# 1AC

### Plan

#### Plan: The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review.

### 1AC War Fighting Advantage

#### Scenario One: War Fighting

#### Domestic and international support for the US drone program is collapsing, threatening to shut it down entirely. Reform is key.

Zenko, CFR Fellow, 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### And, Drones are critical to resolve U.S. military overreach and prevent reductions in power projection capacity

Rushforth JD candidate 12 (Elinor June, J.D. candidate, University of Arizona, James E. Rogers College of Law, “THERE'S AN APP FOR THAT: IMPLICATIONS OF ARMED DRONE ATTACKS AND PERSONALITY STRIKES BY THE UNITED STATES AGAINST NON-CITIZENS, 2004-2012” Arizona Journal of International and Comparative Law 29 Ariz. J. Int'l & Comp. Law 623, Lexis)

G. Arguments Made by Proponents of the Drone Program The drone program is a fixture in the Obama administration's fight against terror n163 and the moral and legal defense the administration offers serves as an indication that these attacks will continue. n164 Further, proponents of the drone program argue their use reduces risk to U.S. service members, decreases American weariness at foreign intervention, and minimizes civilian casualties during attacks and missions. First, because asymmetric warfare has increased, the United States has sought out creative ways to fight terrorists, insurgents, and asymmetric wars more generally. n165 Despite controversy surrounding the drone program, it allows surveillance and lethal missions without putting U.S. troops in harm's way. n166 This is an almost incontrovertible positive factor when considering American public support for a new and technologically incredible program. n167 Due to the lingering Overseas Contingency Operations, Americans are eager for some good news, and this program can deliver. Drone operators are on the front lines of a new and more sophisticated type of war and the information their surveillance missions provide can prove invaluable to service members on the ground. n168 This dual benefit weighs heavily in favor of drone proliferation. Drones can be [\*649] deployed to survey and attack where it would otherwise be impractical for troops, and a single pilot, to venture. n169 However, the analysis of this benefit must be separated between the two organizations employing drones: the military and the CIA. n170 Drones are used for surveillance and killing by both organizations but usually with different purposes in mind. n171 The military has focused its drones primarily on tactical support of ground forces, n172 either by providing information about enemy tactics or eliminating combatants entrenched in defended positions. n173 The CIA uses drones to eliminate specific targets in remote areas in which conventional U.S. military action would be impossible. n174 During Operation Southern Watch, the military used drones to police no-fly zones in Iraq and they were eventually used to target Iraqi radar systems during the second Iraq War. n175 In Operation Enduring Freedom, the military has expanded its use of armed drones to provide air support to ground operations and to act as "killer scouts." n176 By providing immediate battle damage assessment, drones enable commanders to determine if further action is necessary, and provide a new perspective on the field. n177 In Operation Iraqi Freedom, the armed drone retained and expanded its roles targeting anti-aircraft vehicles, performing as a decoy revealing enemy positions, and aiding in a rescue mission. n178 Based on these successes, military leaders maintain the value of drones. n179 The CIA's use [\*650] of drones facilitates U.S. attacks in environments where it is deemed too dangerous for ground troops to have a physical presence. n180 The ability to protect American lives, keep military costs down, and damage terrorist infrastructure and leadership is central to proponents' view of this program. Second, the American public has grown tired of drawn-out conflicts and foreign intervention, and the drone program offers a more palatable form of foreign involvement. n181 President Obama claims that "it is time to focus on nation-building here at home" and, presumably, the drone program allows the government to operate without deployment of ground troops to areas in which intervention is deemed necessary, be it for humanitarian or military purposes. n182 Lethal operations, surveillance for U.S. military operations, and less costly intervention all become possible when robots are the actual tools. With a weary electorate, the Executive can maintain a presence abroad militarily, while remaining able to argue that its full focus is on protecting and growing our nation at home.

#### Overreach collapses hegemony, risks hostile challengers and nuclear war

Florig, prof International Studies, 10 (Dennis, Professor- Division of International Studies- Hankuk (Korean) University of Foreign Studies, Review of International Studies, vol 36, issue 4, October, 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1548783)

IV. Potential Sources of Hegemonic Breakdown and Future Challenges to Hegemony Despite the belief of some in the U.S. in the divine sanction of U.S. hegemony, hegemons do not stand forever any more than the houses of absolute monarchs of earlier ages who claimed celestial legitimation. Theory of hegemonic cycles focuses on the macro-historical process of the rise and decline of hegemonic powers. However, within any one of the long cycles, there are lesser periods of hegemonic weakening and regeneration. The loss of the Vietnam War followed by the oil shock induced recessions of the 1970s and the early 1980s led some to predict the imminent breakdown of U.S. hegemony. The decisive victory in the first Iraq war and the revival of the U.S. economy in the 1990s led others to talk of a second American century. Both were premature. Similarly, the short term outcome of the war in Iraq, whether it is the stabilization of a pro-American regime, the coming to power of a government unfriendly to the U.S. or on-going civil war will almost certainly lead either to new euphoric pronouncements about the 21st century belonging to the U.S. or claims that the end of U.S. hegemony are nigh. Again, either conclusion will most likely be premature. However, the outcome on the main battlefield so far in the Terrorism Wars will indicate much about the future direction of the global system. Hegemonic states and even hegemonic systems do have life spans, however hard it is to gauge them. On the home front, the Iraq War, like the Vietnam War before it, has laid bare one of the key problems of U.S. missionary hegemony—the fervor of elites is not always matched by the willingness of the population to sacrifice. The expansive, messianic conception of the U.S. role in the world predominates in American thinking, but it is not without challenge. The image of the U.S. as a “shining city on a hill” is rarely disputed, but the need for the U.S. to engage in military conflict abroad to spread its principles does come into question when the costs become too high and the benefits are not apparent.24 After World War I the ideology of American mission was not strong enough to overcome the resistance of ordinary citizens at being conscripted to fight in distant conflicts overseas and political elites not yet accommodated to the multilateralism hegemony entails. Thus there was a period of renunciation of hegemonic ambitions. Certainly since World War II the missionary ideology has held sway among policymaking elites. However, the political unpopularity of the long Vietnam War and the second Iraq War show that the average American citizen does not share the elite’s taste for battle overseas if the sacrifice in blood and treasure becomes steep. There is a cycle of hegemonic overreach, political reaction to the costs of failed policies, and then rebuilding of the ideology of messianic intervention. American sense of exceptionalism does not disappear at any time during this process. However, in the reactive part of the cycle the “city on the hill” tends to try to turn inward, wanting more to avoid contamination from the impure world outside than to take on new challenges. But since that conception of America is not adequate to sustain U.S. hegemony, the sense of America’s world historic mission must be painstaking rebuilt through political rhetoric, spoon feeding the mass media the right pictures of the world, and infusing civil society with political messianism. Someday either the overreach may be too costly and/or the public resistance may be too great to effectively rebuild the American missionary ideology. But that day does not seem just around the corner. There is an even larger question than whether the U.S. will remain the hegemonic state within a western dominated system. How long will the West remain hegemonic in the global system?25 Since Spengler the issue of the decline of the West has been debated. It would be hard to question current western dominance of virtually every global economic, political, military, or ideological system today. In some ways the domination of the West seems even more firm than it was in the past because the West is no longer a group of fiercely competing states but a much more cohesive force. In the era of western domination, breakdown of the rule of each hegemonic state has come because of competition from powerful rival western states at the core of the system leading to system-wide war. The unique characteristic of the Cold War and particularly the post-Cold War system is that the core capitalist states are now to a large degree politically united and increasingly economically integrated. In the 21st century, two factors taking place outside the West seem more of a threat to the reproduction of the hegemony of the American state and the western system than conflict between western states: 1. resistance to western hegemony in the Muslim world and other parts of the subordinated South, and 2. the rise of newly powerful or reformed super states. Relations between the core and periphery have already undergone one massive transformation in the 20th century—decolonization. The historical significance of decolonization was overshadowed somewhat by the emergence of the Cold War and the nuclear age. Recognition of its impact was dampened somewhat by the subsequent relative lack of change of fundamental economic relations between core and periphery. But one of the historical legacies of decolonization is that ideological legitimation has become more crucial in operating the global system. The manufacture of some level of consent, particularly among the elite in the periphery has to some degree replaced brute domination. Less raw force is necessary but in return a greater burden of ideological and cultural legitimation is required. Now it is no longer enough for colonials to obey, willing participants must believe. Therefore, cultural and ideological challenges to the foundations of the liberal capitalist world view assume much greater significance. Thus the resurgence of Islamic fundamentalism, ethnic nationalism, and even social democracy in Latin America as ideologies of opposition have increasing significance in a system dependent on greater levels of willing consent. As Ayoob suggests, the sustained resistance within the Islamic world to western hegemony may have a “demonstration effect” on other southern states with similar grievances against the West.26 The other new dynamic is the re-emergence of great states that at one time or another have been brought low by the western hegemonic system. China, in recent centuries low on the international division of labor, was in some ways a classic case of a peripheral state, or today a semi-peripheral state. But its sheer size, its rapid growth, its currency reserves, its actual and potential markets, etc. make it a major power and a potential future counter hegemon. India lags behind China, but has similar aspirations. Russia has fallen from great power to semi-peripheral status since the collapse of the Soviet empire, but its energy resources and the technological skills of its people make recovery of its former greatness possible. No one knows exactly what the resurgence of Asia portends for the future. However, just as half a century ago global decolonization was a blow to western domination, so the shift in economic production to Asia will redefine global power relations throughout the 21st century. Classical theory of hegemonic cycle is useful if not articulated in too rigid a form. Hegemonic systems do not last forever; they do have a life span. The hegemonic state cannot maintain itself as the fastest growing major economy forever and thus eventually will face relative decline against some major power or powers. The hegemon faces recurrent challenges both on the periphery and from other major powers who feel constrained by the hegemon’s power or are ambitious to usurp its place. Techniques of the application of military force and ideological control may become more sophisticated over time, but so too do techniques of guerilla warfare and ideological forms of resistance such as religious fundamentalism, nationalism, and politicization of ethnic identity. World war may not be imminent, but wars on the periphery have become quite deadly, and the threat of the use of nuclear weapons or other WMD by the rising number of powers who possess them looms.

#### And, power projection solves every scenario for extinction

Brzezinski, John Hopkins American Foreign Policy professor, 2012

(Zbigniew, Strategic Vision: America and the Crisis of Global Power, google books, ldg)

An American decline would impact the nuclear domain most profoundly by inciting a crisis of confidence in the credibility of the American nuclear umbrella. Countries like South Korea, Taiwan, Japan, Turkey, and even Israel, among others, rely on the United States’ extended nuclear deterrence for security. If they were to see the United States slowly retreat from certain regions, forced by circumstances to pull back its guarantees, or even if they were to lose confidence in standing US guarantees, because of the financial, political, military, and diplomatic consequences of an American decline, then they will have to seek security elsewhere. That “elsewhere” security could originate from only two sources: from nuclear weapons of one’s own or from the extended deterrence of another power—most likely Russia, China, or India. It is possible that countries that feel threatened by the ambition of existing nuclear weapon states, the addition of new nuclear weapon states, or the decline in the reliability of American power would develop their own nuclear capabilities. For crypto-nuclear powers like Germany and Japan, the path to nuclear weapons would be easy and fairly quick, given their extensive civilian nuclear industry, their financial success, and their technological acumen. Furthermore, the continued existence of nuclear weapons in North Korea and the potentiality of a nuclear-capable Iran could prompt American allies in the Persian Gulf or East Asia to build their own nuclear deterrents. Given North Korea’s increasingly aggressive and erratic behavior, the failure of the six-party talks, and the widely held distrust of Iran’s megalomaniacal leadership, the guarantees offered by a declining America’s nuclear umbrella might not stave off a regional nuclear arms race among smaller powers. Last but not least, even though China and India today maintain a responsible nuclear posture of minimal deterrence and “no first use,” the uncertainty of an increasingly nuclear world could force both states to reevaluate and escalate their nuclear posture. Indeed, they as well as Russia might even become inclined to extend nuclear assurances to their respective client states. Not only could this signal a renewed regional nuclear arms race between these three aspiring powers but it could also create new and antagonistic spheres of influence in Eurasia driven by competitive nuclear deterrence. The decline of the United States would thus precipitate drastic changes to the nuclear domain. An increase in proliferation among insecure American allies and/or an arms race between the emerging Asian powers are among the more likely outcomes. This ripple effect of proliferation would undermine the transparent management of the nuclear domain and increase the likelihood of interstate rivalry, miscalculation, and eventually even perhaps of international nuclear terror. In addition to the foregoing, in the course of this century the world will face a series of novel geopolitical challenges brought about by significant changes in the physical environment. The management of those changing environmental commons—the growing scarcity of fresh water, the opening of the Arctic, and global warming—will require global consensus and mutual sacrifice. American leadership alone is not enough to secure cooperation on all these issues, but a decline in American influence would reduce the likelihood of achieving cooperative agreements on environmental and resource management. America’s retirement from its role of global policeman could create greater opportunities for emerging powers to further exploit the environmental commons for their own economic gain, increasing the chances of resource-driven conflict, particularly in Asia. The latter is likely to be the case especially in regard to the increasingly scarce water resources in many countries. According to the United States Agency for International Development (USAID), by 2025 more than 2.8 billion people will be living in either water-scarce or water-stressed regions, as global demand for water will double every twenty years.9 While much of the Southern Hemisphere is threatened by potential water scarcity, interstate conflicts—the geopolitical consequences of cross-border water scarcity—are most likely to occur in Central and South Asia, the Middle East, and northeastern Africa, regions where limited water resources are shared across borders and political stability is transient. The combination of political insecurity and resource scarcity is a menacing geopolitical combination. The threat of water conflicts is likely to intensify as the economic growth and increasing demand for water in emerging powers like Turkey and India collides with instability and resource scarcity in rival countries like Iraq and Pakistan. Water scarcity will also test China’s internal stability as its burgeoning population and growing industrial complex combine to increase demand for and decrease supply of usable water. In South Asia, the never-ending political tension between India and Pakistan combined with overcrowding and Pakistan’s heightening internal crises may put the Indus Water Treaty at risk, especially because the river basin originates in the long-disputed territory of Jammu and Kashmir, an area of ever-increasing political and military volatility. The lingering dispute between India and China over the status of Northeast India, an area through which the vital Brahmaputra River flows, also remains a serious concern. As American hegemony disappears and **regional competition intensifies**, disputes over natural resources like water have the potential to develop into full-scale conflicts. The slow thawing of the Arctic will also change the face of the international competition for important resources. With the Arctic becoming increasingly accessible to human endeavor, the five Arctic littoral states—the United States, Canada, Russia, Denmark, and Norway—may rush to lay claim to its bounty of oil, gas, and metals. This run on the Arctic has the potential to cause severe shifts in the geopolitical landscape, particularly to Russia’s advantage. As Vladimir Radyuhin points out in his article entitled “The Arctic’s Strategic Value for Russia,” Russia has the most to gain from access to the Arctic while simultaneously being the target of far north containment by the other four Arctic states, all of which are members of NATO. In many respects this new great game will be determined by who moves first with the most legitimacy, since very few agreements on the Arctic exist. The first Russian supertanker sailed from Europe to Asia via the North Sea in the summer of 2010.10 Russia has an immense amount of land and resource potential in the Arctic. Its territory within the Arctic Circle is 3.1 million square kilometers—around the size of India—and the Arctic accounts for 91% of Russia’s natural gas production, 80% of its explored natural gas reserves, 90% of its offshore hydrocarbon reserves, and a large store of metals.11 Russia is also attempting to increase its claim on the territory by asserting that its continental shelf continues deeper into the Arctic, which could qualify Russia for a 150-mile extension of its Exclusive Economic Zone and add another 1.2 million square kilometers of resource-rich territory. Its first attempt at this extension was denied by the UN Commission on the Continental Shelf, but it is planning to reapply in 2013. Russia considers the Arctic a true extension of its northern border and in a 2008 strategy paper President Medvedev stated that the Arctic would become Russia’s “main strategic resource base” by 2020.12 Despite recent conciliatory summits between Europe and Russia over European security architecture, a large amount of uncertainty and distrust stains the West’s relationship with Russia. The United States itself has always maintained a strong claim on the Arctic and has continued patrolling the area since the end of the Cold War. This was reinforced during the last month of President Bush’s second term when he released a national security directive stipulating that America should “preserve the global mobility of the United States military and civilian vessels and aircraft throughout the Arctic region.” The potentiality of an American decline could embolden Russia to more forcefully assert its control of the Arctic and over Europe via energy politics; though much depends on Russia’s political orientation after the 2012 presidential elections. All five Arctic littoral states will benefit from a peaceful and cooperative agreement on the Arctic—similar to Norway’s and Russia’s 2010 agreement over the Barents Strait—and the geopolitical stability it would provide. Nevertheless, political circumstances could rapidly change in an environment where control over energy remains Russia’s single greatest priority. Global climate change is the final component of the environmental commons and the one with the greatest potential geopolitical impact. Scientists and policy makers alike have projected catastrophic consequences for mankind and the planet if the world average temperature rises by more than two degrees over the next century. Plant and animal species could grow extinct at a rapid pace, large-scale ecosystems could collapse, human migration could increase to untenable levels, and global economic development could be categorically reversed. Changes in geography, forced migration, and global economic contraction layered on top of the perennial regional security challenges could create a geopolitical reality of unmanageable complexity and conflict, especially in the densely populated and politically unstable areas of Asia such as the Northeast and South. Furthermore, any legitimate action inhibiting global climate change will require unprecedented levels of self-sacrifice and international cooperation. The United States does consider climate change a serious concern, but its lack of both long-term strategy and political commitment, evidenced in its refusal to ratify the Kyoto Protocol of 1997 and the repeated defeat of climate-change legislation in Congress, deters other countries from participating in a global agreement. The United States is the second-largest global emitter of carbon dioxide, after China, with 20% of the world’s share. The United States is the number one per capita emitter of carbon dioxide and the global leader in per capita energy demand. Therefore, US leadership is essential in not only getting other countries to cooperate, but also in actually inhibiting climate change. Others around the world, including the European Union and Brazil, have attempted their own domestic reforms on carbon emissions and energy use, and committed themselves to pursuing renewable energy. Even China has made reducing emissions a goal, a fact it refuses to let the United States ignore. But none of those nations currently has the ability to lead a global initiative. President Obama committed the United States to energy and carbon reform at the Copenhagen Summit in 2009, but the increasingly polarized domestic political environment and the truculent American economic recovery are unlikely to inspire progress on costly energy issues. China is also critically important to any discussion of the management of climate change as it produces 21% of the world’s total carbon emissions, a percentage that will only increase as China develops the western regions of its territory and as its citizens experience a growth in their standard of living. China, however, has refused to take on a leadership role in climate change, as it has also done in the maritime, space, and cyberspace domains. China uses its designation as a developing country to shield itself from the demands of global stewardship. China’s tough stance at the 2009 Copenhagen Summit underscores the potential dangers of an American decline: no other country has the capacity and the desire to accept global stewardship over the environmental commons. Only a vigorous Unites States could lead on climate change, given Russia’s dependence on carbon-based energies for economic growth, India’s relatively low emissions rate, and China’s current reluctance to assume global responsibility. The protection and good faith management of the global commons—sea, space, cyberspace, nuclear proliferation, water security, the Arctic, and the environment itself—**are imperative to** the long-term growth of the global economy and **the continuation of** basic geopolitical **stability**. But in almost every case, the potential absence of constructive and influential US leadership would fatally undermine the essential communality of the global commons.     The argument that America’s decline would generate global insecurity, endanger some vulnerable states, produce a more troubled North American neighborhood, and make cooperative management of the global commons more difficult is not an argument for US global supremacy. In fact, the strategic complexities of the world in the twenty-first century—resulting from the rise of a politically self-assertive global population and from the dispersal of global power—make such supremacy unattainable. But in this increasingly complicated geopolitical environment, an America in pursuit of a new, timely strategic vision is crucial to helping the world avoid a dangerous slide into international turmoil.

