## 1AC

### PLAN

#### Plan:  The United States Federal Judiciary should conduct judicial ex post review of United States’ targeted killing operations that use drones, with liability falling on the government for any constitutional violation, on the grounds that the political question doctrine should not bar justiciability of cases against the military.

### 1AC – Allies

#### Advantage 1 is Allied Cooperation –

#### U.S. drone policy is more important than the spying and data scandal to European partners – it threatens the trans-atlantic relationship

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Accountability over standards of imminence are impossible from executive internal measures – no one trusts Obama on drones – only the plans court action solves

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### Offering a remedy is key to solve backlash

Cullis 14 (Tyler, JD from the Boston University School of Law, specialized in international law, “Europe Shows Resistance to US Drone Policies”, http://www.lobelog.com/europe-shows-resistance-to-us-drone-policies/)

Earlier this week the European Parliament passed a resolution condemning the US drone program and expressing its concern over the desire of some European states to build a program of their own. Here in the US few have paid attention. But if the resolution signals a more serious commitment on the part of Europe to publicly disclaim the legal and policy architecture of the US’s “targeted killing” program, then the White House’s legal footing, which is already on thin ice, could become untenable in the face of near-unanimous global opposition. The resolution, which is non-binding as a matter of European law, “expresses…grave concern over the use of armed drones outside the international legal framework,” which goes against US pretensions of acting within the bounds of law in conducting its “targeted killing” program. In doing so the European Parliament rejects the novel legal doctrines that the US has used to support its activities in the “global war on terror,” arguing that traditional jus ad bellum and jus in bello rules do not need to be revised in light of the threat posed by transnational terror groups (as the US has long alleged). This is a striking challenge to the United States and its claims to compliance with international norms, and is a sharp reminder of the twin reports from UN Special Rapporteurs last year (whose work is cited in the resolution itself). This also comes on the heels of a New York Times report that the US is considering adding a US citizen, Abdullah al-Shami, to the White House’s “kill list”. Besides the significant constitutional issues at stake in a unilateral presidential decision to kill a US citizen without due process, international human rights law is implicated as well. The focus on human rights law as the appropriate legal frame, which is evident throughout the Parliament’s resolution, thus takes on added significance in the wake of this report. More importantly, the resolution signals to other EU bodies that now is the time for unified European action to publicly oppose the US’s “targeted killing” program; to limit the use of drones both globally and in a distinctly European context; and to hold criminally responsible those that assist what the Parliament regards a potentially criminal action on the part of the United States. In fact, as part of its “action program” the Parliament’s resolution “urges the [European] Council to adopt an EU common position on the use of armed drones,” which would be binding on all EU member-states. Such a legislative gambit could include provisions providing for “judicial review of drone strikes…and effective access to remedies [for victims].” Both have thus far largely been barred in European courts. Such would spell serious trouble for the United States and its continued ability to conduct drone warfare across international borders. It is one thing for official criticism to be done in private and for US and European legal scholars to haggle over applicable laws in the US’s conflict with al-Qaeda. It is entirely another thing for the US’s closest allies to so publicly rebuke the White House (especially one that professes to care as much about toeing the line of the law as this one does) and to threaten to open its court system to the victims of what it regards as “unlawful drone strikes.” While legislative action from the European Council and Commission remains unlikely, the vote count on the Parliament’s resolution (534-49) suggests that sentiment against “targeted killings” has begun to overcome Europe’s squeamishness about upsetting its powerful ally. This week also saw the respected British human rights organization, Reprieve, submit a communication to the International Criminal Court to start an investigation of NATO personnel complicit in the CIA drone program. Of course, none of this bodes well for the United States. Whereas the Bush administration expressed contempt towards international law and thus was treated in kind from its practitioners, the Obama administration has at least demonstrated concern for international norms and struggled to describe its drone policies as compliant with the law. But as US allies and human rights NGOs close in on the White House, the Obama administration will be forced to either proclaim its adherence to international law and end its “targeted killing” policies, or abandon any pretension to international law-compliance altogether. The sooner the better, too, because the growing outcry against the US’ drone policies shows no signs of losing steam.

#### It is a legal problem not a political one – collapses NATO.

Parker 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention. The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, EBSCO

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

### 1AC – Yemen

#### Executive control over the definition of “imminence” makes its scope totally unlimited- makes drone overuse and abuse inevitable.

**Greenwald 13** (Glenn, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo)

4. **Expanding the concept of "imminence" beyond recognition The memo claims that the president's assassination power applies to a senior al-Qaida member who "poses an imminent threat** of violent attack against the United States". **That is designed to convince citizens to accept this power by leading them to believe it's similar to** common and **familiar domestic uses of lethal force on US soil**: if, for instance, an armed criminal is in the process of robbing a bank or is about to shoot hostages, then the "imminence" of the threat he poses justifies the use of lethal force against him by the police. **But this rhetorical tactic is totally misleading**. **The memo is authorizing** assassinations against citizens in **circumstances far beyond this understanding of "imminence**". Indeed, **the memo expressly states that it is inventing "a broader concept of imminence"** than is typically used in domestic law. **Specifically, the president's** assassination **power "does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future".** **The US routinely assassinates its targets not when they are engaged in or plotting attacks** but when they are at home, with family members, riding in a car, at work, at funerals, rescuing other drone victims, etc. **Many** of the early **objections to this new memo have focused on this warped and incredibly broad definition of "imminence**". The ACLU's Jameel **Jaffer told Isikoff that the memo "redefines the word imminence in a way that deprives the word of its ordinary meaning".** **Law Professor** Kevin Jon **Heller called Jaffer's objection "an understatement", noting that the memo's understanding of "imminence" is "wildly overbroad" under international law**. Crucially, Heller points out what I noted above: **once you accept the memo's reasoning** - that the US is engaged in a global war, that the world is a battlefield, and the president has the power to assassinate any member of al-Qaida or associated forces - **then there is no way coherent way to limit this power to places where capture is infeasible or to persons posing an "imminent" threat.** The legal framework adopted by the memo means the president can kill anyone he claims is a member of al-Qaida regardless of where they are found or what they are doing. The only reason to add these limitations of "imminence" and "feasibility of capture" is, as Heller said, purely political: to make the theories more politically palatable. But **the definitions for these terms are so vague and broad that they provide no real limits on the president's assassination power**. As the ACLU's **Jaffer says: "This is a chilling document" because** "it argues that the government has the right to carry out the extrajudicial killing of an American citizen" and **the purported limits "are elastic and vaguely defined, and it's easy to see how they could be manipulated."**

#### Indiscriminate strikes create Yemen instability and swell AQAP ranks – reducing strikes is key

Boyle Ph.D in Political Science, 13 (Michael J., Assistant Professor of Political Science at La Salle University in Philadelphia. “The costs and consequences of drone warfare,” International Affairs 89 : 1 (2013) 1–29. <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>)

