition. NSHQ is attempting to streamline and optimize the intelligence available to NATO SOF units.

#### NATO prevents global nuclear war

Zbigniew **Brzezinski 9**, former U.S. National Security Advisor, the Robert E. Osgood Professor of American Foreign Policy at Johns Hopkins University's School of Advanced International Studies, September/October 2009, “An Agenda for NATO,” Foreign Affairs

And yet, it is fair to ask: Is NATO living up to its extraordinary potential? NATO today is without a doubt the most powerful military and political alliance in the world. Its 28 members come from the globe’s two most productive, technologically advanced, socially modern, economically prosperous, and politically democratic regions. Its member states’ 900 million people account for only 13 percent of the world’s population but 45 percent of global GDP.

NATO’s potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO’s real power derives from the fact that it combines the United States’ military capabilities and economic power with Europe’s collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks.

The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today’s world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction - not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity’s recent political awakening.

The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening.

In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled.

Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers—the United States, the EU, China, Japan, Russia, and India—at least two, or perhaps even three, are revisionist in their orientation. Whether they are “rising peacefully” (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty.

Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons - and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country’s political stability.

## 1NC

#### The aff says the USFG- they don’t defend which branch – they need to specify either the statutory or legislative branch

#### USFG consists of three branches

#### Thefreedictionary.com http://www.thefreedictionary.com/United+States+government

#### United States government - the executive and legislative and judicial branches of the federal government of the United States

#### It’s extra T- they can claim the executive does the plan- that’s not a statutory or judicial restriction- destroys the most critical neg CP- debates over executive self-restraint are a core controversy of the topic

#### On this topic, specifying your agent is important- we should pay attention to who has authority and where it is vested- its necessary for CP competition- if we PICed out of the Court they could clarify in the 2ac that USFG means the Court

## 1NC

#### Interpretation – Authority is power delegated to an agent

**Kelly 03** judge for the State of Michigan

JOSEPH ELEZOVIC, Plaintiff, and LULA ELEZOVIC, Plaintiff-Appellant/Cross-Appellee, v. FORD MOTOR COMPANY and DANIEL P. BENNETT, Defendants-Appellees/Cross-Appellants., No. 236749, COURT OF APPEALS OF MICHIGAN, 259 Mich. App. 187; 673 N.W.2d 776; 2003 Mich. App. LEXIS 2649; 93 Fair Empl. Prac. Cas. (BNA) 244; 92 Fair Empl. Prac. Cas. (BNA) 1557, lexis)

Applying agency principles, a principal is responsible for the acts of its agents done within the scope of the agent's authority, "even though acting contrary to instructions." [Dick Loehr's, Inc v Secretary of State, 180 Mich. App. 165, 168; 446 N.W.2d 624 (1989)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=115&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b180%20Mich.%20App.%20165%2cat%20168%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=708331d40466e4347936b73e103c82fb). This is because, in part, an agency relationship arises where the principal [\*\*\*36]  has the right to control the conduct of the agent. [St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n, 458 Mich. 540, 558 n 18; 581 N.W.2d 707 (1998)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=116&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b458%20Mich.%20540%2cat%20558%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c0a63a81a484a6ce53be229bc2290a07) (citations omitted). The employer is also liable for the torts of his employee if "'the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation,'" [McCann v Michigan, 398 Mich. 65, 71; 247 N.W.2d 521 (1976)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=117&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b398%20Mich.%2065%2cat%2071%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=5219d53b6a7119254f8041c911d87fd2), quoting [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=118&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=71c1bf8c001fe5ae1153be4268b8e9e9), p 481; see also [Champion v Nation Wide Security, Inc, 450 Mich. 702, 704, 712; 545 N.W.2d 596 (1996)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=119&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b450%20Mich.%20702%2cat%20704%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=3d1841dc7f4fb90804d8adb6349a6fae), citing [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=120&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c1927abf5bf3954a85d211c044ada141), p 481 ("the master is liable for the tort of his servant if the servant 'was aided in accomplishing the tort by the existence of the agency relation'"). In [Backus v  [\*213]  Kauffman (On Rehearing), 238 Mich. App. 402, 409; 605 N.W.2d 690 (1999)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=121&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b238%20Mich.%20App.%20402%2cat%20409%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=d9947545fee151274d489cbc14123160), this Court stated: The term "authority" is defined by Black's Law Dictionary to include "the power delegated by a principal to an agent." Black's Law Dictionary (7th ed), p [\*\*\*37]  127. "Scope of authority" is defined in the following manner: "The reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business."