#### Legitimacy of the drone program is critical internal link to drone operations-- key to allied and public support of US leadership.

Kennedy, Foreign Policy prof-Kings College, 13 (Greg, Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, Drones: Legitimacy and Anti-Americanism, http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring\_2013/3\_Article\_Kennedy.pdf)

The current debate over the legitimacy of America’s use of drones to deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaedalinked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion of many, makes Great Britain culpable in the illegality and immorality of those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### Scenario 2- Counter-terrorism

#### US counter-terrorism efforts are failing. Overreliance on drones results in civilian deaths that cause blowback- terrorist groups use civilian deaths for recruitment and fundraising, their key strategies for resurgence.

Cronin, prof-GMU, 13 (Audrey Kurth, Professor of Public Policy at George Mason University and the author of How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns, “Why Drones Fail,” Foreign Affairs, Jul/Aug2013, Vol. 92, Issue 4)

Like any other weapon, armed drones can be tactically useful. But are they helping advance the strategic goals of U.S. counterterrorism? Although terrorism is a tactic, it can succeed only on the strategic level, by leveraging a shocking event for political gain. To be effective, counterterrorism must itself respond with a coherent strategy. The problem for Washington today is that its drone program has taken on a life of its own, to the point where tactics are driving strategy rather than the other way around. The main goals of U.S. counterterrorism are threefold: the strategic defeat of al Qaeda and groups affiliated with it, the containment of local conflicts so that they do not breed new enemies, and the preservation of the security of the American people. Drones do not serve all these goals. Although they can protect the American people from attacks in the short term, they are not helping to defeat al Qaeda, and they may be creating sworn enemies out of a sea of local insurgents. It would be a mistake to embrace killer drones as the centerpiece of U.S. counterterrorism. AL QAEDA'S RESILIENCE At least since 9/11, the United States has sought the end of al Qaeda -- not just to set it back tactically, as drones have surely done, but also to defeat the group completely. Terrorist organizations can meet their demise in a variety of ways, and the killing of their leaders is certainly one of them. Abu Sayyaf, an Islamist separatist group in the Philippines, lost its political focus, split into factions, and became a petty criminal organization after the army killed its leaders in 2006 and 2007. In other cases, however, including those of the Shining Path in Peru and Action Directe in France, the humiliating arrest of a leader has been more effective. By capturing a terrorist leader, countries can avoid creating a martyr, win access to a storehouse of intelligence, and discredit a popular cause. Despite the Obama administration's recent calls for limits on drone strikes, Washington is still using them to try to defeat al Qaeda by killing off its leadership. But the terrorist groups that have been destroyed through decapitation looked nothing like al Qaeda: they were hierarchically structured, characterized by a cult of personality, and less than ten years old, and they lacked a clear succession plan. Al Qaeda, by contrast, is a resilient, 25-year-old organization with a broad network of outposts. The group was never singularly dependent on Osama bin Laden's leadership, and it has proved adept at replacing dead operatives. Drones have inflicted real damage on the organization, of course. In Pakistan, the approximately 350 strikes since 2004 have cut the number of core al Qaeda members in the tribal areas by about 75 percent, to roughly 50-100, a powerful answer to the 2001 attacks they planned and orchestrated nearby. As al Qaeda's center of gravity has shifted away from Pakistan to Yemen and North Africa, drone strikes have followed the terrorists. In September 2011, Michael Vickers, the U.S. undersecretary of defense for intelligence, estimated that there were maybe four key al Qaeda leaders remaining in Pakistan and about ten or 20 leaders overall in Pakistan, Somalia, and Yemen. Drones have also driven down the overall level of violence in the areas they have hit. The political scientists Patrick Johnston and Anoop Sarbahi recently found that drone strikes in northwestern Pakistan from 2007 to 2011 resulted in a decrease in the number and lethality of militant attacks in the tribal areas where they were conducted. Such strikes often lead militants simply to go somewhere else, but that can have value in and of itself. Indeed, the drone threat has forced al Qaeda operatives and their associates to change their behavior, keeping them preoccupied with survival and hindering their ability to move, plan operations, and carry them out. The fighters have proved remarkably adaptable: a document found left behind in February 2013 by Islamist fighters fleeing Mali detailed 22 tips for avoiding drone attacks, including using trees as cover, placing dolls and statues outside to mislead aerial intelligence, and covering vehicles with straw mats. Nonetheless, the prospect of living under the threat of instant death from above has made recruitment more difficult and kept operatives from establishing close ties to local civilians, who fear they might also be killed. But the benefits end there, and there are many reasons to believe that drone strikes are undermining Washington's goal of destroying al Qaeda. Targeted killings have not thwarted the group's ability to replace dead leaders with new ones. Nor have they undermined its propaganda efforts or recruitment. Even if al Qaeda has become less lethal and efficient, its public relations campaigns still allow it to reach potential supporters, threaten potential victims, and project strength. If al Qaeda's ability to perpetuate its message continues, then the killing of its members will not further the long-term goal of ending the group. Not only has al Qaeda's propaganda continued uninterrupted by the drone strikes; it has been significantly enhanced by them. As Sahab (The Clouds), the propaganda branch of al Qaeda, has been able to attract recruits and resources by broadcasting footage of drone strikes, portraying them as indiscriminate violence against Muslims. Al Qaeda uses the strikes that result in civilian deaths, and even those that don't, to frame Americans as immoral bullies who care less about ordinary people than al Qaeda does. And As Sahab regularly casts the leaders who are killed by drones as martyrs. It is easy enough to kill an individual terrorist with a drone strike, but the organization's Internet presence lives on. A more effective way of defeating al Qaeda would be to publicly discredit it with a political strategy aimed at dividing its followers. Al Qaeda and its various affiliates do not together make up a strong, unified organization. Different factions within the movement disagree about both long-term objectives and short-term tactics, including whether it is acceptable to carry out suicide attacks or kill other Muslims. And it is in Muslim-majority countries where jihadist violence has taken its worst toll. Around 85 percent of those killed by al Qaeda's attacks have been Muslims, a fact that breeds revulsion among its potential followers. The United States should be capitalizing on this backlash. In reality, there is no equivalence between al Qaeda's violence and U.S. drone strikes -- under the Obama administration, drones have avoided civilians about 86 percent of the time, whereas al Qaeda purposefully targets them. But the foolish secrecy of Washington's drone program lets critics allege that the strikes are deadlier and less discriminating than they really are. Whatever the truth is, the United States is losing the war of perceptions, a key part of any counterterrorism campaign. Since 2010, moreover, U.S. drone strikes have progressed well beyond decapitation, now targeting al Qaeda leaders and followers alike, as well as a range of Taliban members and Yemeni insurgents. With its so-called signature strikes, Washington often goes after people whose identity it does not know but who appear to be behaving like militants in insurgent-controlled areas. The strikes end up killing enemies of the Pakistani, Somali, and Yemeni militaries who may not threaten the United States at all. Worse, because the targets of such strikes are so loosely defined, it seems inevitable that they will kill some civilians. The June 2011 claim by John Brennan, President Barack Obama's top counterterrorism adviser at the time, that there had not been a single collateral death from drone attacks in the previous year strained credulity -- and badly undermined U.S. credibility. The drone campaign has morphed, in effect, into remote-control repression: the direct application of brute force by a state, rather than an attempt to deal a pivotal blow to a movement. Repression wiped out terrorist groups in Argentina, Brazil, Peru, and tsarist Russia, but in each case, it sharply eroded the government's legitimacy. Repression is costly, not just to the victims, and difficult for democracies to sustain over time. It works best in places where group members can be easily separated from the general population, which is not the case for most targets of U.S. drone strikes. Military repression also often results in violence spreading to neighboring countries or regions, which partially explains the expanding al Qaeda footprint in the Middle East and North Africa, not to mention the Caucasus. KEEPING LOCAL CONFLICTS LOCAL Short of defeating al Qaeda altogether, a top strategic objective of U.S. counterterrorism should be to prevent fighters in local conflicts abroad from aligning with the movement and targeting the United States and its allies. Military strategists refer to this goal as "the conservation of enemies," the attempt to keep the number of adversaries to a minimum. Violent jihadism existed long before 9/11 and will endure long after the U.S. war on terrorism finally ends. The best way for the United States to prevent future acts of international terrorism on its soil is to make sure that local insurgencies remain local, to shore up its allies' capacities, and to use short-term interventions such as drones rarely, selectively, transparently, and only against those who can realistically target the United States. The problem is that the United States can conceivably justify an attack on any individual or group with some plausible link to al Qaeda. Washington would like to disrupt any potentially powerful militant network, but it risks turning relatively harmless local jihadist groups into stronger organizations with eager new recruits. If al Qaeda is indeed becoming a vast collective of local and regional insurgents, the United States should let those directly involved in the conflicts determine the outcome, keep itself out, provide resources only to offset funds provided to radical factions, and concentrate on protecting the homeland. Following 9/11, the U.S. war on terrorism was framed in the congressional authorization to use force as a response to "those nations, organizations, or persons" responsible for the attacks. The name "al Qaeda," which does not appear in the authorization, has since become an ill-defined shorthand, loosely employed by terrorist leaders, counterterrorism officials, and Western pundits alike to describe a shifting movement. The vagueness of the U.S. terminology at the time was partly deliberate: the authorization was worded to sidestep the long-standing problem of terrorist groups' changing their names to evade U.S. sanctions. But Washington now finds itself in a permanent battle with an amorphous and geographically dispersed foe, one with an increasingly marginal connection to the original 9/11 plotters. In this endless contest, the United States risks multiplying its enemies and heightening their incentives to attack the country.

#### And, lack of transparency to the drone program collapses allied cooperation on terrorism, which is critical to intelligence sharing.

Human Rights First 13 (How to Ensure that the U.S. Drone Program does not Undermine Human Rights BLUEPRINT FOR THE NEXT ADMINISTRATION, Updated April 13, http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\_Targeted\_Killing\_blueprint.pdf)

The Obama Administration has dramatically escalated targeted killing by drones as a central feature of its counterterrorism response. Over the past two years, the administration has begun to reveal more about the targeted killing program, including in a leaked Department of Justice White paper on targeted killing1 and in public remarks by several senior officials.2 While this information is welcome, it does not fully address our concerns. Experts and other governments have continued to raise serious concerns about:  The precedent that the U.S. targeted killing policy is setting for the rest of the world, including countries that have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights;  The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence-sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries;  The impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability and provide economic aid;  The number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations; and  Whether the legal framework for the program that has been publicly asserted so far by the administration comports with international legal requirements. The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis, and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. government’s strategy for targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences. How the U.S. operates and publicly explains its targeted killing program will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles (UAVs) is an increasingly global industry and drone technology is not prohibitively complicated. Some 70 countries already possess UAVs3 —including Russia, Syria and Libya4 —and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: the United States is "establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians."5 By declaring that it is in an armed conflict with al Qaeda’s “associated forces” (a term it has not defined) without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all “members” of such groups are legally targetable, the United States is establishing exceedingly broad precedent for who can be targeted, even if it is not utilizing the full scope of this claimed authority.6 As an alternative to armed conflict-based targeting, U.S. officials have claimed targeted killings are justified as self-defense responding to an imminent threat, but have referred to a “flexible” or “elongated” concept of imminence,7 without adequately explaining what that means or how that complies with the requirements of international law. In a white paper leaked to NBC news in February 2013, for example, the Department of Justice adopts what it calls a “broader concept of imminence” that has no basis in law. According to the white paper, an imminent threat need be neither immediate nor specific. This is a dangerous, unprecedented and unwarranted expansion of widely-accepted understandings of international law.8 It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al Qaeda have been killed in drone attacks, studies show that the vast majority of victims are not high-level terrorist leaders.9 National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial costs of the targeted killing program, including growing antiAmerican sentiment and recruiting support for al Qaeda. 10 General Stanley McChrystal has said: “What scares me about drone strikes is how they are perceived around the world. The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates.”11 The broad targeted killing program has already strained U.S. relations with its allies and thereby impeded the flow of critical intelligence about terrorist operations.12

#### Allied cooperation on intelligence is critical to effective counterterrorism

McGill and Gray 12 (Anna-Katherine Staser McGill, David H. Gray, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

#### Terrorists have means and motive for nuclear attacks, now-expertise and materials are widespread and multiple attempts prove.