The second major claim for the effectiveness of drone strikes is based on their ability to kill HVTs, defined as key operational and political leaders of Al-Qaeda and related groups. From the campaign trail to his time in office, Presi - dent Obama has consistently maintained that he would not hesitate to use lethal force to remove leading figures in Al-Qaeda. 44 Yet the actual record of drone strikes suggests that forces under his command have killed far more lower-ranked operatives associated with other Islamist movements and civilians than HVTs from Al-Qaeda. Peter Bergen has estimated that the drone strikes have killed 49 high-ranking ‘militant’ leaders since 2004, only 2 per cent of the total number of deaths from drone strikes. 45 The remaining 98 percent of drone strikes have been directed against lower-ranking operatives, only some of whom are engaged in direct hostilities against the United States, and civilians. Many of these actors pose no direct or imminent threats, but rather speculative ones, such as individ - uals who might some day attack the US or its interests abroad. 46 Even as Presi - dent Obama has increased the number of drone strikes, the number of HVTs killed has ‘slipped or barely increased’. 47 In 2010, a mid-ranking Haqqani network fighter concluded that ‘it seems they really want to kill everyone, not just the leaders’. 48 The decision to expand targeted killing to this scale and take aim at even low-ranking ‘foot soldiers’ is unprecedented and sets the Obama administra - tion’s drone programme apart in both scale and character from targeted killing operations elsewhere. 4 The extent to which the Obama administration has targeted lower-ranked operatives is not without consequences. Many of these lower-ranked operatives are densely connected to local tribal and clan structures. Their deaths in drone strikes may lead those connected to them by family and tribal ties to seek revenge, thus swelling the ranks of Al-Qaeda and its affiliate groups. As David Kilcullen and Andrew Exum have argued, ‘every one of these dead noncombatants repre - sents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased’. 50 Moreover, the vast increase in the number of deaths of low-ranking operatives has deepened political resistance to the US programme in Pakistan, Yemen and other countries. For example, while Pakistani officials have supported and even celebrated drone strikes against high-ranking operatives such as Baitullah Mehsud, they have taken a dimmer view of CIA attempts to kill mere foot soldiers with similar strikes. 51 Such strikes tend to generate more political pressure on the Pakistani government to oppose the US than strikes against well-known figures whose leadership in militant networks was indisputable. Pakistani opposition leader Imran Khan has pointed directly to the deaths of civilians and low-level operatives as the reason why, if elected to office, he would order the air force to shoot down US drones. 52 A similar dynamic has occurred in Yemen, where US drone strikes have driven more civilians into the ranks of Al-Qaeda and strength - ened local insurgent forces challenging the Yemeni government. 53

#### The plan balances good strikes with bad ones---solves overuse while preserving the option

Jonathan Hafetz 13, Associate Professor of Law, Seton Hall University School of Law, 3/8/13, “Reviewing Drones,” http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate. Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed. Government officials, moreover, would be liable only if they violate clearly established legal standards. This limitation helps avoid chilling the use of drones where the law is uncertain, while still deterring their misuse.

#### AQAP poses the largest threat to the United States – they have the means and motive for attack

Cilluffo et al 13 Subcommittee Hearing: Understanding the Threat to the Homeland from AQAP, September 18, 2013, Mr. Frank J. Cilluffo, Associate Vice President, Director, Homeland Security Policy Institute, The George Washington University, Ms. Katherine Zimmerman, Senior Analyst, The American Enterprise Institute, Mr. Brian Katulis, Senior Fellow, Center for American Progress, http://www.securityassistance.org/content/understanding-threat-homeland-aqap#sthash.0ztnhYSX.dpuf

Yet to do so would be a real mistake. Notwithstanding the importance of Syria as a threat to (U.S.) national, regional, and international security—and as a situation that terrorists may seek to exploit, there is a broader range of forces and factors that pose serious and ongoing threats to the United States. One critical example is the terrorist group AQAP which is currently the al Qaeda affiliate that poses the greatest threat to the U.S. homeland. Why AQAP Matters  AQAP is the most active of al Qaeda’s affiliate groups. AQAP has directly targeted the U.S. homeland as well as U.S. interests abroad on multiple occasions. AQAP (and Yemen) is home to one of the world’s most dangerous and innovative bomb- makers who has actively tried and shown himself to be able to circumvent U.S. countermeasures intended to thwart his improvised explosive devices. AQAP has invested significantly in encouraging radicalization and “lone wolf” homegrown attacks, including “Inspire” magazine. AQAP’s efforts in this regard propagate the ideology that underpins al Qaeda as a movement, and provide the “how- to” do it yourself in terrorist tactics, techniques, and procedures. AQAP is currently led by Nasser al-Wuhayshi, formerly a direct confidant of Osama bin Laden, who was recently named the number two figure within al Qaeda writ large. The number two leadership slot is symbolically important but also operationally so, particularly as the boundaries between al Qaeda components (core and affiliates) fade away and their activities converge. AQAP has for some time assumed a leadership role within al Qaeda as a whole, and has cooperated with multiple al Qaeda affiliates. AQAP’s leadership position offers a conduit to foster intent in others to attack the U.S. homeland and U.S. interests. AQAP was established in 2009 by the merger of Yemeni al Qaeda with Saudi al Qaeda elements that were driven out of the Kingdom. The influence of Yemeni al Qaeda was felt long before, however, and pre-dated 9/11. Bear in mind that Yemen, the birthplace of Osama bin Laden, was the host country of the terrorist attack on the U.S.S. Cole in 2000, in which seventeen U.S. sailors perished. Since its creation, AQAP has demonstrated ample evidence of intent to attack the U.S. homeland and U.S. interests, including the 2009 Christmas Day airliner bomb attempt by “underwear bomber” Umar Farouk Abdulmutallab the 2010 cargo / plane bomb attempt in which explosives were concealed in printer cartridges; and the spring 2012 concealed explosives plot.1 The first two of these attempted attacks were overseen by AQAP’s former external operations leader Anwar al-Awlaki. AQAP has managed to attract western recruits or others with the ability to travel, to facilitate such attacks. In addition to Abdulmutallab, examples include American Sharif Mobley, who is in the custody of the Yemeni government following his shooting of two Yemeni security guards, and British national Minh Qhang Pham, who was indicted on terrorism charges in New York in 2012. Most recently, this August (before all eyes turned to Syria and the regime’s use of chemical weapons on its own people there), there was much discussion of a threat stream emanating from Yemen, where AQAP is based. A spate of articles appeared in the press reporting on a so-called “conference call” between al Qaeda Senior Leadership (AQSL) figure Ayman al- Zawahiri and a dozen chiefs of al Qaeda affiliates including AQAP’s Nasser al-Wuhayshi.2 The intelligence suggested that a major terrorist plot directed against western targets was afoot and prompted a range of countermeasures including a U.S. decision to shut temporarily nineteen embassies and consulates. The plot is said to have involved “a new generation of liquid explosive, currently undetectable,” which U.S. officials described as “`ingenious’.”3 In addition to these various demonstrations of intent to attack, AQAP has also evidenced a record of innovation in terror tradecraft. AQAP’s lead bomb-maker Ibrahim al-Asiri personifies this, as the mastermind behind the devices used in the 2009 attempted assassination of the Saudi Interior Minister, the 2009 Christmas Day attack, the 2010 cargo printer bomb, and plots that involve surgically implanted explosives. Over and above his own considerable expertise, al-Asiri has been training the next generation of bomb-makers.4 AQAP has also expressed an interest in attacks using biological warfare agents, including ricin.5 Encouraging radicalization and “lone wolf” homegrown attacks has been a further hallmark and focus of AQAP. Cases of this type inspired by AQAP—and Anwar al-Awlaki in particular— include the attack on Fort Hood in 2009 by Major Nidal Hasan, the attack on a military recruiting center in Arkansas in the same year by Carlos Bledsoe, the 2010 attack on a British parliamentarian by student Roshonara Choudhry, and the Boston marathon bombing earlier this year. AQAP “bridge figure” Anwar al-Awlaki possessed an almost unmatched ability to recruit and inspire new and existing members to al Qaeda’s cause and ideology. Though killed in a drone strike in 2011, Awlaki’s voice lives on including in the many radical and violent “sermons” that he recorded in multiple media formats—and continues to resonate. Ideology is the lifeblood that sustains al Qaeda, and instruments such as “Inspire” magazine are intended to fuel the fire, including the “homegrown” component. Although the original authors and publishers of “Inspire” (Awlaki and colleague Samir Khan) are now deceased, the magazine continues and its production values have improved recently. Immediately following the death of Awlaki and Khan, there was a highly noticeable degradation of “Inspire”; the more recent issues of Inspire, including the 11th issue released after the Boston marathon attack, once again demonstrate high production quality and appear to be written by a native English speaker. The linkages between AQAP and other al Qaeda affiliates and terrorist groups are another source of significant concern. As mentioned, current AQAP leader al-Wuhayshi is the overall number two in al Qaeda.6 He is also directly connected to Osama bin Laden, having served as his secretary until 2001. For him, the battle may be personal; being a direct protégé of bin Laden may add an extra layer of resolve and determination to his actions. Other important links exist, however, beyond al-Wuhayshi’s connection with AQSL. These include AQAP ties to al- Shabaab in Somalia, as discussed by convicted terrorist leader Ahmed Warsame in his guilty plea7; and a reported AQAP role in the attack on the U.S. mission in Benghazi.8