#### Restrictions are prohibitions on action --- the aff is a reporting requirement

Jean **Schiedler-Brown 12,** Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

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

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

#### Restrictions must be enforceable

Elizabeth Boalt 5, Professor of Law Emeritus, University of California, Berkeley, University of Arkansas at Little Rock School of Law The Journal of Appellate Practice and Process Fall, 20035 J. App. Prac. & Process 473, lexis

Four questions follow: (1) Are discouraging words "restrictions" on citation under Rule 32.1? (2) What difference, if any, does it make? (3) What is the risk of judicial resistance to [\*493] no-citation rules, through discouraging words or other means? and (4) Should discouraging words be forbidden?

1. Are Discouraging Words "Restrictions" under Rule 32.1?

The committee's statement notwithstanding, it is not clear that discouraging words have to be considered "restrictions" on citation under the proposed Rule 32.1. These words may be wholly admonitory - and unenforceable. The Fourth Circuit's rule, for example, states that citing unpublished opinions is "disfavored," but that it may be done "if counsel believes, nevertheless, that [an unpublished opinion] has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well." n129 On the question of what counsel "believes," surely counsel should be taken at her word; counsel's asserted belief that an unpublished opinion has precedential or persuasive value should not be considered a falsifiable fact. Hence no sanction should be available for violating the Fourth Circuit's rule, and the rule's discouraging language in turn would not be a "prohibition or restriction" that was barred by Rule 32.1 as presently drafted.

In the rules of some other circuits, however, the language disfavoring citation of unpublished opinions is unmoored from anyone's "belief" and arguably does impose an objective "prohibition or restriction" determinable by a court. n130 A court might find, for example, that the required "persuasive value with respect to a material issue that has not been addressed in a published opinion" n131 was not present, and hence that the citation was not permitted by the circuit rule.

With what result? It would follow, paradoxically, that the opinion could be cited - because the circuit rule would be struck down under Rule 32.1 as a forbidden "restriction" on citation.

The committee's double-negative drafting thus creates a Hall of Mirrors in which citation of an unpublished opinion [\*494] would be allowed either way. If the local rule's discouraging language is merely hortatory, it is not a "restriction" forbidden by Rule 32.1; but that doesn't matter, because such a rule does not bar the citation in the first place. If, on the other hand, the local rule's language has bite and is a "restriction," then Rule 32.1 strikes it down, and again the citation is permitted.

#### Vote neg---

#### Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

## 1NC

**CP: The United States federal government should not deny federal legal counsel to all immigrants that are indefinitely detained.**

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

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

THE COURTS We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and political incentives to defer to the executive, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that courts possess legal authority but not robust political legitimacy. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn. The Timing of Review A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are less likely to set precedents while crises are hot, precedents that will be warped by the emotions of the day or by the political power of aroused majorities.70 Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place. For another thing, even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not. If they have worked, or at least if there is a widespread sense that the crisis has passed, then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, the legal challenges will interest constitutional lawyers, but will lack practical significance. Intensity of Review Another dimension of review is intensity rather than timing. At the level of constitutional law, the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges, including judges applying APA-style review. While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis. Legality and Legitimacy At a higher level of abstraction, the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis. As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal, or of dubious legality, they may nonetheless be politically legitimate, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns. When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so, as the emergency measure will in large part have already worked, or not. The precedents set after the sense of crisis has passed may be calmer and more deliberative, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—but the public will not take much notice of those precedents, and they will have little sticking power when the next crisis rolls around.

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

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

As a matter of fact, this baseline picture is almost certainly incorrect. Government does not always act rationally; sometimes government officials enjoy agency slack and use it to engage in self-dealing, opportunism, or other welfare-reducing actions; sometimes government officials act as tightly constrained agents for the majority and enact policies that oppress minorities. But the baseline picture helps us to clarify the position we will defend: government is not more likely to do these things during emergencies than during normal times, whereas courts are less able to police such behavior during emergencies than during normal times. This is an empirical and institutional claim, which we shall support in every succeeding chapter, not a conceptual claim. If courts were perfectly informed and well motivated, then they might weed out bad emergency policies chosen by irrational or ill-motivated governments. But we just do not have courts of that sort. In particular cases, judges may do better than government at assessing the relative likelihood of threats to security and liberty or the overall costs of particular policies. But this will be wholly fortuitous, and judges who think they have guessed better than government may guess worse instead. Judges are generalists, and the political insulation that protects them from current politics also deprives them of information,33 especially information about novel security threats and necessary responses to those threats. If government can make mistakes and adopt unjustified security measures, then judges can make mistakes as well, sometimes invalidating justified security measures. On this comparative institutional view, there is no general reason to think that judges can do better than government at balancing security and liberty during emergencies. Constitutional rules do no good, and some harm, if they block government’s attempts to adjust the balance as threats wax and wane. When judges or academic commentators say that government has wrongly assessed the net benefits or costs of some security policy or other, they are amateurs playing at security policy, and there is no reason to expect that courts can improve upon government’s emergency policies in any systematic way.