**Jaspal, Quaid-i-Azam University IR professor, 2012**

(Zafar, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, <http://pu.edu.pk/images/journal/pols/pdf-files/Nuclear%20Radiological%20terrorism%20Jaspa_Vol_19_Issue_1_2012.pdf>, ldg)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dual-use nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth.x Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187)

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### Only judicial review provides the due process necessary to solve confidence in targeting—key to viability of the program

Corey, Army Colonel, 12 (Colonel Ian G. Corey, “Citizens in the Crosshairs: Ready, Aim, Hold Your Fire?,” http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA561582)

Alternatively, targeted killing decisions could be subjected to judicial review. 103 Attorney General Holder rejected ex ante judicial review out of hand, citing the Constitution’s allocation of national security operations to the executive branch and the need for timely action.104 Courts are indeed reluctant to stray into the realm of political questions, as evidenced by the district court’s dismissal of the ACLU and CCR lawsuit. On the other hand, a model for a special court that operates in secret already exists: the Foreign Intelligence Surveillance Court (FISC) that oversees requests for surveillance warrants for suspected foreign agents. While ex ante judicial review would provide the most robust form of oversight, ex post review by a court like the FISC would nonetheless serve as a significant check on executive power.105 Regardless of the type of oversight implemented, some form of independent review is necessary to demonstrate accountability and bolster confidence in the targeted killing process. Conclusion The United States has increasingly relied on targeted killing as an important tactic in its war on terror and will continue to do so for the foreseeable future.106 This is entirely reasonable given current budgetary constraints and the appeal of targeted killing, especially UAS strikes, as an alternative to the use of conventional forces. Moreover, the United States will likely again seek to employ the tactic against U.S. citizens assessed to be operational leaders of AQAM. As demonstrated above, one can make a good faith argument that doing so is entirely permissible under both international and domestic law as the Obama Administration claims, the opinions of some prominent legal scholars notwithstanding. The viability of future lethal targeting of U.S. citizens is questionable, however, if the government fails to address legitimate issues of transparency and accountability. While the administration has recently made progress on the transparency front, much more remains to be done, including the release in some form of the legal analysis contained in OLC’s 2010 opinion. Moreover, the administration must be able to articulate to the American people how it selects U.S. citizens for targeted killing and the safeguards in place to mitigate the risk of error and abuse. Finally, these targeting decisions must be subject to some form of independent review that will both satisfy due process and boost public confidence.

#### Only external checks on the executive’s use increase accountability and transparency- internal executive measures can’t establish the credibility of the rule of law.

Brooks, Ph.D in Law @ Georgetown 4/23/13 (Rosa, Professor of Law, Georgetown University Law Center, “The Constitutional and Counterterrorism Implications of Targeted Killing Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights” <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1114&context=cong>)

Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41 No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials. As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? Setting Troubling International Precedents Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an illdefined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### Court action is key—using the legal process to protect constitutional rights is critical to counter-terrorism credibility and US soft power.

Sidhu, J.D, 11 (Dawinder S., J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania. Mr. Sidhu is an attorney whose primary intellectual focus is the relationship between individual rights and heightened national security concerns, “JUDICIAL REVIEW AS SOFT POWER: HOW THE COURTS CAN HELP US WIN THE POST-9/11 CONFLICT,” NATIONAL SECURITY LAW BRIEF Vol 1, No 1, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb>)

The legal principles established by the Framers and enshrined in the Constitution are a source of attraction only if we have meaningfully adhered to them in practice. Part II will posit that the Supreme Court’s robust evaluation of cases in the wartime context suggests that the nation has been faithful to the rule of law even in times of national stress. As support, this part will provide exam- ples of cases involving challenges to the American response to wars both before and after 9/11, the discussion of which will exhibit American respect for the rule of law. While the substantive results of some of these cases may be particularly pleasing to Muslims, for instance the extension of habeas protections to detainees in Guantánamo, 30 this part will make clear that it is the legal process—not substantive victories for one side or against the government—which is the true source of American legal soft power. If it is the case that the law may be an element of soft power conceptually and that the use of the legal process has refl ected this principle in practice, the conclusion argues that it would benefit American national security for others in the world to be made aware of the American constitutional framework and the judiciary’s activities related to the war. Such information would make it more likely that other nations and peoples, especially moderate Muslims, will be attracted to American interests. This Article thus reaches a conclusion that may seem counterintuitive—that the judicial branch, in the performance of its constitutional duty of judicial review, furthers American national security and foreign policy objectives even when it may happen to strike down executive or legislative arguments for expanded war powers to prosecute the current war on terror and even though the executive and legislature constitute the foreign policy branches of the federal government. In other words, a “loss” for the executive or legislature, may be considered, in truth, a reaffirmation of our constitutional system and therefore a victory for the entire nation in the neglected but necessary post-9/11 war of ideas. 31 As such, it is the central contention of this Article that the judicial branch is a repository of American soft power and thus a useful tool in the post-9/11 conflict

#### Judicial review is the only mechanism for creating transparency and reducing collateral damage – the executive alone can’t solve

Adelsberg 12 (Samuel S., \* J.D. Candidate 2013, Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens” Harvard Law & Policy Review 6 Harv. L. & Pol'y Rev. 437, Lexis)

[\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens. Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

### 1AC Judicial Review

#### Advantage Two: Civil-military relations

#### Judicial review of the military is collapsing now- judicial deference over targeted killing results in an unchecked executive.

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

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials. The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But a long pattern of threats and intimidation to depart from established law undermines judicial independence. That has been the course of the U.S. “war on terror” for over a decade now. Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference. 1. Guantanamo. In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards to be developed by the lower courts with “deference” to Executive determinations. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.” 2. Detention and Torture Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP) Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities. Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity. Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP. 1 553 U.S. 723 (2008). 2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007). 3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009). 4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012). 5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP. 3. Unlawful Detentions Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant. Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7 Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security. Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute 4. Unlawful Surveillance Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others. 5. Targeted Killing Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes. 6. Asset Forfeiture 6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009). 7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007). 8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) 9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002). 10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013). 11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010) Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge. Avoiding Accountability The “head in the sand” attitude of the U.S. judiciary in the past decade is a rather dismal record that does not fit the high standard for judicial independence on which the American public has come to rely. Many authors have discussed these cases from the perspective of civil rights and liberties of the individual. What I want to highlight is how undue deference to the Executive in “time of crisis” has undermined the independent role of the judiciary. Torture, executive detentions, illegal surveillance, and now killing of U.S. citizens, have all escaped judicial review under a variety of excuses. To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh Muhamed and Anwar al-Aulaqi should not be allowed to roam free to kill innocent civilians. But hundreds of years of history show that there are ways of dealing with such people within the limits of restrained government without resort to the hubris and indignity of unreviewed executive discretion. The turning of blind eyes by many, albeit not all, federal judges is a chapter of this history that will weigh heavily against us in the future. No judge wants to feel responsible for the deaths of innocents. But moral responsibility for death is with those who contribute to the act. Meanwhile the judge has a moral responsibility for abuses by government of which the judiciary is a part. There is nothing “new” in the killing of innocents for religious or political vengeance. This violence has always been with us and will unfortunately continue despite our best efforts to curb it. Pleas for executive carte blanche power are exactly what the history of the writ of habeas corpus were developed to avoid,14 and what many statements in various declarations of human rights are all about. The way of unreviewed executive discretion is the way of tyranny.

#### And, judicial review of the military is critical to balanced civil-military relations- Congress and the Executive cannot check themselves

Gilbert, Lieutenant Colonel, 98 (Michael, Lieutenant Colonel Michael H. Gilbert, B.S., USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School. He is a member of the State Bars of Nebraska and California. “ARTICLE: The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle,” 8 USAFA J. Leg. Stud. 197, lexis)

The legislative, executive, and judicial branches of the federal government comprise and form a triangle surrounding the military, each branch occupying one side of the civil-military triangle. Commentators have written countless pages discussing, analyzing, and describing the civil-military relationship that the Congress and the President have with the armed forces they respectively regulate and command. Most commentators, however, have neglected to consider the crucial position and role of the federal judiciary. This article examines the relationship between the judiciary and the military in the interest of identifying the role that the judiciary, specifically the United States Supreme Court, plays in civil-military relations. Without an actual, meaningful presence of the judiciary as a leg of the civil-military triangle, the triangle is incomplete and collapses. In its current structure, the judiciary has adopted a non-role by deferring its responsibility to oversee the lawfulness of the other two branches to those branches themselves. This dereliction, which arguably is created by the malfeasance of the United States Supreme Court, has resulted in inherent inequities to the nation, in general, and to service members, in particular, as the federal courts are reluctant to protect even basic civil rights of military members. Judicial oversight is one form of civilian control over the military; abrogating this responsibility is to return power to the military hierarchy that is not meant to be theirs. [\*198] Under the United States Constitution, Congress has plenary authority over the maintenance and regulation of the armed forces, and the President is expressly made the Commander-in-Chief of the armed forces. The unwillingness of the Court to provide a check and balance on these two equal branches of the federal government creates an area virtually unchallengeable by the public. As a result, a large group of people, members of the military services, lack recourse to address wrongs perpetrated against them by their military and civilian superiors. Ironically, the very men and women dedicating their lives to protect the U.S. Constitution lack many of the basic protections the Constitution affords everyone else in this nation. The weakness in the present system is that the Supreme Court has taken a detour from the Constitution with regard to reviewing military issues under the normally recognized requirements of the Constitution. The federal judiciary, following the lead of the Supreme Court, has created de facto immunity from judicial interference by those who seek to challenge policy or procedure established by the other two branches and the military itself. When the "Thou Shalt Nots" of the Amendments to the Constitution compete with the necessities of the military, the conflict is resolved in favor of the military because it is seen as a separate society based upon the constitutionally granted authority of Congress to maintain and regulate the armed forces. 1 Essentially, the Court permits a separate world to be created for the military because of this regulation, distinguishing and separating the military from society. 2 The Court needs to reexamine their almost complete deference on military matters, which is tantamount to an exception to the Bill of Rights for matters concerning members of the military. Unless the Court begins to provide the oversight that is normally dedicated to many other areas of law fraught with complexity and national importance, judicial review of the military will continue to be relegated to a footnote in the annals of law. Combined with the downsizing and further consequent decline of interaction between the military and general society, 3 this exile from the protection of the Constitution could breed great injustices within the military. Perhaps even more importantly, the military might actually begin to believe that they are indeed second-class citizens, separate from the general [\*199] population, which could create dire problems with civil-military relations that are already the subject of concern by many observers. 4

#### Latin America models CMR---absent a strong signal of independence versus the military hardline control is inevitable

Weeks, prof- political science, 06 (By Gregory Weeks, Assistant Professor of Political Science, University of North Carolina at Charlotte, FIGHTING TERRORISM WHILE PROMOTING DEMOCRACY: COMPETING PRIORITIES IN U.S. DEFENSE POLICY TOWARD LATIN AMERICA,<http://clas-pages.uncc.edu/gregory-weeks/files/2012/04/WeeksG_2006JTWSarticle.pdf>)

There is a growing literature on judicial reform in Latin America, which emphasizes the need for greater access, efficiency, transparency, and independence.38 For democratic civil-military relations, the most important factor is judicial independence. The judicial branch is the main civilian source of accountability for members of the armed forces who have committed crimes against civilians. At the same time, it provides due process to the accused, thus ensuring that they receive a fair trial and maintaining the military's faith in the system. To serve in that role, judges must be independent from outside pressure. It is also necessary for those same soldiers to view the courts as fair and impartial. When the process becomes routinized, then the institution can be considered fully effective. Measuring the effectiveness of the courts is perhaps the most straightforward. In a study of judicial reform in Latin America, William Prillaman argues that independence can be measured by tracking the willingness of courts to rule against the government.39 However, for cases involving members of the military, independence also means ruling against the military leadership. Have soldiers been tried, convicted, and imprisoned for crimes they have committed? Even further, were judges successful in that regard even in the face of military resistance? Especially in the context of countries emerging from authoritarian rule (and even more so when the dictatorship was highly repressive) judges can be harassed, threatened, or even killed, or the civilian government may accept military demands to be left alone, fearing the political (or perhaps even personal) consequences. With some exceptions, judicial systems in Latin American countries have not been successful in addressing crimes committed by the armed forces (or the police). Even in some countries—such as Guatemala-where judges have periodically been able to overcome military pressure, court cases have been accompanied by violence or the threat of it. The worst records have been in Central America and the Andean region, whereas in the southern cone notable advances have been made. Especially in Colombia, but also in Ecuador and Peru, intimidation means that many cases are never investigated and judges are reluctant to hear them. Amnesties blocked civilian courts to a significant degree in Brazil, Chile, and Uruguay. In both Argentina and (surprisingly) Chile, the process of routinization is further advanced than elsewhere, so that when officers are called to testify there is less civil-military conflict than in the past, but this remains exceptional in the region. At the 2004 defense meetings in Ecuador, the Mexican Defense Minister spoke of the Mexican military's more "pro-active" stance in the fighting terrorism, which will certainly raise questions about jurisdiction if officers are implicated in abuses. Apart from interaction on the basis of extradition requests (most prominently in the case of Colombia) the judiciary is not a central issue for U.S. defense policy and it is not raised in the 2000 or 2002 National Security Strategy except for the goal of teaching respect for human rights in U.S. military training programs. Nonetheless, the United States Agency for International Development does provide funding for training and judicial development in general.'"' There are two important ways in which U.S. defense policy affects the judiciary, First, support for the regimes that commit serious abuses almost certainly contributes to a general sense of impunity. This was, of course, particularly true when dictatorships were the norm in the region Second, the militarization of areas deemed havens for terrorism (especially drug traffickers) has increased the number of human rights abuses and, in several countries, has increased pressure on judges not to prosecute (especially in Colombia). Another dilemma for civilian governments in Latin America is the scope of military justice in Latin America. In many countries, civilians can be brought before military courts for a broad range of offenses and officers can often find protection from prosecution by civilian courts. Reform has been slow and uneven."' The Staff Judge Advocate's Office of the United States Southern Command has created programs for military justice, such as in Colombia and Venezuela in 1998."^ The main goal for Colombia was to institutionalize the protection of human rights in military courts, whereas the Venezuelan military wished to reform its system of courts martial. Renewed emphasis on antiterrorism and internal security, however, raises the risk that military judges will try more civilians, who will not enjoy the same rights and privileges as they would in civilian courts. Given the debate over terrorist suspects being held in the United States, Latin American armed forces can easily claim that military courts are more appropriate in the context of the war against terrorism. They can also claim that, given national security concerns, the military should not be held accountable to any courts other than its own. The same arguments were often made during the Cold War. Finally, just as with the legislative branch, the emphasis on military intelligence gathering as an element of anti-terrorist policy reinforces the military's perceived need for secrecy and a minimum of civilian oversight. Even before the attacks on the United States, analysts were noting the "heightened tension between demands for secrecy and the desire for enhanced civil liberties.'"43 A return to Cold War-era notions of national security and secrecy represents an obstacle to the development of an effective judicial branch. In particular, the call for regional sharing of intelligence raises legitimate questions about precisely which judicial bodies would have authority to act in defense of civil liberties. Although leaders—both civilian and military—of numerous Latin American countries have indicated approval of the general idea (and southern cone countries have even broached the issue of a regional military) no specifics have yet been forthcoming. The primary historical parallel would be Operation Condor, the multinational (Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay) intelligence system created in 1975 as a way to consolidate anti-communist dictatorships and eliminate political enemies. Although transitions to civilian rule have long taken place, judiciaries remain ill-equipped to confront what would become complex issues of jurisdiction, human rights, and the role military courts. CONCLUSION For civil-military relations to become more democratic in Latin America, it is obviously vital for civilian defense institutions to become stronger. When both civilians and officers view those institutions as legitimate, then the civil-military relationship will become increasingly predictable and differences can be mediated without overt conflict. Defense institutions provide a structure through which civilians and officers can accept each other's expertise and gradually learn that enmity is not always inevitable. This is an especially difficult process in Latin America, where civil-military discord has historically been the norm. The military's historic skepticism of civilian policy makers has, in most countries, solidified the notion that civilians are incapable of handling national defense, while civilians view the armed forces with a suspicion born of military intervention and dictatorship. Therefore, the task of "civilianizing" those institutions is formidable. Beginning in the 1990s, the United States developed a defense policy toward Latin America that, for the first time, emphasized the need for greater civilian expertise and oversight in the region, especially in terms of building more democratic civil-military institutions, which had been sorely lacking in the region. The terrorist attacks of 11 September 2001, however, reoriented U.S. defense policy toward encouraging Latin American militaries to become more involved in intelligence gathering, border patrol and domestic law enforcement, roles that civilians had painstakingly been trying to wrest away from military control. These competing policy goals thus send mixed messages about the real priorities of the U.S. government. Although U.S. policy makers remain focused primarily on the Andean region, it is clear that they view terrorism as a threat in every Latin American country. Furthermore, the main proposed tactic for combating terrorism is increased use of the armed forces in each country, whether it is border patrol, intelligence gathering, fighting guerrillas, or taking over a variety of national police duties. By militarizing policy and emphasizing a largely military response, anti-terrorist initiatives have the strong potential for undermining the stated policy goal of democratizing civil-military institutions in the region. These institutions, which already suffer from a lack of historical effectiveness, have only begun to assert themselves, and these efforts will suffer as a result of a renewed military emphasis on perceived threats to national security.