#### And, terrorism escalates and causes 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

#### Terrorists have means and motive 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)

#### AQAP will attack Saudi oil

Ahram 2013 (“Saudi oil facing security threats: Report”, 11-27, <http://english.ahram.org.eg/NewsContent/2/8/87627/World/Region/Saudi-oil-facing-security-threats-Report.aspx>, ldg)

The Washington-based Institute for Gulf Affairs has issued a report highlighting security threats facing Saudi Arabia's oil infrastructure in a domestic and regional context. The report, Security Threats to Saudi Arabia’s Oil Infrastructure, calls on the government to enhance its security measures to ensure the protection of oil wells, refineries, export terminals and other facilities, despite an already "impressive array" of protective steps. "As the world's oil 'super power', any threat to Saudi Arabia's oil security could significantly affect the international energy market," the report says. As an example, the 71-page document refers to the "failed attack" on the Abqaiq processing plant in 2006 that saw a rise in Brent crude oil prices from $60.54 to $62.60 on London's ICE futures exchange. Though mentioning the "ongoing conflicts" in Bahrain, Yemen and Iran's nuclear issue, the report highlights domestic issues affecting the kingdom. "Sections of the pipeline network run through unstable population centres. Violence across the region demonstrates the facility with which attacks on pipelines can negatively impact crude oil output," it says. The report says the interrelationship between domestic conditions and oil security has been rooted in widespread poverty and corruption in the oil-rich state that had led to the emergence of "vigilante groups and disaffected Saudi citizens unconnected to any particular religious or nationalist agenda." Al-Qaeda The document devotes four pages to Al-Qaeda Organisation in the Arabian Peninsula's (AQAP) role in endangering the country's oil industry. Instability in Saudi Arabia would directly benefit Al-Qaeda because it would target the energy sector, undermine the Al-Saud monarchy and exploit the US dependence on Saudi crude oil, the report states, adding that there have been subtle strategic shifts in Al-Qaeda's paradigm since the death of its founder Osama Bin Laden. "No longer is the terrorist organisation focused on large scale attacks against the United States but instead emphasising regional struggles at a time when that message is more likely to resonate with Muslims in the Middle East and specifically in Saudi Arabia," it points out. The report says AQAP has been able to recruit members from "prominent Sunni families with high positions in government," referring to two suicide bombers who attacked the Abqaiq facility from the families of government ministers. The first suicide bomber, Abdullah Abdulaziz Al-Twaijiri, is related to Khaled Al-Twaijri, King Abdullah's personal secretary and closest advisor, the report asserts, and says many members of the Al-Twaijiri family also enjoy senior positions in the military and security apparatus. On the fifth anniversary of the 11 September 2001 attacks, Al-Jazeera broadcasted a video message from Ayman Al-Zawahiri which reiterated this threat. Zawahiri said: "There must be a focus on [the West's] economic interests and in particular on stopping the theft of Muslims' plundered petroleum."

#### Attacks on Saudi oil facilities collapse the global economy

Gartenstein-Ross, Center for the Study of Terrorist Radicalization director, 2011 (Daveed, “Osama’s Oil Obsession”, 5-23, <http://www.foreignpolicy.com/articles/2011/05/23/osamas_oil_obsession>, ldg)