#### This undermines strategic agility – collapses heg

**Blomquist, 10 -** Professor of Law, Valparaiso University School of Law (Robert, “THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE “ Valparaiso University Law Review, Vol. 44, No. 3 [2010], Art. 6, google scholar)

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the “challengers, competitors, and threats to America’s future.”23 Not that the Justices need to become experts in national security affairs,24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations. (1) “National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment’s notice.”25 While “[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers”26, the twenty-first century reality is that “[t]hreats are also more likely to be intertwined—proliferators use the same networks as narcotraffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers.”27 (2) “Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat—the Soviet Union—was brittle, most of the potential adversaries and challengers America now faces are resilient.”28 (3) “The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events.”29 Importantly, “[w]hen you hold the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not.”30 (4) While “keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony,”31 maintaining the American “strategic advantage is critical, because it is essential for just about everything else America hopes to achieve— promoting freedom, protecting the homeland, defending its values, preserving peace, and so on.”32 (5) The United States requires national security “agility.”33 It not only needs “to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources.”34 As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago,35 the average American can be understood as a Jacksonian pragmatist on national security issues.36 “Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms.”37 Thus, recent social science survey data paints “a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time.”38 Indeed, since the American people “do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian.”39 Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel,40 and the unprecedented dangers to the United States national security after 9/11,41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security.42 Second, Justices should be aware that different presidents institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation.43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. “During emergencies, the institutional advantages of the executive are enhanced”;44 moreover, “[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times.”45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check—even during times of claimed national emergency; but, how much deference to be accorded by the Court is “always a hard question” and should be a function of “the scale and type of the emergency.”46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule,47 “the United States should comply with the laws of war in its battle against Al Qaeda”—and I would argue, other lawless terrorist groups like the Taliban—“only to the extent these laws are beneficial to the United States, taking into account the likely response of other states and of al Qaeda and other terrorist organizations,”48 as determined by the POTUS and his national security executive subordinates.

#### Extinction

Barnett 11 (Thomas, Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” The World Politics Review, March 7, 2011, <http://www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads>)

Events in Libya are a further reminder for Americans that we stand at a crossroads in our continuing evolution as the world's sole full-service superpower. Unfortunately, we are increasingly seeking change without cost, and shirking from risk because we are tired of the responsibility. We don't know who we are anymore, and our president is a big part of that problem. Instead of leading us, he explains to us. Barack Obama would have us believe that he is practicing strategic patience. But many experts and ordinary citizens alike have concluded that he is actually beset by strategic incoherence -- in effect, a man overmatched by the job. It is worth first examining the larger picture: We live in a time of arguably the greatest structural change in the global order yet endured, with this historical moment's most amazing feature being its relative and absolute lack of mass violence. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our stunningly successful stewardship of global order since World War II. Let me be more blunt: As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding down that path of perpetual war. Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace. We introduced the international liberal trade order known as globalization and played loyal Leviathan over its spread. What resulted was the collapse of empires, an explosion of democracy, the persistent spread of human rights, the liberation of women, the doubling of life expectancy, and a roughly 10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts. That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come. To continue the historical survey, after salvaging Western Europe from its half-century of civil war, the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism. America then successfully replicated globalization further in East Asia over the second half of the 20th century, setting the stage for the Pacific Century now unfolding. As a result, the vector of structure-building connectivity shifted from trans-Atlantic to trans-Pacific. But if the connectivity push of the past several decades has been from West to East, with little connectivity extended to the South outside of the narrow trade of energy and raw materials, the current connectivity dynamic is dramatically different. Now, the dominant trends are: first, the East cross-connecting back to the West via financial and investment flows as well as Asian companies "going global"; and second, the East creating vast new connectivity networks with the South through South-South trade and investment. The challenge here is how to adjust great-power politics to these profound forces of structural change. Because of the West's connectivity to the East, we are by extension becoming more deeply connected to the unstable South, with China as the primary conduit. Meanwhile, America's self-exhausting post-Sept. 11 unilateralist bender triggered the illusion -- all the rage these days -- of a G-Zero, post-American world. The result, predictably enough for manic-depressive America, is that we've sworn off any overall responsibility for the South, even as we retain the right to go anywhere and kill any individuals -- preferably with flying robots -- that we deem immediately threatening to our narrowly defined national security interests. The problem with this approach is that China has neither the intention nor the ability to step up and play anything resembling a responsible Leviathan over the restive South, where globalization's advance -- again, with a Chinese face -- produces a lot of near-term instability even as it builds the basis for longer-term stability. Libya is a perfect example of where the world is now stuck: America is very reticent to get involved militarily, while China, for the first time in its history, engages in long-range military operations to evacuate its workforce there. Meanwhile, the expanding civil war rages on, to everyone's moral and economic distress. The point is not that America must invade Libya pronto to keep the world as we know it from coming to an end. But if the United States and the West sit by while the Rest, risers that they are, manage nothing more than pious warnings about needlessly butting in, then we all run the risk of collectively making the post-American, G-Zero, do-nothing storyline a self-fulfilling prophecy. While that alone won't stop the world from spinning, if it persists as a pattern, globalization will slide down another path: one of regionalism, spheres of influence and neocolonial burdens that are intuitively hoarded by great powers grown increasingly suspicious of one another. And if you know your history, that should make you nervous.