#### Civilian control is critical to nuclear cooperation agreements that check prolif---goes global

Sanchez 11/16/11 (Alex, Research Fellow @ Council on Hemispheric Affairs “The Unlikely Success: Latin America and Nuclear Weapons” <http://wasanchez.blogspot.com/2011/11/unlikely-success-latin-america-and.html>)

Nuclear Cooperation Even though Latin American states haven’t had a nuclear weapons program in decades, nuclear cooperation does exist. The best example is the creation of the ABACC (Agencia Brasileno-Argentina de Contabilidad y Control de Materiales Nucleares - Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials), which is responsible for overseeing a cooperation agreement initiated in 1991, in which Buenos Aires and Brasilia agreed to commit to using nuclear energy for solely peaceful purposes. In that year, Argentina, Brazil, the ABACC, and the International Atomic Energy Agency (IAEA) signed the Quadripartite Agreement, specifying procedures for IAEA and ABACC for the monitoring and verification of Argentine and Brazilian nuclear installations. (8) Nevertheless, it is worth stating that neither country has signed the additional protocol by the IEAE which gives the international watchdog the right to access information and visit nuclear sites. (9) A 2009 commentary by the Carnegie Endowment for International Peace, a think tank headquartered in Washington DC, puts the nuclear relations between Brasilia and Buenos Aires into perspective: “Argentina and Brazil are seen as having been successful in turning their nuclear competition into cooperation through mutual confidence. This approach is often considered as a model for other regions where potential nuclear proliferation risks may be perceived. However, it is not yet certain that both countries will become competent partners by taking advantage of their joint strengths. Certain obstacles could endanger this process. Bureaucratic resistance, as well as possible asymmetries of interests and views -especially those related to the possibility of sharing proprietary technology - could upset the internal balance of the agreement and, therefore, its long-term sustainability.” (10) Indeed, while the current levels of nuclear cooperation between Brazil and Argentina are positive, it is important to understand that they are not fault-proof and there is the possibility that cooperation could take a turn for the worst. For example, should inter-state disputes arise, or if military governments appear again, then a worst case scenario could be that nuclear weapons programs could be revisited. In addition Venezuela has had plans for creating its own nuclear energy program with support from Iran. Some analysts have gone as far as arguing that Iranian mining companies currently operating in Venezuela may be trying to find uranium to use in Iran’s nuclear projects. (11) In interviews between the author of this essay and several Latin America military officials, (12) the consensus was that regional governments did not have a problem with Caracas looking to produce nuclear energy, but greater transparency is necessary to maintain inter-state confidence.

#### Latin American prolif risks nuclear war

Cote 9 (Owen, joined the MIT Security Studies Program in 1997 as Associate Director. Prior to that he was Assistant Director of the International Security Program at Harvard's Center for Science and International Affairs, where he remains co-editor of the Center's journal, International Security. He received his Ph.D. from MIT, where he specialized in U.S. defense policy and international security affairs, “The ABC's of Nuclear Disarmament in Latin America” <http://ocw.mit.edu/courses/political-science/17-951-nuclear-weapons-in-international-politics-past-present-and-future-spring-2009/projects/MIT17_951S09_abcs.pdf>)

Nuclear Weapons in Latin America are more destabilizing than stabilizing Security concerns in Latin America do not only include nuclear weapons. On December 9, 1974 la Declaración de Ayacucho was made in order to increase security perception. Argentina, Bolivia, Chile, Colombia, Ecuador, Panama, Peru and Venezuela set the goal to "create conditions which permit effective limitation of armaments and put an end to their acquisition for offensive military purposes, in order to dedicate all possible resources to economic development (Ayacucho Declaration, 1974 1)." This treaty prohibited weapons and equipment, including biological, chemical and nuclear weapons, aircraft carriers, ballistic missiles, cruisers and nuclear submarines. This agreement discussed "the concepts of intraregional balance and trust within the countries of the region (Portales 25)."2 There are several resources that indicate that Latin American political scientists were worried about the effect nuclear weapons would have on the region. Several theorists believed that the introduction of even the hint of a weapons program would make the entire region paranoid and further increase a state's incentive to produce a bomb. Other theorists view the development of nuclear weapons in the region as a risk in that it draws attention from the rest of the world onto Latin America. This unwanted attention could lead to disastrous affects for the region if any country was perceived as a threat to any of the greater superpowers. Security perception motivates a country's weapons development. Carlos Portales discusses how the introduction of a new weapon to the Latin American region has a "contagious" effect; first one country has it and then the rest of them struggle to obtain it. If any country is perceived to be looking or developing a new weapon, all countries will follow in order to keep the balance of power within the region. The introduction of a new weapon limits any arms control treaties until all countries possess the new weapon (Mercado Jarrín; Portales 27). In his article "Consequences of a Nuclear Conflict for the Climate in South America," Licio da Silva describes the consequences to South America if there were to be a nuclear attack on North America. He calls this the "Optimistic Hipothesis [sic]" for South America and calculates population death by smoke in the atmosphere. His "Pessimistic Hipothesis [sic]" involves attacks on South American cities and the destruction that could be cause, he even takes into account the possibility of the Amazon going up in flames. His article is quite alarming and one can see that he is truly terrified at the possibilities. As a conclusion, he calls for countries to be prepared for the worse and for the region to try and avoid international conflict by not obtaining nuclear weapons. da Silva states that if no South American country possesses a nuclear weapon, then no nuclear weapon state should perceive South America as a threat. If a Latin American state were to have a nuclear weapon, then that country could be perceived as a threat and thus could be targeted in an international conflict if it is seen as taking sides: "When a country becomes the owner of a nuclear arsenal, it also becomes a potential target (da Silva 56)." Therefore, da Silva calls for Latin American countries to remain disarmed so as not to put the region in peril. His directly names Argentina and Brazil for their involvement in nuclear weapons programs and accuses them of putting the entire region at risk: This shows the temerity of Argentine and Brazilian military who are in favour of the possession of nuclear weapons in their respective countries; we believe that the price we would have to pay for the dubious pride of belonging to the small group of nations in possession of nuclear technology for military purposes is too high. da Silva 56 Here we see a sincere fear of the security risks that one country can pose on an entire region. For da Silva, the destabilizing effect that nuclear weapons would have on South America alarm him enough to single out the two countries and negatively describe their search for nuclear weapons as "dubious pride." He continues on to ask for "the commitment not to install any nuclear arms in their [South American's] territory (da Silva 56)." The use of the word "their" refers to a collective identity shared by those in South America. Military improvements of individual countries should not be as important as the well being of the entire region. South Americans countries are lumped together and thus, must take into account the entire region before pursuing precarious programs. An arms race in the region would affect all countries in Latin America since such an arms race "contributes to increase both international tensions and the danger of armed conflicts, in addition to diverting resources indispensable to the economic and social progress of the peoples of the world. (Brazil and the Non-Proliferation of Nuclear Weapons 19)." One country's search for nuclear weapons or even nuclear power, increases all the other countries' likelihood to obsess, overreact or become hostile during the situation. Regions that are economically dependent on each other, such as South America, would have a very hard time surviving if there existed no trust between the nations Although some attribute South America's disarmament to be a factor of the emergence of democratic and civilian governments, the initial talks about nuclear weapons and their negative effects on the region were discussed by the military dictatorships of XXX in Argentina and XXX in Brazil. Even in Latin American military dictatorships the perception of an increasing imbalance of power would lead a country's leader to find a way to keep the status quo. This could come from fear of losing the race (specifically the nuclear arms race in this situation) and having it result in a hegemon among the South American countries, which has never really happened. Throughout South American history, the balance of power in the region has been relatively stable, with no one country overpowering the others. Anything that challenging that would be very disruptive to the region's sense of security.

#### No turns---prolif is destabilizing, risks accidents

Busch, Professor of Government-Christopher Newport, 04 (Nathan, “No End in Sight: The Continuing Menace of Nuclear Proliferation” p 281-314)

Summing Up: Will the Further Spread of Nuclear Weapons Be Better or Worse? This study has revealed numerous reasons to be skeptical that the spread of nuclear weapons would increase international stability by helping prevent conventional and nuclear wars. Because there is reason to suspect that emerging NWSs will not handle their nuclear weapons and fissile materials any better than current NWSs have, we should conclude that the further spread of nuclear weapons will tend to undermine international stability in a number of ways. First, because emerging NWSs will probably rely on inadequate command-and-control systems, the risks of accidental and unauthorized use will tend to be fairly high. Second, because emerging NWSs will tend to adopt systems that allow for rapid response, the risks of inadvertent war will also be high, especially during crisis situations. Third, because emerging NWSs will tend to adopt MPC&A systems that are vulnerable to overt attacks and insider thefts, the further spread of nuclear weapons could lead to rapid, destabilizing proliferation and increased opportunities for nuclear terrorism. Finally, there is reason to question whether nuclear weapons will in fact increase stability. Although nuclear weapons can cause states to be cautious about undertaking actions that can be interpreted as aggressive and can prevent states from attacking one another, this may not always be the case. While the presence of nuclear weapons did appear to help constrain U.S. and Soviet actions during the Cold War, this has generally not held true in South Asia. Many analysts conclude that Pakistan invaded Indian-controlled Kargil in 1999, at least in part, because it was confident that its nuclear weapons would deter a large-scale Indian retaliation. The Kargil war was thus in part caused by the presence of nuclear weapons in South Asia. Thus, the optimist argument that nuclear weapons will help prevent conventional war has not always held true. Moreover, this weakness in the optimist argument should also cause us to question the second part of their argument, that nuclear weapons help prevent nuclear war as well. Conventional wars between nuclear powers can run serious risks of escalating to nuclear war."5 Based on a careful examination of nuclear programs in the United States, Russia, China, India, and Pakistan, as well as preliminary studies of the programs in Iraq, North Korea, and Iran, this book concludes that the optimists' arguments about the actions that emerging NWSs will probably take are overly optimistic. While it is impossible to prove that further nuclear proliferation will necessarily precipitate nuclear disasters, the potential consequences are too severe to advocate nuclear weapons proliferation in hopes that the stability predicted by the optimists will indeed occur.

#### AND

Russia specifically models an independent judiciary

Austein-IIP Digital-3/20/08 US EMBASSY

U.S. Legal System Serves as Model for Russian Courts

<http://iipdigital.usembassy.gov/st/english/article/2008/03/20080320125020hmnietsua0.8971521.html#axzz2OiR7vBdr>

Washington – In the years since the end of the Soviet Union, Russia's judicial system continuously has incorporated new democratic reforms, thanks in part to the help of legal professionals in the United States. Since 1988, the Russian American Rule of Law Consortium (RAROLC,) a not-for-profit organization, has sought to help Russia transform its judiciary into a free and transparent system. By arranging partnerships between state judicial professionals in the United States and those working in local judiciaries in parts of Russia, RAROLC has helped Russian legal institutions implement reforms by using the American legal system as a model. These partnerships have encouraged Russian legal institutions to improve their courts and law schools by implementing democratic reforms. As participants in these partnerships, Russian judicial leaders have been able to visit the United States and watch the American judicial system in action and meet with U.S. judges.

#### Strong judicial model prevents Russian loose nukes

Nagle, Independent Research Consultant Specializing in the Soviet Union, 1994 (Chad. “What America needs to do to help Russia avoid chaos” Washington Times, August 1, Lexis Nexis)

As things stand right now, there is indeed potential for danger and instability in Russia, as Mr. Criner notes. But this is not because America has failed to act as a "moral compass" in the marketplace. Rather, Russia's inherent instability at present stems from the fact that in all of its 1,000-year history, it never had a strong, independent judiciary to act as a check on political power. The overwhelming, monolithic power of the executive, whether czar or Communist Party, has always been the main guarantor of law and order. Now, as a fragile multiparty democracy, Russia has no more than an embryo of a judiciary. The useless Constitutional Court is gone, the Ministry of Justice is weak, and the court system is chaotic and ineffective. Hence, the executive determined the best safeguard against the recurrence of popular unrest, the kind that occurred in October 1993, to be the concentration of as much power as possible in its hands at the expense of a troublemaking parliament. Under a sane and benign president, Russia with a "super presidency" represents the best alternative for America and the West. The danger lies in something happening to cause Mr. Yeltsin's untimely removal from office. If Russia is ever to develop a respected legal system, it will need the protracted rule of a non-tyrannical head of state. In the meantime, the United States can provide a model to Russia of a system in which the judiciary functions magnificently. America, the world's only remaining superpower, can provide advice and technical expertise to the Russians as they try to develop a law-based society. We can also send clear signals to the new Russia instead of the mixed ones emanating from the Clinton administration. Now is the time for America to forge ahead with the "new world order," by promoting the alliance of the industrialized democracies of the Northern Hemisphere on American terms, not Russian. This constitutes the real "historical moment" to which Mr. Criner refers. Russia is not in a position to make threats to or demands of the United States any more so than when it ruled a totalitarian empire. It should learn to play by new rules as a first lesson in joining the family of nations. Coddling an aggressive Russia and giving it unconditional economic aid (as Alexander Rutskoi has called for) would be counterproductive, and might even encourage Russia to "manufacture" crises whenever it wanted another handout. Russia is indeed a dangerous and unstable place. The prospect of ordinary Third World political chaos in an economically marginal country with a huge stockpile of intercontinental ballistic missiles is a nightmare. However, Mr. Yeltsin is busily consolidating power, and the presidential apparatus is growing quickly. With his new team of gray, non-ideological figures intent on establishing order in the face of economic decline and opposition from demagogues (e.g. Vladimir Zhirinovsky and Mr. Rutskoi), Mr. Yeltsin is already showing signs of success. Under such circumstances, the best America can do is stand firm, extend the hand of friendship and pray for Mr. Yeltsin's continued good health.

Extinction

Helfand and Pastore 9 [Ira Helfand, M.D., and John O. Pastore, M.D., are past presidents of Physicians for Social Responsibility. March 31, 2009, “U.S.-Russia nuclear war still a threat”, http://www.projo.com/opinion/contributors/content/CT\_pastoreline\_03-31-09\_EODSCAO\_v15.bbdf23.html]

President Obama and Russian President Dimitri Medvedev are scheduled to Wednesday in London during the G-20 summit. They must not let the current economic crisis keep them from focusing on one of the greatest threats confronting humanity: the danger of nuclear war. Since the end of the Cold War, many have acted as though the danger of nuclear war has ended. It has not. There remain in the world more than 20,000 nuclear weapons. Alarmingly, more than 2,000 of these weapons in the U.S. and Russian arsenals remain on ready-alert status, commonly known as hair-trigger alert. They can be fired within five minutes and reach targets in the other country 30 minutes later.  Just one of these weapons can destroy a city. A war involving a substantial number would cause devastation on a scale unprecedented in human history. A study conducted by Physicians for Social Responsibility in 2002 showed that if only 500 of the Russian weapons on high alert exploded over our cities, 100 million Americans would die in the first 30 minutes.  An attack of this magnitude also would destroy the entire economic, communications and transportation infrastructure on which we all depend. Those who survived the initial attack would inhabit a nightmare landscape with huge swaths of the country blanketed with radioactive fallout and epidemic diseases rampant. They would have no food, no fuel, no electricity, no medicine, and certainly no organized health care. In the following months it is likely the vast majority of the U.S. population would die. Recent studies by the eminent climatologists Toon and Robock have shown that such a war would have a huge and immediate impact on climate world wide. If all of the warheads in the U.S. and Russian strategic arsenals were drawn into the conflict, the firestorms they caused would loft 180 million tons of soot and debris into the upper atmosphere — blotting out the sun. Temperatures across the globe would fall an average of 18 degrees Fahrenheit to levels not seen on earth since the depth of the last ice age, 18,000 years ago. Agriculture would stop, eco-systems would collapse, and many species, including perhaps our own, would become extinct.  It is common to discuss nuclear war as a low-probabillity event. But is this true? We know of five occcasions during the last 30 years when either the U.S. or Russia believed it was under attack and prepared a counter-attack. The most recent of these near misses occurred after the end of the Cold War on Jan. 25, 1995, when the Russians mistook a U.S. weather rocket launched from Norway for a possible attack.  Jan. 25, 1995, was an ordinary day with no major crisis involving the U.S. and Russia. But, unknown to almost every inhabitant on the planet, a misunderstanding led to the potential for a nuclear war. The ready alert status of nuclear weapons that existed in 1995 remains in place today.