Bin Laden long believed that undermining the U.S. economy was central to his war against the United States -- an outlook that has permeated al Qaeda's ranks and will outlive him. Al Qaeda views attacking the oil supply as a smart strategy for good reason: America's reliance on oil for its transportation needs makes it a commodity that, if disrupted or made unaffordable, will cause the U.S. economy to collapse. The United States holds only 3 percent of conventional global oil reserves, yet uses 25 percent of the world's daily production. It imports more than 66 percent of its oil, amounting to a daily purchase of 12 million barrels of imported oil. A significant rise in the price of oil due to a terrorist attack would deal al Qaeda's main enemy a severe economic blow. The threat that keeps counterterrorism officials up at night is a massive strike on Saudi oil installations, taking advantage of the limited number of production hubs to knock a significant amount of oil off the world market. The kingdom relies on its Abqaiq facility to process two-thirds of its crude oil, and on two primary terminals (Ras Tanura and Ras al-Ju'aymah) to export its oil to the world. The economic impact of a successful attack on one of these targets would be tremendous: Gal Luft and Anne Korin of the Institute for the Analysis of Global Security estimate that, if a terrorist cell hijacked a plane and crashed it into either the Abqaiq or Ras Tanura facilities in a 9/11-style attack, it could "take up to 50% of Saudi oil off the market for at least six months and with it most of the world's spare capacity, sending oil prices through the ceiling." Former CIA case officer Robert Baer agrees, writing his 2004 book Sleeping with the Devil, "A single jumbo jet with a suicide bomber at the controls, hijacked during takeoff from Dubai and crashed into the heart of Ras Tanura, would be enough to bring the world's oil-addicted economies to their knees, America's along with them." The prospect of a terrorist strike is so worrying because of the critical role that Saudi oil production plays in the world economy. Saudi Arabia produces almost 10 million barrels of oil per day, and is the only country able to maintain excess daily production capacity of around 1.5 million barrels per day (a "swing reserve") to keep world prices stable. Al Qaeda has certainly tried to attack the kingdom's key oil targets. The threat of terrorist attacks on Saudi oil infrastructure first became a reality in September 2005, when a 48-hour shootout with Islamic militants at a villa in the Saudi seaport of al-Dammam ended with Saudi police introducing light artillery. When police entered the compound in the aftermath of the battle, they found not only what Newsweek described as "enough weapons for a couple of platoons of guerilla fighters," but also forged documents that would have given the terrorists access to the country's key oil and gas facilities. Saudi Interior Minister Prince Nayef bin Abdul Aziz confirmed to the newspaper Okaz that the cell had planned to attack energy facilities, noting that "there isn't a place that they could reach that they didn't think about."

#### Nuclear war

Kemp 10 Geoffrey, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, pg. 233-4

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 1AC - PQD

#### Invocation of the political question doctrine in national security contexts unravels attempts to apply civilian justice to the military—line drawing fails, only a clear signal solves

Vladeck 12 (Stephen, Professor of Law and Associate Dean for Scholarship, American University, Washington College of Law, “THE NEW NATIONAL SECURITY CANON,” June 14, http://www.aulawreview.org/pdfs/61/61-5/Vladeck.website.pdf)

But if what in fact has taken place over the last decade is a testament to a longer-term pattern, one that neither the political branches nor the Supreme Court disrupt in the near future, then we must confront a more alarming possibility: that as these “national security”-based exceptions increasingly become the rule in contemporary civil litigation against government officers—whether with regard to new “special factors” under Bivens, new bases for contractor preemption under Boyle, proliferation of the political question doctrine, or even more expansive reliance upon the qualified immunity defense—the line between the unique national security justifications giving rise to these cases and ordinary civil litigation will increasingly blur. Thus, wherever one comes down on the virtues and vices of this new national security canon, perhaps the most important point to take away is the need to carefully cabin its scope. Otherwise, exceptions articulated in the guise of such unique fact patternss could serve more generally to prevent civil liability for government misconduct and to thereby dilute the effectiveness of judicial review as a deterrent for any and all unlawful government action—not just those actions undertaken in ostensibly in defense of the nation.

#### Japanese posturing is inevitable—but the constitutional scope of using force is key to stability in East Asia

Ryo 1/16/14 (Correspondent for Waseda Opinions, “Why Article 9 of Japan’s Constitution should be amended” <http://wui.weblogs.jp/advanced/2014/01/why-article-9-o-5fac.html>)

The government has dodged the question of the constitutionality of engaging in war with a tricky interpretation of Article 9, saying that it restricts the possession of forces with strike capability, but not the minimum forces necessary for self-defense. Of course, this interpretation has a fault. It is difficult to distinguish “the minimum forces necessary for self-defense” from “strike capability.” There is no weapon limited to defensive use. No one knows for sure where the line is drawn that the government cannot cross, and this raises a question on the normative power of the Constitution. It should also be noted that Japan has kept its own large-scale standing army: the Japan Self-Defense Forces (JSDF). While the Self-Defense Forces Act and other acts set limitations on JSDF activities, it is just a law passed in normal proceedings and can be easily amended. When the JSDF was established, its geographical sphere was limited only to Japan. In fact however, the role of the JSDF has expanded. At the height of the Afghanistan and Iraq wars, the JSDF was mobilized abroad to support U.S forces. In Somalia, the JSDF sent its warships abroad to protect maritime security. It is also worth noting that Japan is fifth in the world in terms of military spending. This year Japan announced a 49 billion dollar defense budget. Some do have concerns over Japan’s constitutional recognition of the JSDF. As mentioned, the JSDF has operated abroad in places like Iraq, Afghanistan, and Somalia. The concern is if the JSDF continues to operate outside of Japan, the government will no longer abide by the Constitution’s stipulation of only maintaining “the minimum forces necessary for self-defense,” and that there is a risk that a transient nationalistic fever will lead to Japan repeating the same mistakes it made in World War II. A member of the Communist Party in China told me, “Japan has a history of aggression and a constitutional remilitarization will spread fear in Asia the same as it did in the past.” He also said, “The difference of historical awareness, which is evident in a number of politicians’ visits to Yasukuni shrine as well as their historical take on the Nanjing atrocity, causes mistrust towards Japan.” It is certainly quite understandable that the JSDF unnerves neighboring countries fearing the risk of war. Therefore, Japan needs to reflect on its possession of the JSDF and on its Constitution, and the Constitution should set limitations on the role of the JSDF. However, the LDP’s revision draft shows that Prime Minister Abe does not intend to rewrite all provisions in Article 9. The draft only amends Article 9 (2), which bars the possession of armed forces, but still upholds Article 9 (1), which renounces war. Also, Abe said in the Diet that he upholds the Murayama statement, issued by former Prime Minister Tomiichi Murayam in 1995 on the 50th anniversary of the end of World War II, which recognizes Japan’s history and apologizes for its past colonizations and atrocities. No prime minister since Murayama has tried to amend the Murayama statement officially. Although rewriting the constitution is contentious, it is the reasonable answer to the reality Japan faces. If Article 9 is not revised, then the contradictory roles of Japan’s JSDF will continue to cause uncertainty in determining what it means to defend one’s own security. Also, perhaps the lack of clear constitutional provisions might lead to Japan undermining the rule of law and repeating the history no one wants repeated. A face-to-face meeting with China and Korea to clearly state Japan’s position may allow the revision to move forward without unwanted repercussions.