## 1NC

**CP: The United States federal Government should no longer enforce deportation laws.**

#### This solves

Stephen Dinan, 13 (staff writer, Obama adds to list of illegal immigrants not to deport: Parents, <http://www.washingtontimes.com/news/2013/aug/23/new-obama-policy-warns-agents-not-detain-illegal-i/?page=all>)

The Obama administration issued a policy late last week telling immigration agents to try not to arrest and deport illegal immigrant parents of minor children — a move that adds to the categories of people the administration is trying not to deport. In a nine-page memo issued Friday, U.S. Immigration and Customs Enforcement said agents should use “prosecutorial discretion” to try to avoid detaining parents and, if parents are detained, agents should make sure they have the ability to visit with their children or participate in family court proceedings. The move won praise from immigrant rights groups who said it’s a step toward a kinder detention policy. But a top Republican blasted the memo as another effort by the Obama administration to circumvent the law. “President Obama has once again abused his authority and unilaterally refused to enforce our current immigration laws by directing U.S. Immigration and Customs Enforcement agents to stop removing broad categories of unlawful immigrants,” said House Judiciary Committee Chairman Bob Goodlatte, Virginia Republican. Mr. Goodlatte, whose committee is in charge of many of the immigration bills the House could consider this year and who is working on a legalization bill for young illegal immigrants, said the Obama administration’s move “poisons the debate” and shows that the president is trying to “politicize the issue” rather than work for a compromise bill. It’s not clear how many illegal immigrants could be aided by the latest guidance, nor how many parents already in the deportation pipeline could be released or transferred. However, some cases already bubbling up could be affected. Earlier this month, immigrant rights groups protested and managed to win a one-year stay of deportation for an illegal immigrant in Ohio who is the chief provider for his family, including a child with cerebral palsy. The memo is the latest in a series of directives issued by ICE and by Homeland Security Secretary Janet A. Napolitano that try to lay out priorities for whom the government will detain and try to deport. Ms. Napolitano says her department is funded to deport about 400,000 immigrants a year out of an estimated population of 11 million. She said it makes sense to focus those deportation efforts on immigrants with serious criminal records or who have violated immigration laws repeatedly. A year ago, she issued a policy granting tentative legal status to young illegal immigrants brought to the country as children, who call themselves Dreamers. That policy began accepting applications in August 2012 and as of the end of this July had approved legal status for more than 430,000 illegal immigrants.

## Illegal Aliens

## Non-Citizen Agonism

#### Obama transferring from drones to detention and intel gathering now

**Corn 13** (David, Washington Bureau Chief, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?”, 5/23/13, <http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties>)

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes. The New York Times received the customary pre-speech leak and reported: A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists. Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted. These moves may not satisfy civil-liberties-minded critics on the right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?) Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis. With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism. But the speech may well mark a pivot point. Not shockingly, Obama is attempting to find middle ground, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

#### Shutting down detention leads a shift to drones and alternative rendition. Comparatively worse and kills intel gathering.