Yes model

Smith-Third Circuit Judge-8 7 Ave Maria L. Rev. 1

PROMOTING THE RULE OF LAW AND RESPECTING THE SEPARATION OF POWERS: THE LEGITIMATE ROLE OF THE AMERICAN JUDICIARY ABROAD

Introduction

The rule of law 1 is fundamental to the freedom enjoyed in the United States today. John Locke explained its essential nature well before the Revolutionary War: Freedom of men under government, is, to have a standing rule to live by, common to every one of that society ... a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man. 2 [\*2] Yet, the rule of law so central to American democracy today has deep historical roots, which long precede even Locke's lifetime. In ancient Greece, Aristotle considered a variety of constitutions before concluding that "it is more proper that the law should govern than any of the citizens." 3 During our nation's infancy, Thomas Paine wrote in Common Sense that "the world may know that, so far as we approve of monarchy, that in America the law is king. For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other." 4 John Adams later memorialized this principle when drafting the Massachusetts State Constitution of 1780, declaring "to the end it may be a government of laws, and not of men." 5 While it was clear the rule of law would play a central role in the federal government following the Revolution, the Founding Fathers deliberated carefully for eleven years before incorporating it into the Constitution in a way that would thwart tyranny and best achieve a free, yet ordered, society. 6 The success and stability of our nation today flows, in large part, from our faithful adherence to the rule of law. [\*3] In addition to its central and vital role in any strong democracy, 7 the rule of law has been described as an "unqualified human good." 8 It stands alone in terms of its extensive international endorsement. 9 There is a wide consensus among the international community that democratic values, including the rule of law, should be universal - furthered in all nations - because these values preserve and protect human dignity, facilitate accountability in government, and allow access to the political process. 10 Reflecting its own growing commitment to fostering democracy abroad, the United States has formally incorporated rule-of-law promotion in its foreign assistance efforts in conjunction with traditional monetary aid. 11 The rule of law is increasingly considered one of the most valuable American exports to developing and transitioning nations. 12 Effective administration of the rule of law requires an independent, transparent, and accountable judiciary. 13 Because of the [\*4] experience and expertise our federal judges gain in their domestic role, they are well positioned to promote the rule of law abroad. 14 And indeed, federal judges have played a significant role in the effort to advance the rule of law and the democratic values essential to it in other parts of the world. Each year, dozens of federal judges assist in presenting seminars abroad that educate and train judges in other countries on a host of topics including how to oversee a case, how to write an opinion, and the importance of impartiality. I have had the privilege of participating in at least a dozen such programs. Beyond the exhilarating human experiences these programs have provided me, I have gained some background in their structure, objectives, and efficacy. My experience has also given me reason to pause and consider some of the tensions created by the participation of the federal judiciary in efforts to promote the rule of law abroad. One of the more sensitive concerns relates to the federal judiciary's involvement in matters that touch upon foreign policy, a province conferred by the Constitution to the politically accountable branches of government. 15 Judicial participation in these efforts may also raise questions concerning government funding and compliance with judicial ethical obligations. That said, clearly defined roles for participating judges coupled with cognizance of these tensions will allow these important efforts to continue in a manner that maintains the delicate separation-of-powers balance and comports with the Canons of the Code of Conduct for United States Judges. 16

#### Courts try terrorism cases and don’t leak classified information – empirics.

Vladeck et al 08 (Steven, A CRITIQUE OF “NATIONAL SECURITY COURTS”, A REPORT BY THE CONSTITUTION PROJECT’S LIBERTY AND SECURITY COMMITTEE & COALITION TO DEFEND CHECKS AND BALANCES, June 23,

http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle these cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brought in the federal courts over the past fifteen years. It finds that established federal courts were able to try these cases without sacrificing either national security or the defendants’ rights to a fair trial.3 The report documents how federal courts have successfully dealt with classified evidence under the Classified Information Procedures Act (CIPA) without creating any security breaches. It further concludes that courts have been able to enforce the government’s Brady obligations to share exculpatory evidence with the accused, deal with Miranda warning issues, and provide means for the government to establish a chain of custody for physical evidence, all without jeopardizing national security.

# 2AC

## \*\*\*Solvency

### 2AC DA

#### 1. No backlash – Congress wants more oversight, even Rand Paul filibustered

#### 2. GOP will block nominations

National Journal Daily Extra PM 7/17/13

HEADLINE: The Senate Deal Doesn't Help Obama on Judges, and That's What Matters Most

Senate Republicans are letting President Obama fill a few important slots in his administration, but they haven't given an inch where it really counts on the federal judges who could define his legacy for generations. Judicial nominees were never going to escape the tyranny of the filibuster. The Democrats' threatened "nuclear option" wasn't going to apply to prospective judges. And neither does the deal that senators struck giving Obama his administration picks and preserving the filibuster. The most obvious cause of these numbers is GOP obstructionism. More than a Democratic talking point, it is a fact that Republicans consider undermining Obama as their clearest path to victory, individually and collectively. In fairness, Democrats during the Bush years were mindlessly partisan though, according to the numbers, not quite as ruthlessly effective as the GOP today.

#### 3. No unique link – rulings against CIA secrecy

Jaffer 13 (Jameel Jaffer, Deputy Legal Director, ACLU, “What the Government Should Disclose About Its Targeted Killing Program,” https://www.aclu.org/blog/national-security/what-government-should-disclose-about-its-targeted-killing-program)

The U.S. Court of Appeals for the D.C. Circuit recently ruled that the Central Intelligence Agency may no longer refuse to acknowledge something that everyone knows to be true: the agency has "an interest" in the use of drones to carry out targeted killings. The CIA is unaccustomed to courts rejecting its secrecy claims, but in asking the courts to pretend that the agency might have no connection whatsoever to the targeted killing program, the agency dramatically overreached. Unsurprisingly, the appeals court was unwilling to give its "imprimatur to a fiction of deniability that no reasonable person would regard as plausible."

#### 4. The link is wrong – Republicans backlash because of Obama, NOT judicial accountability

The National Journal 6/4/13 HEADLINE: How Congress and the White House Eviscerate the Judiciary Ron Fournier

The most obvious cause of these numbers is GOP obstructionism. More than a Democratic talking point, it is a fact that Republicans consider undermining Obama as their clearest path to victory, individually and collectively. In fairness, Democrats during the Bush years were mindlessly partisanalthough, according to the numbers, not quite as ruthlessly effective as the GOP today.

#### 5. Appointments don’t determine the ideological direction of the court—

Maltzman, prof poli sci at George Washington, 07 (Forrest, senior vice provost for academic affairs and planning and professor of political science George Washington University, The Politicized Judiciary: A Threat to Executive Power, http://home.gwu.edu/~forrest/fmpoliticizedjudiciary.pdf)

Second, the vast majority of the vacancies presidents can fill have a small impact on the bench’s ideological composition. Because judges’ have lifetime appointments, the¶ ability of a president to change a bench’s ideological tenor depends on both who retires¶ and the ideological bent of that court. If the bench is overwhelming dominated by either liberal or conservative judges, no single appointment is likely to make a big difference in¶ the partisan or ideological balance of the bench.12¶ Likewise, if a judge or justice retires¶ who holds views sympathetic to those of the president, the president will be unable to use¶ the appointment to alter the composition of the court. For example, if a conservative¶ Supreme Court Justice (such as Antonin Scalia)retires, a conservative president can ¶ appoint another conservative, but that doesn’t remove any liberals from the Court or¶ change the status quo.¶ Third, the appointment power is a limited one, because predicting future judicial¶ behavior is complicated. Once confirmed, a judge has his or her position for life. They¶ therefore have virtually no incentive to defer to the views of the president by complying ¶ with his policy positions and legal arguments. Even if the administration uses a litmus¶ test or screening process to identify judges who would be most likely to be “true”¶ believers in an administration’s positions, the administration is likely to encounter what¶ economists often term an “adverse selection problem.” That is, a president lacks the¶ capacity to fully understand a nominees policy preferences and such nominees have an ¶ incentive to present themselves in a manner that is favorable to the president’s positions.

#### 6. Even if there will be more nominees- appointments take forever

The National Journal 6/4/13

HEADLINE: How Congress and the White House Eviscerate the Judiciary Ron Fournier

The dysfunctional relationship between Congress and the White House threatens to erode the third and least-political branch of government: the judiciary. Like so much about Washington, the U.S. court system is a victim of the raw partisanship and incompetence infesting both major parties. Yes, this is another pox-on-both-houses story. Democratic President Obama shines a light on the problem today in nominating three candidates to fill the remaining vacancies on the U.S. Court of Appeals for the District of Columbia Circuit. It is considered the second-most powerful court in the country, the arbiter of major cases and a platform for future Supreme Court nominees. By nominating a trio of jurists, a unique maneuver, the president hopes to put pressure on Republicans to confirm them. Good luck with that, Mr. President. The former constitutional lawyer knows that the fight to fill the D.C. court is part of a broader question: Is the system for filling judicial vacancies broken? Look at the numbers: There are 81 vacancies on the federal bench , a nearly 50 percent increase since Obama took office. His predecessors fared much better. Within the first three years of President George W. Bush's term, there was a 65 percent decline in vacancies, according to the Alliance for Justice. President Clinton reduced openings by 34 percent. Another troubling metric: The time it takes to confirm a nominee has skyrocketed, a trend that makes the federal bench less appealing to the best and brightest. Obama made 212 nominations with an average wait of 224 days until the confirmation phase, according to data compiled in November 2012 by USA Today from the White House and the Alliance for Justice. At the same point in their tenures, Bush had nominated 225 lawyers with an average wait of 176 days, while Clinton made 237 nominations with an average lag of 98 days. The most obvious cause of these numbers is GOP obstructionism. More than a Democratic talking point, it is a fact that Republicans consider undermining Obama as their clearest path to victory, individually and collectively. In fairness, Democrats during the Bush years were mindlessly partisanalthough, according to the numbers, not quite as ruthlessly effective as the GOP today.

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### 2AC A2: No Modeling

#### Latin America and other countries model U.S. rule of law

Carothers 99 (Thomas, vice president for studies at the Carnegie Endowment for International Peace. He is the founder and director of the Democracy and Rule of Law Program and oversees Carnegie Europe in Brussels. “Aiding Democracy Abroad: The Learning Curve” Accessed from Google Books)

JUDICIAL REFORM AND THE RULE OF LAW The first wave of U.S. aid directed at legal systems in other countries, the law and development programs of the 1960s and 1970s, attempted to reshape legal education and the role of the lawyer. When U.S. aid providers took a new interest in law-oriented aid, starting in Central America in the mid-1980s, they focused instead on the administration of justice, or more specifically, the administra- tion of criminal justice. They attempted to help Latin American countries reshape their criminal law systems, through a shift from a partially inquisitorial to a fully accusatorial system, the introduc- tion of oral rather than purely written proceedings, the expansion of due process protections, the general strengthening of the basic institutions of criminal justice, and other systemic reforms. The crim- inal law focus of the U.S. aid efforts reflected U.S. policy makers' hope that they could improve the human rights situation in the region by helping Latin American security forces and judicial institu- tions operate in accordance with legal norms. The highly top-down approach—as opposed to, say, strengthening legal aid groups and nongovernmental groups pressing on the agenda of popular jus- tice—reflected the policy context of the time, the U.S. desire to foster tightly controlled, gradual processes of democratic reform and to bolster besieged anticommunist governments friendly to the United States. Law-oriented aid grew significantly in the early 1990s, as part both of the expansion of U.S. democracy aid and of U.S. efforts to bolster market reform processes around the world. In Eastern Europe and the former Soviet Union, U.S. programs have supported the many efforts at de-Sovietization of the judicial and legal systems, encompassing the wholesale rewriting of many laws, attempts to establish judicial independence, and major institutional changes such as the reintroduction of appellate courts and reduction of the autonomy of once all-powerful prosecutors. In East Asia, U.S. groups have supported governments' attempts to renovate the legal frame- works, to advance both economic and political reforms. As they have expanded the reach of law-oriented aid from Latin America to all regions in which they work, U.S. aid providers have also broadened their operative concept, from strengthening the administration of justice to promoting the rule of law. Effective, efficient administration of justice is a part of the rule of law, but not the entirety. Rule of law rests on other important features: laws that are publicly known, clear, and applied equally to everyone; respect for political and civil liberties, especially due process in criminal matters; and the subordination of government power to legal author- ity.4 Aid providers draw a close connection between advancing the rule of law and promoting democracy. The fundamental elements of the rule of law, especially the equal, consistent application of laws, respect for political and civil liberties, and subordination of political power to law, are, they argue, all essential to democracy. An economic rationale for rule-of-law assistance is often close by the political one. Aid officials assert that the rule of law is necessary for a full transition to a market economy—foreign investors must believe that they can get justice in local courts, contracts must be taken seriously, property laws must be enforceable, and so on.5 Not only do political and economic rationales dovetail, but many transitional societies confront growing government corruption and ordinary crime, and the United States and other donors now pre- scribe strengthening the rule of law for those ills as well. In short, the rule of law appeals as a remedy for every major political, eco- nomic, and social challenge facing transitional countries. It has joined civil society as a new element of donors' conventional wisdom, an ideologically nonaligned concept, rarely invoked in previous decades, that is suddenly considered indispensable for democracy, economic success, and social stability.6 The result is an explosion of rule-of-law assistance all over the developing world, Eastern Europe, and the former Soviet Union. Many other bilateral donors, as well as the World Bank and the regional development banks, have plunged into the field. At least in some countries, this new consensus on the importance of rule- of-law aid produces congestion on the ground. Cuatemala is a vivid example. As the country's leaders have struggled to implement the ambitious 1996 peace accords, donors have gravitated toward rule- of-law strengthening as the solution to the challenges of deepening democracy, furthering human rights, advancing market reforms, reducing corruption, and fighting crime. Rule-of-law aid programs are multiplying: the U.S. government, the Inter-American Develop- ment Bank, the World Bank, the Swedish government, the UN Devel- opment Programme, the Spanish government, and the Dutch gov- ernment are all sponsoring rule-of-law aid activities in the country. The various donors have commissioned more than thirty separate diagnostic studies of Guatemala's legal and judicial system in recent years. The rather small set of Guatemalan institutions responsible for the rule of law is overrun with aid programs.

### 2AC A2: Prolif Stable

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### 2AC A2: Not Legit

#### Ex post solves legitimacy – its not a rubberstamp

Taylor, Senior Fellow-Center for Policy & Research, 13 (Paul, Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, and is veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, “Former DOD Lawyer Frowns on Drone Court,” March, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/)

Last week Jeh Johnson, the general council for the Department of Defense during President Obama’s first term, warned at a conference at Fordham Law School that the President’s targeted killing policies breeds mistrust among the public:“The problem is that the American public is suspicious of executive power shrouded in secrecy. In the absence of an official picture of what our government is doing, and by what authority, many in the public fill the void by imagining the worst.”However, he was skeptical about recent calls for a “drone court” to review and approve or deny targeted killing decisions: “To be sure, a national security court composed of a bipartisan group of federal judges with life tenure, to approve targeted lethal force, would bring some added levels of credibility, independence and rigor to the process, and those are worthy goals.”… “But, we must be realistic about the degree of added credibility such a court can provide. Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government”s applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. … [While] the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a ‘rubber stamp’ because it almost never rejects an application. How long before a ‘drone court’ operating in secret is criticized in the same way?” Apparently not long, since I have already raised this criticism in a previous post. However, I coupled this criticism with a proposed solution: using ex post review, rather than ex ante. By removing from the judge’s consideration the concern for the pressing national security need involved in deciding whether a proposed target is an imminent threat, ex post review would allow the judge to be more critical of the Administration’s case, and make the court less likely to become another “rubber stamp.”

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### 2AC T Aurhotiy

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually committed to the courts as claims brought under the Suspension Clause. Both are fundamental judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir. 1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene, 553 U.S. 723.