#### Japan currently models the U.S. political question doctrine – that stifles judicial review and results in expansive interpretations of Japanese war powers in Article 9

Martin 8/4/12 (Craig, associate professor of Law at the Washburn University School of Law, and frequent visiting lecturer at Osaka University Graduate School of Law and Politics, “Why Japan should amend its war-renouncing Article 9” <http://www.japantimes.co.jp/opinion/2012/08/04/commentary/why-japan-should-amend-its-war-renouncing-article-9/#.Uu2DIxCwIax>)

Such constitutional war powers provisions, which date back to the U.S. Constitution, and which have theoretical origins in the writings of Kant, Madison and others, are becoming increasingly common in the constitutions of democracies all around the world. Such provisions are based on the idea that it is important for the direct representatives of the people, who will be paying for and often dying in the wars decided upon by executive branch of government, to have a direct say in the decision-making process. Moreover, requiring legislative approval, and thus a separation of the power to decide on making war, ensures wide public debate with intense interrogation of the government’s rationales for wanting to use force. This makes for better decisions, and makes military misadventure less likely. The convention for Diet approval already exists in Japan, and it is indeed criticized as being cumbersome and time consuming. But the decision to engage in armed conflict should be difficult, and if the government cannot convince the legislature that such use of force is necessary, then it suggests that the policy is indeed not required. Finally, a new paragraph four would establish an explicit authority and responsibility for the courts to exercise their power of judicial review of government decisions or actions alleged to be in violation of Article 9. The Constitution already confers upon the Japanese courts robust powers of judicial review, and establishes that the courts are the ultimate authority for interpreting the Constitution, but the Supreme Court has largely abdicated this authority in the context of enforcing Article 9. Through dubious application of the “political question” doctrine (a controversial doctrine developed by American courts to insulate certain types of issue as being non-justiciable by the courts, primarily because their resolution falls under the authority of another branch of government), and the creation of increasingly narrow grounds for “standing” (the legitimate legal basis upon which one can commence constitutional claims) the Supreme Court has almost entirely insulated Article 9 from any possible enforcement by the courts. This has greatly weakened the provision, and has more generally undermined the scheme of constitutional separation of powers. An explicit provision is thus required to establish judicial review powers with respect to Article 9 itself. It should provide for a broad range of possible remedies, and it should grant broad standing so that regular citizens could advance claims when the government is perceived to have violated the provision. This is just the summary of one proposal, offered as a basis for further discussion. But such discussion among defenders of Article 9 is urgently required. When the language of Article 9 was being debated in the Diet in 1946, it was argued that Article 9 would put Japan in the vanguard of a new movement toward international peace. The constraint on the use of force in paragraph one has indeed effectively operated to shape Japanese foreign policy, such that it has not been in an armed conflict in 65 years. Moreover, Article 9 has helped to foster pacifism as a central strand of Japan’s post-war national identity. Nonetheless, the international system has not evolved as envisioned in 1946. The world and Japan’s role in it have changed, and the conflicts over the proper interpretation of the Constitution have only grown over time. Article 9 itself must be amended in recognition of these shifting realities if it is not to be revised into oblivion or made utterly irrelevant by policies that violate it with impunity. In short, Article 9 must be amended to help preserve it.

#### Japanese court activism checks executive re-interpretation of article 9– only this prevents regional misperceptions that spark conflict

Martin 7 (Craig, associate professor of Law at the Washburn University School of Law, and frequent visiting lecturer at Osaka University Graduate School of Law and Politics, “The Case Against “Revising Interpretations” of the Japanese Constitution” <http://japanfocus.org/-craig-martin/2434>)