**Chensney 11** (Robert M. Chesney, 5/1/2011, Prof at U Texas Law School, served on Detention Task Force with the Justice Department, <http://lawdigitalcommons.bc.edu/bclr/vol52/iss3/2/> ‘Who May Be Held? Military Detention through the Habeas Lens’)

The convergence thesis describes one manner in which law might respond to the cross-cutting pressures associated with the asymmetric warfare phenomenon—i.e., the pressure to reduce false positives (targeting, capture, or detention of the wrong individual) while also ensuring an adequate capacity to neutralize the non-state actors in question. One must bear in mind, however, that detention itself is not the only system of government action that can satisfy that latter interest. Other options exist, including the use of lethal force; the use of rendition to place individuals in detention at the hands of some other state; the use of persuasion to induce some other state to take custody of an individual through its own means; and perhaps also the use of various forms of surveillance to establish a sort of constructive, loose control over a person (though for persons located outside the United States it is unlikely that surveillance could be much more than episodic, and thus any resulting element of “control” may be quite weak).210 From the point of view of the individual involved, all but the last of these options are likely to be far worse experiences than U.S.-administered detention. In addition, all but the last are also likely to be far less useful for purposes of intelligence-gathering from the point of view of the U.S. government.211 Nonetheless, these alternatives may grow attractive to the government in circumstances where the detention alternative becomes unduly restricted, yet the pressure for intervention remains. The situation is rather like squeezing a balloon: the result is not to shrink the balloon, but instead to displace the pressure from one side to another, causing the balloon to distend along the unconstrained side. So too here: when one of these coercive powers becomes constrained in new, more restrictive ways, the displaced pressure to incapacitate may simply find expression through one of the alternative mechanisms. On this view it is no surprise that lethal drone strikes have increased dramatically over the past two years, that the Obama administration has refused to foreswear rendition, that in Iraq we have largely (though not entirely) outsourced our detention operations to the Iraqis, and that we now are progressing along the same path in Afghanistan.212 Decisions regarding the calibration of a detention system—the management of the convergence process, if you will—thus take place in the shadow of this balloon-squeezing phenomenon. A thorough policy review would take this into account, as should any formal lawmaking process. For the moment, however, our formal law-making process is not directed at the detention-scope question. Instead, clarification and development with respect to the substantive grounds for detention takes place through the lens of habeas corpus litigation.

In-group/out-group distinctions are human nature – two reasons.

A.) Resource conflicts

Thayer 2004 – Thayer has been a Fellow at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University and has taught at Dartmouth College and the University of Minnesota [*Darwin and International Relations: On the Evolutionary Origins of War and Ethnic Conflict*, University of Kentucky Press, 2004, pg. 77-78 //adi]

Humans make in-group/out-group distinctions for three reasons. First, humans seek resources—food, water, and shelter—to care for themselves and relatives, and they seek mates to reproduce their genotype; in sum, they are egoistic for the reasons advanced by Darwin, William Hamilton, and other evolutionary theorists, as I described in chapter 1 and in the discussion above. They are unlikely to assist those who are not related, but may do so occasionally, expecting reciprocal behavior. Humans behave in these ways because resources were scarce in the late-Pliocene, Pleistocene, and Holoccne environments in which we evolved. In that environment, it is easy to understand why humans would prefer more resources to fewer: more strength is preferable to less strength, more wealth to less wealth, domination to being dominated. Most people do indeed prefer more resources to fewer; the rich want even more wealth, and seldom say they are too wealthy. Rather, they seem to worry about protecting their wealth from those who may take it from them, such as revolutionaries or the government. In essence, in prehistoric times when there was too little to go around, humans discriminated between self and others, family and others, tribe and others, in-groups and out-groups. This behavior remains today. We humans are likely to perceive out-groups as threats to our resources, the resources we need to maintain ourselves and our families and extended in-groups such as the tribe or state.