#### we’re a restriction on executive authority and ex-ante is not

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what [Tennessee v. Garner](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

### 2AC Politics

#### No immigration vote – House GOP leadership won’t take it up

Palmer and Sherman 10/25/13 (Staffwriters for Politico, “House GOP plans no immigration vote in 2013” <http://www.politico.com/story/2013/10/house-gop-plans-no-immigration-vote-in-2013-98824_Page2.html>)

House Republican leadership has no plans to vote on any immigration reform legislation before the end the year. The House has just 19 days in session before the end of 2013, and there are a number of reasons why immigration reform is stalled this year. Following the fiscal battles last month, the internal political dynamics are tenuous within the House Republican Conference. A growing chorus of GOP lawmakers and aides are intensely skeptical that any of the party’s preferred piecemeal immigration bills can garner the support 217 Republicans — they would need that if Democrats didn’t lend their votes. Republican leadership doesn’t see anyone coalescing around a single plan, according to sources across GOP leadership. Leadership also says skepticism of President Barack Obama within the House Republican Conference is at a high, and that’s fueled a desire to stay out of a negotiating process with the Senate. Republicans fear getting jammed. Of course, the dynamics could change. Some, including Majority Leader Eric Cantor (R-Va.), are eager to pass something before the end of the year. Speaker John Boehner (R-Ohio) has signaled publicly that he would like to move forward in 2013 on an overhaul of the nation’s immigration laws. If Republicans win some Democratic support on piecemeal bills, they could move forward this year. But still, anything that makes its way to the floor needs to have significant House Republican support And Obama is also ramping up his messaging on immigration reform. “It’s good for our economy, it’s good for our national security, it’s good for our people, and we should do it this year,” Obama said Thursday. That same afternoon his chief of staff Denis McDonough met with business CEOs to strategize on immigration reform. Attendees included representatives from the U.S. Chamber of Commerce and the National Association of Manufacturers. Getting immigration through this deeply divided Congress in 2014 — an election year — would be incredibly difficult. That’s why immigration reform supporters are growing increasingly worried that the window for a bigger reform package could be slipping away since it would be even more difficult to try and forge ahead in an election year. “I think there are a lot of folks who are concerned about this issue not getting solved, and I think legitimately so,” Rep. Mario Diaz-Balart (R-Fla.) told POLITICO. “Because I do think that every day that goes by, it makes it more and more difficult.” Other prominent immigration supporters like Sen. Marco Rubio (R-Fla.) have also backed off any deal, saying the Obama administration has “undermined” negotiations by not defunding his signature health care law. Rep. Raul Labrador (R-Idaho) went further, saying Obama is trying to “destroy the Republican Party” and that GOP leaders would be “crazy” to enter into talks with Obama. That rhetoric combined with signals in private conversations with lawmakers and staff has led some immigration advocates to say they see the writing on the wall and they aren’t going to invest heavily until there’s more momentum. “After Obama poisoned the well in the fiscal showdown and [House Minority Leader Nancy] Pelosi now is actively trying to use immigration as a political weapon, the chances for substantive reforms, unfortunately, seem all but gone,” said one GOP operative involved in the conservative pro-immigration movement. Many of the groups that ran ads after the Senate passed its immigration bill — including the American Action Network and U.S. Chamber of Commerce — have gone silent on air. Several immigration reform proponents said that until House Republicans come up with legislation, there won’t be any television advertising campaigns. Liberals’ patience with House Republicans is also waning, as many argue that its time for the Obama administration to step in. National Day Laborer Organizing Network Executive Director Pablo Alvarado has been leading the charge, pressing the White House to use his “existing legal authority to alleviate the suffering of immigrants.” Frank Sharry of America’s Voice said there is a “strong preference” for action before the end of the year. “We’re either going to pass immigration reform or punish Republicans who block it,” Sharry said. “If they can’t convince their leadership then of course we want a Democratic majority that will … We’d much rather have a signing ceremony on immigration reform than a punishing electoral campaign where we’re trying to take people out.”

#### The GOP is putting other issues first and won’t work with Obama

Berman-The Hill-10/25/13

GOP comfortable ignoring Obama pleas for vote on immigration bill

For President Obama and advocates hoping for a House vote on immigration reform this year, the reality is simple: Fat chance. [Video] Since the shutdown, Obama has repeatedly sought to turn the nation’s focus to immigration reform and pressure Republicans to take up the Senate’s bill, or something similar. But there are no signs that Republicans are feeling any pressure. Speaker John Boehner (R-Ohio) has repeatedly ruled out taking up the comprehensive Senate bill, and senior Republicans say it is unlikely that the party, bruised from its internal battle over the government shutdown, would pivot quickly to an issue that has long rankled conservatives. Rep. Tom Cole (R-Okla.), a leadership ally, told reporters Wednesday there is virtually no chance the party would take up immigration reform before the next round of budget and debt-ceiling fights are settled. While that could happen by December if a budget conference committee strikes an agreement, that fight is more likely to drag on well into 2014: The next deadline for lifting the debt ceiling, for example, is not until Feb. 7. “I don’t even think we’ll get to that point until we get these other problems solved,” Cole said. He said it was unrealistic to expect the House to be able to tackle what he called the “divisive and difficult issue” of immigration when it can barely handle the most basic task of keeping the government’s lights on. “We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while,” Cole said. In a colloquy on the House floor, Minority Whip Steny Hoyer (D-Md.) asked Majority Leader Eric Cantor (R-Va.) to outline the GOP's agenda between now and the end of 2013. Cantor rattled off a handful of issues — finishing a farm bill, energy legislation, more efforts to go after ObamaCare — but immigration reform was notably absent. When Hoyer asked Cantor directly on the House floor for an update on immigration efforts, the majority leader was similarly vague. “There are plenty of bipartisan efforts underway and in discussion between members on both sides of the aisle to try and address what is broken about our immigration system,” Cantor said. “The committees are still working on this issue, and I expect us to move forward this year in trying to address reform and what is broken about our system.” Immigration reform advocates in both parties have long set the end of the year as a soft deadline for enacting an overhaul because of the assumption that it would be impossible to pass such contentious legislation in an election year. Aides say party leaders have not ruled out bringing up immigration reform in the next two months, but there is no current plan to do so. The legislative calendar is also quite limited; because of holidays and recesses, the House is scheduled to be in session for just five weeks for the remainder of the year. In recent weeks, however, some advocates have held out hope that the issue would remain viable for the first few months of 2014, before the midterm congressional campaigns heat up. Democrats and immigration reform activists have long vowed to punish Republicans in 2014 if they stymie reform efforts, and the issue is expected to play prominently in districts with a significant percentage of Hispanic voters next year. With the shutdown having sent the GOP’s approval rating plummeting, Democrats have appealed to Republicans to use immigration reform as a chance to demonstrate to voters that the two parties can work together and that Congress can do more than simply careen from crisis to crisis. “Rather than create problems, let’s prove to the American people that Washington can actually solve some problems,” Obama said Thursday in his latest effort to spur the issue on. But Republicans largely dismiss that line of thinking and say the two-week shutdown damaged what little trust between the GOP and Obama there was at the outset. “There is a sincere desire to get it done, but there is also very little goodwill after the president spent the last two months refusing to work with us,” a House GOP leadership aide said. “In that way, his approach in the fiscal fights was very short-sighted: It made his achieving his real priorities much more difficult.”

#### No link – courts shield – A. Obama asked to limit drones – means he’ll get credit from the plan and wont’ backlash

Baker, New York Times, 2013

(Peter, “Pivoting From a War Footing, Obama Acts to Curtail Drones”, 5-23, <http://www.nytimes.com/2013/05/24/us/politics/pivoting-from-a-war-footing-obama-acts-to-curtail-drones.html?pagewanted=all&_r=0>, ldg)

WASHINGTON — Nearly a dozen years after the hijackings that transformed America, President Obama said Thursday that it was time to narrow the scope of the grinding battle against terrorists and begin the transition to a day when the country will no longer be on a war footing. Declaring that “America is at a crossroads,” the president called for redefining what has been a global war into a more targeted assault on terrorist groups threatening the United States. As part of a realignment of counterterrorism policy, he said he would curtail the use of drones, recommit to closing the prison at Guantánamo Bay, Cuba, and seek new limits on his own war power. In a much-anticipated speech at the National Defense University, Mr. Obama sought to turn the page on the era that began on Sept. 11, 2001, when the imperative of preventing terrorist attacks became both the priority and the preoccupation. Instead, the president suggested that the United States had returned to the state of affairs that existed before Al Qaeda toppled the World Trade Center, when terrorism was a persistent but not existential danger. With Al Qaeda’s core now “on the path to defeat,” he argued, the nation must adapt. “Our systematic effort to dismantle terrorist organizations must continue,” Mr. Obama said. “But this war, like all wars, must end. That’s what history advises. It’s what our democracy demands.” The president’s speech reignited a debate over how to respond to the threat of terrorism that has polarized the capital for years. Republicans contended that Mr. Obama was declaring victory prematurely and underestimating an enduring danger, while liberals complained that he had not gone far enough in ending what they see as the excesses of the Bush era. The precise ramifications of his shift were less clear than the lines of argument, however, because the new policy guidance he signed remains classified, and other changes he embraced require Congressional approval. Mr. Obama, for instance, did not directly mention in his speech that his new order would shift responsibility for drones more toward the military and away from the Central Intelligence Agency. But the combination of his words and deeds foreshadowed the course he hopes to take in the remaining three and a half years of his presidency so that he leaves his successor a profoundly different national security landscape than the one he inherited in 2009. While President George W. Bush saw the fight against terrorism as the defining mission of his presidency, Mr. Obama has always viewed it as one priority among many at a time of wrenching economic and domestic challenges. “Beyond Afghanistan, we must define our effort not as a boundless ‘global war on terror,’ ” he said, using Mr. Bush’s term, “but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.” “Neither I, nor any president, can promise the total defeat of terror,” he added. “We will never erase the evil that lies in the hearts of some human beings, nor stamp out every danger to our open society. But what we can do — what we must do — is dismantle networks that pose a direct danger to us, and make it less likely for new groups to gain a foothold, all the while maintaining the freedoms and ideals that we defend.” Some Republicans expressed alarm about Mr. Obama’s shift, saying it was a mistake to go back to the days when terrorism was seen as a manageable law enforcement problem rather than a dire threat. “The president’s speech today will be viewed by terrorists as a victory,” said Senator Saxby Chambliss of Georgia, the top Republican on the Senate Intelligence Committee. “Rather than continuing successful counterterrorism activities, we are changing course with no clear operational benefit.” Senator John McCain, Republican of Arizona, said he still agreed with Mr. Obama about closing the Guantánamo prison, but he called the president’s assertion that Al Qaeda was on the run “a degree of unreality that to me is really incredible.” Mr. McCain said the president had been too passive in the Arab world, particularly in Syria’s civil war. “American leadership is absent in the Middle East,” he said. The liberal discontent with Mr. Obama was on display even before his speech ended. Medea Benjamin, a co-founder of the antiwar group Code Pink, who was in the audience, shouted at the president to release prisoners from Guantánamo, halt C.I.A. drone strikes and apologize to Muslims for killing so many of them. “Abide by the rule of law!” she yelled as security personnel removed her from the auditorium. “You’re a constitutional lawyer!” Col. Morris D. Davis, a former chief prosecutor at Guantánamo who has become a leading critic of the prison, waited until after the speech to express disappointment that Mr. Obama was not more proactive. “It’s great rhetoric,” he said. “But now is the reality going to live up to the rhetoric?” Still, some counterterrorism experts saw it as the natural evolution of the conflict after more than a decade. “This is both a promise to an end to the war on terror, while being a further declaration of war, constrained and proportional in its scope,” said Juan Carlos Zarate, a counterterrorism adviser to Mr. Bush. The new classified policy guidance imposes tougher standards for when drone strikes can be authorized, limiting them to targets who pose “a continuing, imminent threat to Americans” and cannot feasibly be captured, according to government officials. The guidance also begins a process of phasing the C.I.A. out of the drone war and shifting operations to the Pentagon. The guidance expresses the principle that the military should be in the lead and responsible for taking direct action even outside traditional war zones like Afghanistan, officials said. But Pakistan, where the C.I.A. has waged a robust campaign of air assaults on terrorism suspects in the tribal areas, will be grandfathered in for a transition period and remain under C.I.A. control. That exception will be reviewed every six months as the government decides whether Al Qaeda has been neutralized enough in Pakistan and whether troops in Afghanistan can be protected. Officials said they anticipated that the eventual transfer of the C.I.A. drone program in Pakistan to the military would probably coincide with the withdrawal of combat units from Afghanistan at the end of 2014. Even as he envisions scaling back the targeted killing, Mr. Obama embraced ideas to limit his own authority. He expressed openness to the idea of a secret court to oversee drone strikes, much like the intelligence court that authorizes secret wiretaps, or instead perhaps some sort of independent body within the executive branch. He did not outline a specific proposal, leaving it to Congress to consider something along those lines. He also called on Congress to “refine and ultimately repeal” the authorization of force it passed in the aftermath of Sept. 11. Aides said he wanted it limited more clearly to combating Al Qaeda and affiliated groups so it could not be used to justify action against other terrorist or extremist organizations. In renewing his vow to close the Guantánamo prison, Mr. Obama highlighted one of his most prominent unkept promises from the 2008 presidential campaign. He came into office vowing to shutter the prison, which has become a symbol around the world of American excesses, within a year, but Congress moved to block him, and then he largely dropped the effort. With 166 detainees still at the prison, Mr. Obama said he would reduce the population even without action by Congress. About half of the detainees have been cleared for return to their home countries, mostly Yemen. Mr. Obama said he was lifting a moratorium he imposed on sending detainees to Yemen, where a new president has inspired more faith in the White House that he would not allow recidivism. The policy changes have been in the works for months as Mr. Obama has sought to reorient his national security strategy. The speech was his most comprehensive public discussion of counterterrorism since he took office, and at times he was almost ruminative, articulating both sides of the argument and weighing trade-offs out loud in a way presidents rarely do. He said that the United States remained in danger from terrorists, as the attacks in Boston and Benghazi, Libya, have demonstrated, but that the nature of the threat “has shifted and evolved.” He noted that terrorists, including some radicalized at home, had carried out attacks, but less ambitious than the ones on Sept. 11. “We have to take these threats seriously and do all that we can to confront them,” he said. “But as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.”

#### B. Allows political cover

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### C. Healthcare proves

Sanger-Katz 12 (Margot, healthcare correspondent for the National Journal, Poll: No Blame if Court Nixes Health Care Law, June 5, http://www.nationaljournal.com/daily/poll-no-blame-if-court-nixes-health-care-law-20120605)

Even though President Obama fought for passage of the landmark 2010 health care law, very small minorities say their attitudes about him would change one way or the other should the Supreme Court strike down the law that is so often referred to as “Obamacare.” Two-thirds of those surveyed in a new public-opinion poll said that their respect for Obama would be unchanged if the Supreme Court struck down his signature legislative achievement. Fourteen percent said they would respect Obama more under such a scenario, while 15 percent said they would respect him less. That trend was consistent across the political spectrum—similar proportions of Republicans, Democrats, and independents said they would be unmoved, despite the pundits’ speculation that a Court decision declaring the Affordable Care Act unconstitutional in part or in its entirety might alter public opinion toward the president. The nonplussed attitude also held across nearly all age, income, regional, and racial categories, with at least 60 percent of each surveyed group saying that the ruling would have no impact on their view of the president.

#### D. Aff happens in the DC Circuit – no unique reason that links

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

#### Health care kills Obama’s political capital

DOVERE 10/25/13 (EDWARD-ISAAC, staffwriter, “Democrats' united front cracks” <http://www.politico.com/story/2013/10/the-democratic-crackup-98832.html?hp=t1>)

For weeks leading up to the shutdown — and over the 16 days it dragged on — President Barack Obama did the unthinkable: he held every Democrat in the House and Senate together. There weren’t any defectors. There wasn’t even anyone running to reporters to question his strategy. The man who’d disappointed them so many times was suddenly exciting them, with his newly apparent backbone and successful resistance to Republicans. They were rushing to do whatever they could to stand by him, next to him, with him. Like any fad, that’s gone the way of trucker hats and the macarena. The problems with the Obamacare website have transformed the president from a man who seemed to have gotten a sudden infusion of political capital to a man who’s been pushed back on his heels. He was firm, and he was setting the agenda. Now he’s back to trying to beating back the latest frame Republicans have forced on him, inadvertently providing evidence to support the doubts they’ve been trying to sow from the beginning. He spent last week against the backdrop of a shutdown that made people appreciate all the things government can do for them. Now he has a website which shows how little it can. And Democrats have scattered, raising the question of whether the president will be able to preserve any of the new cohesion he inspired earlier in the month, or whether the rift is going to widen again. With every day, there was more impatience and dismay with the botched rollout of the website. Meanwhile, the White House spent much of the week dealing with a bizarre episode with Sen. Dick Durbin (D-Ill.) over whether an unnamed Republican insulted the president, forced to support Speaker John Boehner’s denial over the insistent statement of one of its closest allies on the Hill. Privately, certain Republicans express concern with the party’s decision to focus so much attention on a website that could very well be fixed over the next few months, instead of calling attention to other potentially problematic aspects of the law. And polls show support for Republicans remains way down, while support for Obamacare is still ticking up. But instead of spending the week beating up on Republican overreach, or promoting all the aspects of the law that don’t involve uninsured people spending hours trying to sign up, Democrats have had to confront undeniable problems that have even core liberals worried. That’s led a growing number of people on the Hill to push the White House to change its current position that it can fix the problems with the website without changing the deadlines or time frame. “I can’t honestly say that we’ve tried our hardest to fix things,” said Sen. Joe Manchin (D-W.Va.), who chose Bill O’Reilly’s talk show as his venue to unveil a plan to delay the individual mandate penalty for a year. “You have to give me a reason I want to buy what you want to sell me. And until they get that in their minds, they’re going to have a lot of headwinds, if you will.” Manchin says he’s still hopeful the law can work, but that it’s going to take a lot more than what the administration’s done so far to convince him. So far, he said, he hasn’t heard back on the call he made to the White House to tell them about his announcement.