It is not within the authority of the executive to mandate interpretations of the Constitution. But if it is not within the authority of the executive to mandate constitutional interpretations, at least the executive is a branch of government. The “panel of experts” established by the executive, to the extent that it is being called upon to provide an interpretation that will be relied upon by the government as a means of legitimizing its policies and persuading the other branches of government that the “re-interpretation” is valid and correct, has no legitimacy or authority whatsoever to engage in constitutional interpretation, and is a body not contemplated in any manner by the Constitution. Of course, policies and laws based on new interpretations of the Constitution can be challenged in court, and so some may think that the concern being expressed here is exaggerated. But given the timidity of the courts – particularly the Supreme Court – when called upon to enforce Article 9, there is good reason to question whether the courts would step in to correct any such “re-interpretation”. Moreover, as we will discuss in the next section, there is cause for concern that the government is seeking to use this “panel of experts” to further exclude the courts from any discourse on Article 9 issues.[13] The Legitimate Interpreters – the Courts How has the judiciary, as the branch of government with the authority under the Constitution to interpret the Constitution, actually performed in enforcing Article 9 of the Constitution? We should begin by reviewing briefly the power of judicial review that the courts enjoy under the Constitution. As noted above, Article 81 provides that the courts are vested with the authority to interpret the Constitution and determine the constitutionality of any law, order, regulation or other act of government. In the very first case to come before it on the issue of Article 9, the Supreme Court in 1952 decided that judicial review generally was limited to ex post facto consideration of concrete cases, in the American tradition, as opposed to permitting requests, either by private litigants or the government, for determination of hypothetical questions on the constitutionality of prospective events.[14] Thus, the government cannot refer the question of whether, for example, a government policy permitting the deployment of Maritime Self Defense Force (MSDF) ships in defense of US vessels in international waters would violate Article 9, as would be possible in Germany or Canada, to name just a couple of constitutional democracies with a system that permits constitutional references. Justices of the Supreme Court of Japan, those with the constitutional authority to interpret the Constitution Nonetheless, the courts in countries that have followed the American model of judicial review, in which courts are limited to the consideration of concrete cases, not only function as the final guardian and interpreter of the nation’s constitution, but many have done so in a very robust fashion. The Supreme Court of the Unites States is itself a prime example. What is more, where there is no general “reference” jurisdiction of the courts, it may be argued that it is all the more important that the courts establish a broad basis for standing (that is, the criteria for permitting one to commence constitutional claims), so that concrete cases involving the constitutionality of government acts can be brought before the courts. It is precisely because the courts of Japan, particularly the Supreme Court, have so narrowed both their own jurisdiction and the basis for standing to commence constitutional claims, that one has to be concerned about the Abe government’s “re-interpretation” efforts. There are two significant Supreme Court decisions on Article 9. In the Sunakawa case, decided in 1959, shortly before the US-Japan Security Treaty was to be renewed, the defendants to criminal proceedings for trespassing on a US Forces base challenged the constitutionality of the US-Japan Security Treaty and the presence of US military forces in Japan. Article 9(2) provides that “land, sea, and air forces as well as other war potential will never be maintained”, and the defendants argued that US Forces in Japan offended this clause. The trial court acquitted them on the basis of this argument, but the Supreme Court overturned the decision on the grounds that the status of the treaty was a “political consideration” best left to the cabinet and the legislature, and that only if government policy was “obviously unconstitutional” (whatever that means) should the courts intervene. The Court went on to comment, however, that Article 9 did not deprive Japan of the inherent right of self-defense, and that such measures or arrangements that were limited to the purpose of protecting Japan would not therefore be inconsistent with Article 9. Finally, the Court noted that the US Forces in Japan were not under the command and control of the Japanese government, and thus could not constitute military forces or “war potential” maintained by Japan so as to offend Article 9.[15] The clear implications of these comments, of course, were that actions or arrangements that were not strictly for the defense of Japan, and military forces or other war potential that were under the command of the Japanese government, might be held to be in violation of Article 9. When the constitutionality of the SDF itself came before the Supreme Court in 1982, however, the Court again dodged the issue, and in the process narrowed the standing for claims under Article 9 to a degree that makes them all but impossible. In the Naganuma case a number of residents in Hokkaido challenged the constitutionality of the SDF and the US-Japan Security Treaty within the context of a plan to develop a missile site on a forestry reserve. They did so on the basis that the decision of the Minister of Agriculture and Forestry to convert the forestry reserve had been made for an improper purpose, and one not in the public interest; and also that they would suffer harm, both in terms of direct damage to the water table caused by the construction, and more indirect harm in that their neighborhood would be thereby transformed into a high-value target in the event of armed conflict. While their arguments were accepted by the lower court,[16] on final appeal the Supreme Court dismissed their application on the basis that none of the applicants had a direct legal interest implicated by either the decision of the Minister or the construction of the missile site, since the SDF had (after the judgment on the application by the lower court) taken special measures to ensure that there would be no harm to the water table. Thus, regardless of whether the Minister’s decision had been for an improper purpose, or whether the SDF itself existed in violation of Article 9, the applicants had no standing to make a claim.[17] The Supreme Court has not explicitly relied upon the “political question” doctrine since the Sunakawa decision, but it has in other constitutional cases emphasized the importance of deferring to the discretion of the cabinet or legislature. Moreover, just last year it relied on the narrowest interpretation of direct legal standing as a basis for dismissing a constitutional challenge to the Prime Minister’s visits to Yasukuni Shrine.[18] It is with this history in mind that one must consider the intentions of the Abe government in establishing the “panel of experts”, and question how its “re-interpretation” will be used. The courts have so narrowed the basis for standing that virtually no one other than an SDF member ordered to deploy in some collective security operation in accordance with the new policy, would have standing to challenge the policies and laws flowing from the “re-interpretation”. In the unlikely event that a claim actually got past those preliminary hurdles, one can see how the government’s arguments to invoke the “political question” doctrine and deference to government discretion would be squarely based on how the government established the “panel of experts”. The argument would be made that not only is the question of how the government deploys its forces, in accordance with its treaty obligations to the US and under the UN Charter, entirely within the realm of politics and foreign policy rather than law, but that the government established its policy in the most careful and deliberate fashion, taking the advice of a “panel of experts” that deliberated for months on the issue before advising cabinet on its views. Thus, so the argument would run, the courts should not interfere in this complex area of governmental discretion. In my view such an argument is not in the least bit convincing, since the question that would be before the court is in fact a purely legal one.[19] The question would be whether the actions of the government in engaging in some collective security operation, and the enabling regulations or laws pursuant to which such action was undertaken, constituted a violation of the prohibition in Article 9 against the use or threat of use of force for the purposes of settling international disputes. It is a mischaracterization to argue that the question is “political”, unless one merely means that it has political ramifications. That of course does not alter the fundamentally legal nature of the issue at hand. There are, indeed, few important constitutional questions that are not politically sensitive, or the deciding of which will not have significant political ramifications. But that does not make the question a “political question” that is therefore outside of the jurisdiction of the courts. The point, however, is that the Supreme Court of Japan has been persuaded by such arguments in the past, or perhaps more accurately, has relied upon such arguments as a cover for avoiding the risks of confrontation with the other branches of government. And the effort to develop this “re-interpretation” has to be examined in that context. In the circumstances of a weak Court and limited standing to advance claims for court interpretations of the Constitution, expert “re-interpretations” have the potential to assume an importance and an air of validity that can be exploited by the government, notwithstanding how illegitimate the exercise may be. The “Re-Interpretation” Sought is Unreasonable The final argument to be made against this attempt by the Abe government to “re-interpret” Article 9 is that the specific interpretation that the government seeks to obtain is simply not one that can be reasonably reconciled with the language of the Constitution. Massive amounts have been written on the interpretation of Article 9, and it is obviously an issue of considerable controversy, which we can only touch on here. But it is well to begin by recalling that Article 9 specifically provides that: (i) Japan renounces war as a sovereign right of the nation, and the use or threat of use of force as a means of settling international disputes; (ii) Japan will not maintain land, sea and air forces, as well as any other war potential; and (iii) the rights of belligerency of the state will not be recognized. The Cabinet Legislation Bureau in 1954 provided the government with an interpretation of Article 9 according to which Japan was not denied the right to self-defense under Article 9, and Japan was entitled to maintain such limited military forces that comprised the minimum necessary to defend the country against direct attack. Thus, pursuant to this understanding of Article 9, Japan could not maintain “offensive” weapons systems, or deploy forces abroad.