#### Plan destroys US legitimacy, rule of law, and fuels terrorism

Deborah **Colson 09**, Acting Director, Law & Security Program at Human Rights First, March, “The Case Against A Special Terrorism Court,” http://www.humanrightsfirst.org/wp-content/uploads/pdf/090323-LS-nsc-policy-paper.pdf

Human Rights First believes that all indefinite detention and special court proposals—whatever form they might take—are unwise, unnecessary and should be rejected. The federal criminal courts have proven to be fully capable of handling the challenges posed by complex terrorism cases without compromising national security or sacrificing standards of fairness and due process. Our procedural safeguards and evidentiary standards comprise the bedrock of American justice. A decision to jettison them, even for a small number of suspects, would weaken our system as a whole, undermine America’s efforts to forge an international coalition to combat terrorism, and perpetuate the damage to America’s reputation for fairness and transparency done by unjust trials and prolonged detention without charge at Guantánamo. ¶ Moreover, the problems that plagued the military commission system—with prolonged litigation over the applicable procedures and rules and increasingly widespread dissention within the military command structure—do not favor the creation of a new court to deal with these cases. Establishing another separate, and secondary, system for terrorism suspects would only result in more legal challenges and would negate many of the strategic advantages of closing Guantánamo and ending military commissions. ¶ Just as importantly, a special terrorism court is not smart counterterrorism policy. Current U.S. counterinsurgency doctrine underscores the important strategic value of treating terrorism suspects as criminals, rather than as military combatants, in order to deprive them of legitimacy and undermine their support in the societies from which they seek recruits to their cause. Unjust detentions and trials at Guantánamo have fueled animosity toward the United States. These decisions also have undermined U.S. efforts to advance the rule of law around the world, which is critical to confronting the threat of terrorism. Creating a special terrorism court and a substitute system of detention without charge would perpetuate these errors rather than solve them. ¶ The new Congress and the Obama Administration have a window of opportunity to signal to the American people and the world that the policies of the Bush Administration were an aberration and that, as it confronts the threat of terrorism, the United States is prepared to uphold the Constitution, restore the rule of law, and honor its international obligations. At stake are the effectiveness of our counterterrorism strategy and the integrity of the American justice system.

# 2NC

## T

#### Prez can do more

**Wilson Center No Date**

(War Powers Proposal Gives the President Even More Authority, http://www.wilsoncenter.org/publication/war-powers-proposal-gives-the-president-even-more-authority)

That will not be the case if Congress uses the concurrent resolution of approval approach. No matter how many conditions Congress might try to place on the president's use of force in such a concurrent resolution, the president would be under no legal obligation to comply because the provisions would have no force or effect outside Congress. This is because concurrent resolutions are mere sense-of-Congress expressions. (Who's going to charge the president with failing to faithfully execute a non-law?)

It stands to reason that, given this option, no future president will ask for a declaration of war or use of force law when the alternative is a nonbinding sense-of-Congress resolution approving the commitment of troops to combat. Never mind that such a resolution is probably unconstitutional under the Chadha decision requiring two-house passage and presentment to the president. (It's unlikely the court would directly rule on the issue since in recent times it has sidestepped war powers disputes between the branches on the grounds that they present political questions best left to the president and Congress to resolve.)

#### There's a clear brightline---restrictions require a floor and a ceiling---oversight is a floor but doesn't set a cap on the President's potential actions

**USCA 77**, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 564 F.2d 292, 1977 U.S. App. LEXIS 10899,. 1978 Fire & Casualty Cases (CCH) P317

Continental argues that even if the Aetna and Continental policies provide coverage for the Cattuzzo accident, that coverage should [\*\*8] be limited to a total of $300,000 because Atlas agreed to procure "not less than" $300,000 coverage. The District Court properly found that the subcontract language does not support a restriction on the terms of Continental's policy because the subcontract only sets a floor, not a ceiling, for coverage.

#### Their ev only defines "restrictions," not "restrictions on authority" - that kills predictability

J.A.D. Haneman 59, justice of the Superior Court of New Jersey, Appellate Division. “Russell S. Bertrand et al. v. Donald T. Jones et al.,” 58 NJ Super. 273; 156 A.2d 161; 1959 N.J. Super, Lexis

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.¶ HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

#### And, substantial requires an objective, absolute measurement--- there's no way to quantify the impact oversight has on War Powers which means that their interpretation has no coherent way to account for an entire word in the topic

**Words & Phrases 64,** 40 W&P 759

The words "outward, open, actual, risible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not bidden; exposed to view; free from concealment dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive. Bass v. Pease, 79 111. App. 308, 31R

#### They conflate management and restrictions

**BEREC 12**, Guidelines for quality of service in the scope of net neutrality, Body of European Regulators for Electronic Communications

The concept of “traffic management” is sometimes used as a synonym of “restrictions”, but in these guidelines BEREC seeks to avoid misunderstanding by using the term “restrictions” to refer to all limitations, including those which are contractually binding and/or technically implemented limitations.