#### Johnson nomination triggers the link

Mathews 10/23/13 (Kevin, staffwriter, “5 Worrisome Facts About Obama’s Homeland Security Nominee” <http://www.care2.com/causes/5-worrisome-facts-about-obamas-homeland-security-nominee.html>)

President Barack Obama has selected Jeh Johnson to lead the Department of Homeland Security this week. Johnson, who accepted Obama’s nomination, is considered a favorable choice by some liberals due to his purported desire to end the war on terror and having played a pivotal legal role in overturning the military’s Don’t Ask, Don’t Tell policy. That said, others are worried by details that have them question what kind of DHS head Johnson will be. Here are five of the troublesome factors: 1. Drones As the United Nations begins to take a firmer stance against U.S. drone attacks (they believe it may violate international humanitarian law and that the strikes are killing more innocent civilians than the United States acknowledges), the new homeland security nominee takes a contrary position. As Johnson posits, drones are not only extremely necessary, but also certainly legal. In his previous position as a leading attorney for the military, Johnson was the man to authorize specific drone strikes on foreign targets. Worse yet, he even has no problem with one of the more controversial talking points of drone warfare: targeted assassinations of United States citizens. Though many argue that citizens are Constitutionally guaranteed due process when suspected of criminal behavior, Johnson sees it differently. “Belligerents who also happen to be U.S. citizens do not enjoy immunity,” he claimed last year.

#### **Impeachment hearings will kill Obama agenda**

Sink-The Hill-10/19/13

http://thehill.com/blogs/blog-briefing-room/news/329449-dem-gop-planning-impeachment-circus-to-thwart-immigration-reform

Rep. Jim McDermott (D-Wash.) says congressional Republicans are planning an "impeachment circus" to thwart President Obama's legislative goals on the economy and immigration reform. "It's like a magician who snaps his fingers in one place so you won`t see what he`s doing with his other hand," McDermott said Friday during an appearance on MSNBC. "They are basically trying to keep the president from doing anything on jobs or on immigration or on climate change or any other issue that the American people are facing or pensions or anything." The former House Ethics Committee chairman said that Republicans would turn to the impeachment strategy after they were unsuccessful in using the debt ceiling and government shutdown as leverage to dismantle ObamaCare. "They've run the let's run the country over the cliff strategy and that didn't work. And so now back at the second one of the Republican strategies. That is let`s impeach the president," McDermott said. The Washington Democrat warned that "as long as they can keep this impeachment circus going, nobody will pay any attention" to more substantive policy issues. A number of Republicans, including Texas Reps. Steve Stockman and Blake Farenthold, as well as Sen. Jim Inhofe (R-Okla.) and Rep. Michele Bachmann (R-Minn.) have suggested that the House of Representatives could consider impeachment procedures. Still, there's been no movement by House Republican leadership to pursue such a strategy. McDermott predicted that even if Republicans fulfilled his prophecy and did undertake impeachment proceedings, they would not prevail. "That`s exactly what they did to Clinton and they are going to fail at this," McDermott told MSNBC on Friday. "They simply believe that it`s an impeachable offense if they don't agree with it."

War wont go nuclear

Enders ’02 “Experts say nuclear war still unlikely,”, David Enders, Daily News Editor, January 30th 2002, DA: 7/26/10, http://www.michigandaily.com/content/experts-say-nuclear-war-still-unlikely?page=0,0

University political science Prof. Ashutosh Varshney becomes animated when asked about the likelihood of nuclear war between India and Pakistan. "Odds are close to zero," Varshney said forcefully, standing up to pace a little bit in his office. "The assumption that India and Pakistan cannot manage their nuclear arsenals as well as the U.S.S.R. and U.S. or Russia and China concedes less to the intellect of leaders in both India and Pakistan than would be warranted.” The world"s two youngest nuclear powers first tested weapons in 1998, sparking fear of subcontinental nuclear war a fear Varshney finds ridiculous. "The decision makers are aware of what nuclear weapons are, even if the masses are not," he said. "Watching the evening news, CNN, I think they have vastly overstated the threat of nuclear war," political science Prof. Paul Huth said. Varshney added that there are numerous factors working against the possibility of nuclear war. "India is committed to a no-first-strike policy," Varshney said. "It is virtually impossible for Pakistan to go for a first strike, because the retaliation would be gravely dangerous." Political science Prof. Kenneth Lieberthal, a former special assistant to President Clinton at the National Security Council, agreed. "Usually a country that is in the position that Pakistan is in would not shift to a level that would ensure their total destruction," Lieberthal said, making note of India"s considerably larger nuclear arsenal. "American intervention is another reason not to expect nuclear war," Varshney said. "If anything has happened since September 11, it is that the command control system has strengthened. The trigger is in very safe hands."

### 2AC Counterplan

#### Permutation do both

#### Politics links to the net benefit – Obama will perceive a loss of his authority when faced with congressional oversight – results in controversy over the mandates of the counterplan – this is their own kriner ev

congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort

#### Doesn’t solve –

#### A. Judicial review – accountability is dependent on judicial challenges to targeted killing – only plan grants standing to plaintiffs whereas the counterplan doesn’t allow accountability for ALL targeted killing – that’s Corey and Rushforth

#### B. Collateral damage – judicial review is the only mechanism to cause double-checking before an attack happens – that’s Adelsberg and Corey

#### C. Executive trust deficits – only judicial review and external checks on the executive solve status quo credibility gap in US operations – that’s Brooks

#### Doesn’t solve CMR or judicial independence – congressional actions do not influence court action on other issues

Harvey and Friedman, professors at NYU, 06 (ANNA HARVEY, Professor of Politics at New York University; and BARRY FRIEDMAN, Professor of Law at New York University School of Law, Pulling Punches: Congressional¶ Constraints on the Supreme Court’s¶ Constitutional Rulings, 1987–2000, LEGISLATIVE STUDIES QUARTERLY, http://politics.as.nyu.edu/docs/IO/2787/harveyfriedmanlsq.pdf)

A central empirical debate in the field of judicial politics is whether or not U.S. Supreme Court justices are constrained in their¶ decisions by the policy preferences of federal elective officeholders¶ (that is, the members of Congress and the president). This debate has¶ focused almost exclusively on the Court’s statutory decisions; there¶ appears to be a consensus that the Court is wholly unconstrained in its¶ constitutional decisions. Few studies have found any evidence¶ supporting the hypothesis of a constrained Court in statutory decisions,¶ and no study has found any evidence of congressional constraint in¶ constitutional decisions.

#### Judicial review is better – its key to legal clarity which is better than constant legal guesswork – that’s key to all our advantages

Pildes 13 (Rick, Sudler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, Does Judicial Review of National-Security Policies Constrain or Enable the Government?, August 5, 2013, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

But two very significant benefits to government policy in this area can also result from judicial review. Over the many years since 9/11, I have come to wonder more whether our system calibrates these potential benefits and costs well. First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

#### No net benefit and solvency – congressional checks will be abandoned in times of crisis – means the counterplan necessitates future court action

Katyal 13 (Neal Kumar, Georgetown University Law Center, review of Jack Goldsmith’s Power and Constraint: The Accountable Presidency After 9/11, “Book Review: Stochastic Constraint”, 126 Harv. L. Rev. 990-1010 (2013))

He identifies several mechanisms Congress has established and the Executive has self-imposed to check military wartime activities. Covert actions must be approved via formal findings, congressional intelligence committees must be informed of all intelligence activities, detention now involves extensive paperwork and legalistic standards, and inspectors general conduct reviews of CIA activities (pp. 87–88, 99, 155). Goldsmith describes the exponential increase in the number of lawyers employed by the executive and military departments as a significant check on executive discretion (pp. 125–35). These mechanisms not only lead to increased reporting but also provide a deterrent effect — the presidential synopticon described by Goldsmith and mentioned earlier in this Review — inducing executive branch officials to second guess themselves before undertaking decisions that they will soon have to explain to Congress and other bodies. These existing mechanisms work well now, in a time of relative calm. But if another grave threat to national security emerges, as it undoubtedly will, there is no guarantee that these accountability programs will be left in place and will work. Indeed, Goldsmith himself suggests that they will not.48 The suspension of these checks and the resulting increase in executive power would mean the cycle will repeat itself, for to reinstate those same checks we would have to relitigate, repass, or rescind legislation, and rely once again on the press and courts to uncover abuse of this broad power. Given Goldsmith’s prognosis, it is worth thinking now about ways to try to lace an understanding of Goldsmith’s cycle into legislative and judicial decisionmaking in times of crisis, in order to catalyze the start of stage three and allow a quick exit from stage two’s unilateral regime.

#### Executive deference means the counterplan won’t be enforced

Pirozzi-Attorney-97 27 Sw. U. L. Rev. 185 ARTICLE: THE WAR POWER AND A CAREER- MINDED CONGRESS: MAKING THE CASE FOR LEGISLATIVE REFORM, CONGRESSIONAL TERM LIMITS, AND RENEWED RESPECT FOR THE INTENT OF THE FRAMERS

2. Lack of Political Determination Although Congress has the options necessary to restrain presidential initiative in the area of foreign affairs, either through joint resolution or appropriations termination, Congress has historically been unwilling to implement either of these mechanisms. Although an argument could be made that Congress is hesitant to cancel appropriated funds committed to a military exercise for fear of stranding troops, the predominant reason is political. It appears that, quite simply, Congress would rather leave the war-making decision to the President and avoid the political fallout of an unpopular war. 156 "It may be preferable to accept presidential leadership and preserve the ability to criticize decisions that turn out wrong. That can enable a person to take credit for popular decisions and to criticize, gathering helpful publicity and stature, those that go awry." 157 Interestingly, when Congress's constitutional authority is at its highest (at the initiation of military hostilities), its resolve is at the lowest. Conversely, when Congress's constitutional authority begins [\*218] to decrease (at the cessation of armed hostilities), it seems to gather courage to oppose the military action - especially in circumstances where the military exercise was not particularly successful. It is in this light that one can observe the agenda of Congress. First and foremost, Congress is a political body and its members seek to reflect and maintain a positive public persona. Therefore, the political interests of Congress logically lead to deference and discretion to the President concerning highly sensitive issues such as war and peace. Most assuredly, the most paramount of these political interests is re-election. 158

#### The Executive would effectively challenge the counterplan in Court

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

Alternatively, Congress could pass legislation that explicitly prohibits the targeted killing of Americans unless the circumstances present a concrete threat of imminent danger.236 As the analysis in Part II.A indicates, targeted killing is a premeditated offensive military strategy, not a defensive practice.237 Congress could exercise its own constitutional powers as the war-making body of government to ensure that no American may be targeted for extrajudicial lethal force by the Executive Branch.238 Similarly, Congress could amend the AUMF to include a prohibition of the targeted killing of Americans.239 Although this has the potential to limit the military in counterterrorism measures in circumstances such as the Aulaqi case, it would emphasize congressional commitment to fundamental constitutional rights even in the face of terrorist threats.240 The irony of the Aulaqi case is that based on the publicly available evidence, there is good reason to believe the DOJ’s assertion that Anwar al-Aulaqi presented significant danger to the country.241 But allowing the president to target Aulaqi for extrajudicial killing presents its own danger, as it establishes a broad and unreviewable killing power with potential for error and abuse.242 Americans must have more reassurance that the powers of the Executive Branch are limited and reasonable. Although a legislative solution is appealing given the success of the analogous FISA court, a statutory ban on the targeted killings of Americans is certainly the preferable option. When a government unilaterally assassinates one of its own citizens in circumvention of civil liberties, this raises profound questions about the legitimacy of that government, especially in a representative democracy. It also stands in contradiction to the American constitutional legacy, in which separate but coequal branches of government were created primarily to limit the possibility of tyranny and other government abuses of power. A congressional ban on the targeted killing of Americans would represent a legislative rebuke of executive excesses in protection of fundamental civil liberties. Congressional action of any kind, however, faces a very serious hurdle: as the DOJ made clear in the Aulaqi case, the executive branch position is that any infringement on the President's targeted killing authority is simply unconstitutional. Yet if congress were to prohibit targeted killing and a court found that such a law is an unconstitutional infringement on executive authority, there is still another and perhaps final option. In the event that a federal court interprets the constitution to actually permit the targeted killing of Americans by the Executive Branch, then it would be necessary to fix this constitutional flaw. A constitutional amendment prohibiting the practice of targeted killing would thus permanently extinguish the concerns over targeted killing. 243

#### Congressional oversight would be terrible- they don’t have the expertise

Zenko 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

Congressional oversight of drone strikes varies depending on whether the CIA or the U.S. military is the lead executive authority. The CIA, according to the chair of the Senate Select Committee on Intelligence, Senator Dianne Feinstein, meets its “fully and currently informed” legal obligations through “monthly in-depth oversight meetings to review strike records and question every aspect of the program.” 38 Individual JSOC strikes are not reported to the relevant armed services committees, but are covered under the broad special access program biannual reporting to Congress. According to senior staff members on the Senate Foreign Relations Committee and House Foreign Affairs Committee, many of their peers have little understanding of how drone strikes are conducted within the countries for which they are responsible for exercising oversight. Even serving White House officials and members of Congress repeatedly make inaccurate statements about U.S. targeted killings and appear to be unaware of how policies have changed over the past decade.39 At the same time, the judiciary committees have been repeatedly denied access to the June 2010 Office of Legal Counsel memorandum that presented the legal basis for the drone strike that killed U.S. citizen and alleged leader of AQAP Anwar al-Awlaki in September 2011.40 Finally, despite nearly ten years of nonbattlefield targeted killings, no congressional committee has conducted a hearing on any aspect of them.

#### The executive will prevent information from being released to congressional oversight committees

Wheeler 13 (Marcy, phd in comparative lit, “Did Administration Stall Congressional Oversight Just to Beat ACLU in Court?”, http://www.emptywheel.net/2013/02/08/did-administration-stall-congressional-oversight-just-to-beat-aclu-in-court/#sthash.E7wwj5gF.dpuf)

In an interview with WSJ last March, White House Counsel Kathryn Ruemmler said that publicly explaining the drone program would be “self-defeating.” White House Counsel Kathy Ruemmler acknowledged Mr. Obama has developed a broader view of executive power since he was a senator. In explaining the shift, she cited the nature of the office. “Many issues that he deals with are just on him, where the Congress doesn’t bear the burden in the same way,” she said. “Until one experiences that first hand, it is difficult to appreciate fully how you need flexibility in a lot of circumstances.” [snip] Ms. Ruemmler said Mr. Obama tries to publicly explain his use of executive power, but says certain counterterrorism programs like the drone campaign are exceptions. Opening them to public scrutiny would be “self-defeating,” she said. At the time, I thought she was treating the NYT and ACLU as “the public.” After all, in a debate over releasing the targeted killing memos in the situation room in November 2011, she had warned that releasing the memo might weaken the government’s position in litigation, presumably the FOIA battle with the two entities. The CIA and other elements of the intelligence community were opposed to any disclosures that could lift the veil of secrecy from a covert program. Others, notably the Justice and State departments, argued that the killing of an American citizen without trial, while justified in rare cases, was so extraordinary it demanded a higher level of public explanation. Among the proposals discussed in the fall: releasing a “white paper” based on the Justice memo, publishing an op-ed article in The New York Times under Holder’s byline, and making no public disclosures at all. The issue came to a head at a Situation Room meeting in November. At lower-level interagency meetings, Obama officials had already begun moving toward a compromise. David Petraeus, the new CIA director whose agency had been wary of too much disclosure, came out in support of revealing the legal reasoning behind the Awlaki killing so long as the case was not explicitly discussed. Petraeus, according to administration officials, was backed up by James Clapper, the director of national intelligence. (The CIA declined to comment.) The State Department, meanwhile, continued to push for fuller disclosure. One senior Obama official who continued to raise questions about the wisdom of coming out publicly at all was Janet Napolitano, the Homeland Security director. She argued that the calls for transparency had quieted down, as one participant characterized her view, so why poke the hornet’s nest? Another senior official expressing caution about the plan was Kathryn Ruemmler, the White House counsel. She cautioned that the disclosures could weaken the government’s stance in pending litigation. The New York Times has filed a lawsuit against the Obama administration under the Freedom of Information Act seeking the release of the Justice Department legal opinion in the Awlaki case. [my emphasis] But having now updated my timeline of the over 14 requests members of Congress have made for the targeted killing memos, she seems to lump Congress with the ACLU and NYT. More troubling, though: it appears the White House stalled its response to Congress for almost nine months simply to gain an advantage in the ACLU FOIA lawsuits. Here are the relevant dates: October 5, 2011: Chuck Grassley requests targeted killing memo. November, 2011, unknown date: Situation Room meeting regarding targeted killing memo. November 3, 2011: Arbitrary end date DOJ’s Office of Information Policy placed on FOIA request for targeted killing documents. November 8, 2011: In his opening statement for a DOJ Oversight hearing, Pat Leahy complained the Senate Judiciary Committee had not been given “the legal justification underlying drone strikes against an American citizen overseas.” November 8, 2011: According to House Judiciary Committee letter, the date on the white paper it later received. February 8, 2012: Ron Wyden follows up on his earlier requests for information on the targeted killing memo with Eric Holder. June 20, 2012: The government responds to NYT and ACLU lawsuits for memo and other documents related to targeted killing (though several of the declarations supporting that motion, including the one from DOJ OIP, were not submitted until June 21). June 22, 2012: According to House Judiciary Committee letter, the date the 7-month old white paper provided to Committee (Dianne Feinstein says both Senate Judiciary and Intelligence Committees received the memo in June 2012 too). August 10, 2012: Pat Leahy claims SJC received the white paper in response to his (and Grassley’s) initial requests from the previous year: “the Senators has been provided with a white paper we received back as an initial part of the request I made of this administration.” Grassley requested the memo(s) just 6 days after Anwar al-Awlaki was killed; over a week before 16-year old American citizen Abdulrahman was killed. By November, the White House determined that releasing a white paper would present a middle ground. At least according to Jerry Nadler and friends, that memo was completed on November 8, 2011. But then DOJ and the White House waited, ignoring Leahy’s renewed call for the memo that same day. The DOJ and the White House waited, ignoring Ron Wyden’s request the following February. DOJ only finally provided this woefully inadequate white paper to the committees overseeing DOJ and the CIA the day after the Administration had provided the NYT and ACLU with their FOIA request. And not only did they impose an arbitrary date on the ACLU’s request to ensure it would not return this white paper — which was an unclassified document clearly responsive to the ACLU request (the NYT request specified OLC memos, so the white paper might not have been included) — but it stamped it draft so when NYT’s Scott Shane asked for it specifically, they could deny it on deliberative grounds. Note, when DOJ responded to ACLU’s allegation that its search was inadequate, the FOIA officer blamed people who worked in Eric Holder and the Deputy Attorney’s offices (several of the key people involved have moved on; one of those may be — though I am not certain — Lisa Monaco, who will replace Brennan in the White House after he gets confirmed at CIA). Consider what this appears to mean. The White House and DOJ appear to have delayed the time when key oversight committees in Congress could begin to exercise oversight over the targeted killing of Americans — including Abdulrahman al-Awlaki, who was still alive when the first request was made — until such time as it had dealt with the ACLU. They appear to have stalled almost nine months because they didn’t want to respond in good faith to the ACLU FOIA lawsuit. Remember, one of the key John Brennan speeches in this whole process — one the white paper points to as public notice that people like Anwar al-Awlaki might be targeted under the twisted definition of “imminent threat” — also suggests that if the government doesn’t respond to FOIA requests with a presumption of disclosure it will help the terrorists win. Perhaps tellingly, while the speech bragged about Congress’ effort to impose new disclosure requirements on the Executive, Brennan said nothing about the value of Congressional oversight; on the contrary, he complained that Congress was reining in the Executive Branch’s “flexibility.”