[20] The government developed its policies in accordance with that interpretation, and as we have seen earlier, the Supreme Court obliquely acknowledged the validity of that interpretation in the Sunakawa decision. This interpretation leads, of course, to all kinds of tortured arguments over what constitutes defensive weapons as opposed to offensive weapons, what exactly “war potential” means, and when defensive weapons systems might cross the line to become war potential.[21] But putting aside questions of whether, for instance, Japan’s Kongo Class Aegis guided-missile-system destroyers and its fleet of 16 submarines constitute offensive weapons, this is and has long been the accepted interpretation in Japan. It was departed from with the passage of legislation in 1992 to permit support activities in UN peace keeping missions, and to deploy support forces for the Afghanistan and Iraq campaigns, but the prohibition against collective self-defense remains the prevailing understanding of Article 9.[22] Thus, while Japanese SDF troops were deployed to Iraq under special legislation for “support” purposes, the troops were classified as “non-combat” and operated under strict self-defense rules of engagement, to the point that they were under the “protection” of the Australian forces.[23] The Kirishima, one of Japan's 4 Kongo Class Aegis guided-missile-system destroyers, and part of a fleet of 44 destroyers It is precisely this restriction on Japanese participation in collective security operations that the Abe government wants to escape. The “panel of experts” has been asked to consider specifically such scenarios as Japanese missiles being used to intercept intercontinental ballistic missiles targeting the United States or US targets outside of Japan, and MSDF vessels engaging the naval forces of some third country in joint defense of US assets outside of Japanese territorial waters.[24] Thus, could Japanese MSDF Aegis destroyers currently deployed in the Indian Ocean engage the forces of Iran, for instance, were they to be in the process of attacking US forces in the area? Or, if Australians came under attack in Iraq, or some other country’s contingent in a UN peacekeeping mission came under attack, could the SDF troops deployed nearby engage the attackers in defense of their coalition partners? Of course, these questions, and the answers that the government is looking for, lead naturally to more significant issues governed by the same principles, such as could Japan come to the defense of US and Taiwanese forces in the event that hostilities break out with China in the Taiwan Straits? For no one should be under any illusion that the answers to the seemingly narrow questions put to the “panel of experts” will not be used to establish more general principles governing defense policy. These scenarios would of course constitute the use of armed force in armed conflict. The SDF would be engaged in the application of deadly military force against enemy forces, for purposes that are not directly related to the defense of Japan, or in response to any attack on Japan. They would, in short, be involved in the use of force for purposes of settling international disputes, the very thing prohibited by Article 9(1). Naturally, in the context of such armed conflict Japan would expect the laws of war to apply to its forces, such that, for instance, SDF personnel would both obey and enjoy the benefits of the Geneva Conventions. Similarly, it would expect that the Hague Conventions would govern such things as the weapons that could be used against its troops. In other words, Japan would expect that it would enjoy the status of a belligerent state under international law in the event that its forces were involved in military combat as part of collective security operations. While many scholars tend to ignore or dismiss the significance of the clause stating that “the rights of belligerency shall not be recognized” in Article 9(2), belligerency is a status enjoyed under international law that triggers the application of the laws of war. There is simply no way that Article 9 can be interpreted in any reasonable fashion that is not utterly inconsistent with such armed conflict that is unrelated to a direct attack on Japan. “Re-interpreting” Article 9 to allow for Japanese forces to engage in armed conflict for the purposes of collective security, would not only render Article 9 meaningless, but would throw into question the normative power and meaning of all other provisions of the Constitution. A perverse interpretation of one provision cannot help but bleed through and influence the extent to which other provisions are taken seriously. The reasoning behind attempts to justify “re-interpretations” that would permit such collective security operations is almost entirely result-oriented. The starting proposition is that Japan ought to be able to engage in such collective security operations, that other “normal countries” do engage in such operations, that Japan has international obligations that require it to engage in such operations, from which it follows that the most reasonable interpretation of the Constitution must be that that Japan can engage in such operations. Prime Minister Abe himself has complained that “a military alliance is an ‘alliance of blood’” and that while American troops will shed blood for Japan, “the Japanese Self Defense Forces are not asked to be prepared to shed blood when the United States comes under attack”.[24] These are certainly legitimate considerations for the debate on whether to or how to amend Article 9 of the Constitution, but they are absolutely and entirely irrelevant to how Article 9 as it currently reads is to be interpreted. Constitutional interpretation is a legal matter, not one of foreign policy or military imperatives. And as a legal matter, the “re-interpretation” that Mr. Abe wants, in order to permit Japanese troops to shed blood for the defense of others, is utterly inconsistent with any reasonable interpretation of Article 9, and is inconsistent with the closest thing to an interpretation of Article 9 that has been provided by the Supreme Court.[25] Of course, there is already a considerable gulf between the reality of Japan’s defense posture and any reasonable reading of Article 9. While the accepted interpretation of Article 9 in Japan is that Japan is entitled to defend itself, and thus some minimal level of military force for self-defense is permitted under Article 9, the fact is that Japan’s military spending is the 4th or 5th largest in the world, (depending on how one estimates the defense expenditures of China), and it has the most sophisticated navy in Asia.[26] It is in the process of developing the two-tiered BMD system discussed above, and recent headlines reflect how threatening Russia views the deployment of similar BMD systems in Eastern Europe. It is often argued that BMD systems are not purely defensive, as they increase the vulnerability of those states whose deterrence power is thereby undermined. Even if one accepts that some minimal level of defense capability is permitted, therefore, it becomes very difficult to reconcile Japan’s current military capability with the language of Article 9(2) renouncing the maintenance of military forces or other war potential. As the gulf between the constitutional norm and the reality increases, of course, the integrity and normative power of the Constitution is undermined. The great danger in the effort to develop a further “re-interpretation” that would essentially make nonsense of the constitutional provision is that it would undermine and erode the validity of the constitutional order much more broadly. If the government can ignore, or interpret out of existence, one provision, what is to stop it from so subverting any other provision? How are citizens to have any confidence in the rule of law and the value of constitutional rights if the government can, in Orwellian fashion, define constitutional norms into oblivion? Moreover, it undermines the efforts to convince both Japan’s citizens and its neighbors that the amendments proposed for Article 9 in the legitimate amending process are designed merely to allow Japan to play a more responsible role in international society as a mature constitutional democracy. If it reveals itself willing to disregard or distort existing constitutional constraints on its military power, how is anyone to take at face value the representations made by the government regarding the measured developments proposed in the amending process? Herein lie the grave dangers inherent in Mr. Abe’s announced “re-interpretation” process. Conclusion The Constitution of Japan has operated without amendment for a longer period than any other constitution in modern history. There are some good reasons to consider amending it now. Concerns over the growing gap between the clear language of Article 9 and the reality of Japan’s defense posture and capabilities is one. The desire to have Japan play a more active role in the international collective security system, in order to bring Japan’s defense posture more in line with its treaty obligations, and to raise its diplomatic influence to a level that is commensurate with its economic power, is another. The governing party has tabled amendment proposals, and the government has developed the legislative procedures and a timetable, for amending the Constitution. The intervening period should be used for thorough debate of the competing ideas and for careful consideration of not only whether Article 9 should be amended, but if so, precisely how it should be amended and what additional provisions may be required to ensure democratic accountability, civilian control, and other constraints on exactly how the military may be used. If the government fails to achieve the amendments it desires, however, then it will have to accept that that is the will of the people of Japan. The government ought not to be permitted to hedge against that possibility by developing an alternate track for changing the constitutional constraints on defense policy, a process that circumvents the legitimate amending procedures and frustrates the sovereign will of the people. It is a process that appears to be designed to both exploit and further entrench the weakness of the courts when it comes to questions of Article 9, yet it is the courts that hold the legitimate authority to interpret the Constitution. It is particularly dangerous for the government to employ extra-constitutional bodies to develop new interpretations that may be used to usurp or suppress the voice of the courts in interpreting the Constitution. Ultimately, it is not overstating the issue to say that for all these reasons, the process of changing the Constitution by “expert re-interpretation” could do serious violence to the constitutional order of Japan. And while the primary reason for opposing the process should be to prevent such harm to the constitutional order, the impact of the process on Japan’s neighbors, and thus Japan’s foreign policy, should not be overlooked. A perception (and one that is likely to be exploited by nationalists elsewhere) that Japan is re-militarizing through extra-constitutional means, and that Japan’s so-called “Pacifist Constitution” has lost its power to constrain nationalist governments, would be very destabilizing for the region, and inimical to Japan’s national security interests.