# 1AR

## Case

### Solves

#### Solves

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse. But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

### T/ War

#### Review inevitable – now is better for flexibility

Wittes 8 (Benjamin Wittes is a Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, “The Necessity and Impossibility of Judicial Review,” https://webspace.utexas.edu/rmc2289/National%20Security%20and%20the%20Courts/Law%20and%20the%20Long%20War%20%20Chapter%204.pdf)

WE COME, then, to the question of what judicial review ought to look like in the war on terror if one accepts that it should exist more robustly than the administration prefers but should not be of an unbridled or general nature, as human rights advocates wish to see. The answer is conceptually simple, though devilishly complicated in operation: Judicial review should be designed for the relatively narrow purpose of holding the executive to clearly articulated legislative rules, not to the often vague standards of international legal instruments that have not been implemented through American law. Judges should have an expanded role in the powers of presidential preemption in the antiterrorism arena, for the judiciary is essential to legitimizing the use of those powers. Without them, the powers themselves come under a barrage of criticism which they cannot easily withstand. And eventually the effort to shield them from judicial review fails, and the review that results from the effort is more intrusive, more suspicious, and less accommodating of the executive's legitimate need for operational flexibility. Judges, in other words, should be a part of the larger rules the legislature will need to write to govern the global fight against terrorism. Their role within these legal regimes will vary-from virtually no involvement in cases of covert actions and overseas surveillance to extensive involvement in cases of long-term detentions. The key is that the place of judges within those systems is not itself a matter for the judges to decide. The judiciary must not serve as the designer of the rules.

### 1AR AT: Chilling

#### It’s a universal norm-never failed

Pillard 99 (Cornelia, Associate Professor of Law, Georgetown University Law Center, former Deputy Assistant Attorney General- Office of Legal Counsel in the Department of Justice, “Taking Fiction Seriously: The Strange Results of Public Officials' Individual Liability Under Bivens,” http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1719&context=facpub)

The Court brushed aside the contention that it should treat Bivens as effectively establishing governmental rather than individual liability more than a decade ago on the ground that federal regulations did not make reimbursement "sufficiently certain and generally available.", 58 The fiction is, to be sure, not airtight. From the perspective of an individual federal official sued under Bivens, the residual uncertainty in indemnification and representation policies can be cause for concern. 59 However, reimbursement policies are now more uniformly the norm among federal agencies and departments than they were ten years ago. 60 Looking at the run of cases, the risk that an official who acted within the scope of his employment would be left paying damages is negligible.61 Moreover, in order to help assuage employees' concern that they might nonetheless bear personal liability for constitutional torts, the government may subsidize premiums on professional liability insurance for law-enforcement officers and supervisory or management officials.62 In sum, it is now fair to conclude that, as a practical matter, Bivens liability runs against the federal government, even though as a formal matter the named defendants must be individual officials in their personal capacities.

[footnote 61 starts:]

61. In cases in which the United States has provided representation to the individual defendant, it has not once failed to reimburse a federal employee for the costs of a Bivens settlement or judgement. See Goldberg Interview, supra note 6; Colgate Memo, supra note 51, at 1. The Court's concern in Anderson is also unfounded because the claims least likely to be covered by indemnification are also unlikely to warrant qualified immunity, eliminating any argument that the individual liability/qualified immunity regime provides more complete protection.

[footnote 61 ends]

### AT: Slow

#### Ex post review solves speed – the process and execution of the targeted killing is left entirely to the military

Mohamed 2/6/13 (Faisel G., He is a Professor in the Department of English of the University of Illinois at Urbana-Champaign, where he also holds appointments in the Unit for Criticism and Interpretive Theory and the Center for South Asian and Middle Eastern Studies, “The Targeted Killing Memo: What the U.S. Could Learn From Israel” <http://www.huffingtonpost.com/feisal-g-mohamed/the-targeted-killing-memo_b_2634078.html>)

Well, you may say, what's the alternative? In fact there is an alternative that a careful legal brief would have noted: the Supreme Court of Israel's 2005 decision in Public Committee Against Torture in Israel [PCATI] v. Government of Israel (HCJ 769/02). Citing the European Court of Human Rights decision in McCann v. United Kingdom (21 ECHR 97 GC), the Israeli court concludes that while a targeted killing is a military matter in its planning and execution, the courts must be free to conduct post-operational judicial review. This would shed light on the internal deliberations leading up to the targeted killing, assuring sound evidentiary procedures and the absence of a reasonable alternative to the killing. While that remains a form of due process that is less than ideal for the defendant, who is dead when his day in court arrives, it at least exposes military and governmental decision-makers to judicial scrutiny.

### PQD

#### Judicial review on targeted killing doesn’t spillover to other restrictions on military force

Brooks, prof of Law @ Georgetown, 13 (Rosa, Senior Fellow at the New America Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing”, Testimony Before the Senate, April 23, 2013, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf)

It is also worth noting that the practical concerns militating against justiciability in the context of traditional wartime situations do not exist to the same degree here. On traditional battlefields, imposing due process or judicial review requirements on targeting decisions would be unduly burdensome, as many targeting decisions must be made in situations of extreme urgency. In the context of targeted killings outside traditional battlefields, this is rarely the case. While the window of opportunity in which to strike a given target may be brief and urgent, decisions about whether an individual may lawfully be targeted are generally made well in advance.

### 1AR UQ – Drones Low

#### we’re reducing drone use now because of blowback

Shane 13 (Scott, Debate Aside, Number of Drone Strikes Drops Sharply, May 21, http://www.nytimes.com/2013/05/22/us/debate-aside-drone-strikes-drop-sharply.html?pagewanted=all&\_r=1&)

“Globally these operations are hated,” said Micah Zenko, a scholar at the Council on Foreign Relations who wrote a major study of targeted killing this year. “It’s the face of American foreign policy, and it’s an ugly face.” Tracing the rise and decline of strikes in Pakistan and Yemen, it is possible to correlate some of the numbers with shifting political conditions. In Pakistan, for instance, the C.I.A. has cut back on strikes as relations have grown strained — after the arrest of a C.I.A. contractor, Raymond Davis, in January 2011, for example, and after the incursion of a SEAL team to kill Osama bin Laden in May 2011. A recent hiatus in strikes in Pakistan may have been prompted by the desire not to fuel anti-American sentiments during the campaign before the May 11 general elections. Bruce Riedel, a former C.I.A. analyst and Brookings Institution scholar, said there were many reasons for the declining number of strikes in Pakistan. “But a growing awareness of the cost of drone strikes in U.S.-Pakistan relations is probably at the top of the list,” Mr. Riedel said. “They are deadly to any hope of reversing the downward slide in ties with the fastest growing nuclear weapons state in the world.” In Yemen, strikes rose sharply last year as the United States supported efforts by Yemeni authorities to reclaim territory taken over by the local Al Qaeda branch and its supporters in the tumultuous aftermath of the Arab Spring, said Bill Roggio, editor of the Long War Journal, a Web site that tracks the strikes. The numbers have declined since, and there were no strikes at all in Yemen in February or March. Mr. Roggio said a growing chorus of criticism — including a young Yemeni journalist who passionately criticized the strikes at a recent Senate hearing — may be influencing American policy. “I get the sense that the microscope on the program is leading to greater selectivity in ordering strikes,” he said.

## Politics

### Johnson

#### Johnson nomination saps political capital

Rockwell 10/18/13 (Mark, staffwriter, “Republicans criticize DHS nominee” http://fcw.com/Articles/2013/10/18/republicans-johnson-dhs-nominee.aspx?Page=3)

The nomination of former Department of Defense General Counsel Jeh Johnson to head the Department of Homeland Security brought mixed reactions from Congress that broke down along party lines, perhaps presaging a difficult confirmation battle. Some leading Republican senators seized on Johnson's financial relationships with President Barack Obama and the Democratic Party, saying the nomination had more to do with fundraiser favoritism than job abilities. "I have grave concerns with Jeh Johnson's nomination to head the Department of Homeland Security. After this administration's mismanagement of DHS, in particular its failure to secure the border, Texans expect a nominee with serious management and law enforcement experience," said Texas Republican John Cornyn, the No. 2 Republican in the Senate. "Rather than selecting someone who knows the unique dynamics of our southern border, President Obama has tapped one of his former New York fundraisers. We need someone who knows how to secure the border, not dial for dollars," said Cornyn. The Opensecrets.org website says that in 2008 Johnson gave more than $93,000 in contributions to Democrats and was part of Obama's transition team. The website also lists Johnson as a Democratic "bundler" -- a contributor who raises money from friends and associates to deliver to the candidate. Sen. Jeff Sessions (R-Ala.) called DHS "the most mismanaged department in the federal government" and said Johnson's nomination was more a reward for a top campaign donor than an effective choice to run the department. "It would appear that the president plans to nominate a loyalist and fundraiser to this post. This is deeply concerning. This huge department must have a proven manager with strong relevant law enforcement experience, recognized independence and integrity, who can restore this department to its full capability," said Sessions. Johnson has faced off with other Republican lawmakers over homeland security issues in the past. Rep. Peter King (R-N.Y.), formerly chairman of the House Homeland Security Committee, tangled with Johnson over a CIA leak case. John Kiriakou, a former CIA officer, was sentenced last January to 30 months in prison for violating the Intelligence Identities Protection Act by passing along classified information on CIA operatives to a newspaper reporter. In 2012, Johnson refused King's request to identify Defense Department lawyers—who were charged with defending Guantanamo detainees --who had allegedly disclosed identities of the same CIA operatives to the press and detainees through sloppily-handled case files. Current House Homeland Security Committee Chairman Michael McCaul (R-Texas) said his concerns about depleted management ranks at the agency were only partially allayed by the nomination. "[I] look forward to hearing Mr. Johnson's vision for improving the department's operations, morale and creating a more unified agency," McCaul said. Currently, Rand Beers is acting secretary at DHS and Rafael Borras is acting deputy secretary. "Even with this prospective nominee, over 40 percent of senior leadership positions at DHS are either vacant or have an 'acting' placeholder," said McCaul. "The lack of leadership at the White House is reflected in the holes in leadership at the department, and these important positions must be filled in order to fill the holes in our homeland security."

### 1AR Health Care

#### They didn’t properly answer the health care argument – its not about the docket, but about backlash to Obama because of a loss on his failed implementation of his keystone policy

#### Health care fiasco undermines Obama’s political capital

ALONSO and OHLEMACHER 10/23/13 (\*RICARDO, \*STEPHEN, staffwriter, “Healthcare.gov Problems Are Target at Hill Hearing” <http://abcnews.go.com/Politics/wireStory/house-dems-worried-health-law-rollout-woes-20657571>)

The principal contractors responsible for the federal government's troubled health insurance website say the Obama administration shares responsibility for snags that have crippled the system. Executives of CGI Federal, which built the federal HealthCare.gov website serving 36 states, and QSSI, which designed the part that verifies applicants' income and other personal details, were testifying Thursday before the House Energy and Commerce Committee. As the hearing began, Republican committee members said the website problems are symptomatic of deeper flaws in the Affordable Care Act, and they accused administration officials of misleading Congress with repeated assurances that the rollout was on track. "The American people deserve something that works, or start over," said Rep. Tim Murphy, R-Pa., adding that the administration should suspend the health law until problems are fixed. Democrats acknowledged the website problems but defended the law, saying millions of uninsured Americans are counting on it to finally get coverage — and thousands are succeeding in signing up. They accused Republicans of trying to sabotage the law, not to fix it. "Republicans don't have clean hands coming here," said Rep. Frank Pallone, D-N.J. The hearing comes as President Barack Obama's allies are starting to fret about the political fallout. Democrats had hoped to run for re-election next year on the benefits of the health care law for millions of uninsured Americans. Instead, computer problems are keeping many consumers from signing up through new online markets. One House Democrat says the president needs to "man up" and fire somebody, while others are calling for signup deadlines to be extended and a reconsideration of the penalties individuals will face next year if they remain uninsured. The focus on the contractors is a first step for GOP investigators. After the failure of their drive to defund "Obamacare" by shutting down the government, they've been suddenly handed a new line of attack by the administration itself. Administration officials, including Health and Human Services Secretary Kathleen Sebelius, are to testify next week.

#### More evidence – healthcare website scandal undermines Obama’s political capital now

Madhani 10/22/13 (Aamer, staffwriter, “Health care website problems jeopardize Obama's legacy” <http://www.usatoday.com/story/news/politics/2013/10/22/obama-health-care-problems-analysis/3151757>)

WASHINGTON — As his administration scrambles to fix the online enrollment process under the Affordable Care Act, President Obama is facing a challenge that threatens to undercut the most significant legislative victory of his presidency. The difficulty of the situation, and the pressing need to find a solution, was underscored on Tuesday when the White House announced that Obama has tapped Jeffrey Zients, a former deputy White House budget director who has helped the president fix other troubled government programs, to lead the embattled Department of Health and Human Services' effort to repair the online exchange. Zients' appointment came a day after Obama acknowledged deep disappointment about the problematic rollout of the law's enrollment process. The online website was billed ahead of the rollout as an easy-to-use portal where the uninsured could window shop for their health care options. Instead it is plagued with problems. The stakes in fixing the process could not be higher for Obama. The health care overhaul stands as the most visible example of Obama's political philosophy that there are still areas where government can best serve the public interest. With the passage of the major health care law overhaul in 2010, Obama accomplished something that Theodore Roosevelt, Harry Truman, Richard Nixon and Bill Clinton all tried and failed to get done during their time leading the country. "The longer this gets delayed, the less believable the excuses of the Obama administration become to people," said Susan MacManus, a political scientist at the University of South Florida. "It feeds into the concerns that people have about inefficiencies and waste by government at a time when many people are still struggling to get by." GOP lawmakers have put up plenty of opposition during the rollout. But arguably the administration's failed introduction of HealthCare.gov this month has provided the greatest threat to undermining implementation of the law.