#### Re-interpreting article 9 results in war China over the Senkaku islands – historical factors and economic interdependence doesn’t check

Carpenter 13 (Ted, senior fellow at the Cato Institute, June 17 2013, “Japan’s Containment Strategy against China”, CATO, <http://www.cato.org/publications/commentary/japans-containment-strategy-against-china>)

Japan has begun to play a more vigorous role in East Asia’s security affairs, and China is responding with a mixture of wariness and outright hostility. That development puts the United States in an awkward position. Japan is Washington’s most important political and military ally in the region, as well as a long-standing, crucial economic partner. But China’s economic importance to the United States, already substantial, is likely to become even more so in the coming years. And U.S. officials understand that China is a fast-rising geopolitical player in East Asia and globally. “ Washington needs to proceed with great caution, lest it find itself in the middle of a growing power struggle between Japan and China.” Washington wants to maintain friendly, productive relations with both countries, but that task may prove extremely challenging in the coming decade. Because of historical factors, especially Imperial Japan’s brutal treatment of a weak China during the 1930s and early 1940s, Sino-Japanese relations have typically been rather cool, despite substantial economic ties. Overall bilateral relations have become even frostier over the past year or so. The proximate cause of that chill is the territorial dispute over the Diaoyu/Senkaku Islands in the East China Sea. That simmering quarrel flared in mid and late 2012 when the Japanese government purchased some of the islands from a private owner and proceeded to tighten its administrative control. Anti-Japanese riots erupted in several Chinese cities during that period. Chinese leaders see Tokyo’s actions regarding the islands as symptomatic of a broader, worrisome trend in the country’s behavior. The emergence of the nationalistic Shinzo Abe as Japan’s prime minister adds to Beijing’s concerns. Indications that Tokyo might end its self-imposed limit of spending no more than one percent of the country’s annual gross domestic product on the military provoke strongly negative reactions in Beijing. The same is true of signs that Abe’s government might seek to modify article 9 of Japan’s post-World War II constitution, which places severe restrictions on the country’s use of military force. “Given the Japanese government’s refusal to apologize for Japan’s aggression during World War II, any revision of Japan’s constitution,” an editorial in China Daily warned, would be “a cause for concern in the rest of the world.” Japan is fast embracing a more active foreign policy, especially with regard to security matters, and much of the policy appears aimed at curbing China’s power and influence in the region. Even ostensibly non-military measures seem to have that goal. In late May, Japan canceled the remaining debt that Myanmar owed to Tokyo and then extended a new loan for $504 million. That was an unsubtle effort to dilute Beijing’s influence with a long-standing economic and security client. Japan’s direct moves regarding security issues have spooked Chinese leaders even more, as the Japanese government has established or strengthened security ties with several countries. In January 2013, Tokyo and Manila agreed to enhance their cooperation on maritime security. Collaboration also is growing between Japan and both Singapore and Australia on such matters. In the recent summit between Prime Minister Abe and Indian Prime Minister Manmohan Singh, the first steps were taken toward cooperation between their two countries on the highly sensitive issue of nuclear technology. Tokyo’s rhetoric is also noticeably more assertive—and not just on its territorial dispute with China. In early April, former defense minister Shigeru Ishiba, a leading figure in the governing Liberal Democratic Party, insisted that Japan had a right to launch preemptive military strikes against North Korea—another prominent Chinese client—if officials concluded that an act of aggression was imminent. China has recently softened its overall policy in East Asia in an attempt to appear more reasonable to its neighbors and to focus attention (and suspicion) on Japan’s ambitions. Speaking to the Shangri-La Dialogue, an annual security conference in Singapore, in early June, Lt. Gen. Qi Jianguo, deputy chief of staff of the People’s Liberation Army, affirmed that China recognized Japan’s sovereignty over Okinawa and the other islands in the Ruyuku chain. His statement repudiated an earlier editorial in People’s Daily, the Chinese Communist Party’s main publication, which questioned Japan’s historical claim to those islands. The People’s Daily comment had sparked widespread worries that the Diaoyu/Senkaku dispute might escalate dramatically, with unpleasant ramifications for the entire region. Beijing’s diplomatic olive branch, though, is accompanied by pressure on the United States to rein-in its Japanese ally. And there is an undertone of suspicion that Washington is actually encouraging Tokyo’s bolder stance. China rebuked then-Secretary of State Hillary Clinton for supporting Japan’s right to administer the disputed islands. “We urge the U.S. side to take a responsible attitude towards dealing with the Diaoyu Islands,” stated Foreign Ministry spokesman Hong Lei, adding that U.S. officials needed to “be cautious in what they say and do and take concrete steps to maintain regional stability.” Other Chinese opinion leaders have been more caustic regarding U.S. policy. In October, veteran Chinese diplomat Chen Jia charged that Washington was deliberately using Japan as a strategic tool aimed at containing China. Chen, who earlier served as China’s ambassador to Japan, accused the United States of encouraging the revival of Japanese militarism. The Obama administration will continue to be buffeted by such conflicting pressures from East Asia’s two leading powers. Japan is insisting on stronger backing from its American ally, not only regarding its territorial dispute with China but on such matters as dealing with North Korea. Tokyo is seeking nothing less than Washington’s endorsement of a more active, vigorous Japanese security role in East Asia. It has already secured U.S. backing for the Diaoyu/Senkaku dispute, and it is clear that the Obama administration sees Japan as a crucial component of the U.S. strategic pivot to East Asia. But if the United States embraces a more assertive Japanese regional security role, it risks antagonizing an already worried and annoyed China. Washington needs to proceed with great caution, lest it find itself in the middle of a growing power struggle between Japan and China.

#### Results in escalation and nuclear war – the U.S. will be drawn in

Eland 12/10/13 (Ivan, senior fellow and director of the center on peace and liberty at the independent institute, Ph.D in Public Policy – George Washington University, “Stay Out of Petty Island Disputes in East Asia” <http://www.huffingtonpost.com/ivan-eland/stay-out-of-petty-island-_b_4414811.html>)

One of the most dangerous international disputes that the United States could get dragged into has little importance to U.S. security -- the disputes nations have over small islands (some really rocks rising out of the sea) in East Asia. Although any war over these islands would rank right up there with the absurd Falkland Islands war of 1982 between Britain and Argentina over remote, windswept sheep pastures near Antarctica, any conflict in East Asia always has the potential to escalate to nuclear war. And unlike the Falklands war, the United States might be right in the atomic crosshairs. Of the two antagonists in the Falklands War, only Britain had nuclear weapons, thus limiting the possibility of nuclear escalation. And although it is true that of the more numerous East Asian contenders, only China has such weapons, the United States has formal alliance commitments to defend three of the countries in competition with China over the islands -- the Philippines, Japan, and South Korea -- and an informal alliance with Taiwan. Unbeknownst to most Americans, those outdated alliances left over from the Cold War implicitly still commit the United States to sacrifice Seattle or Los Angeles to save Manila, Tokyo, Seoul, or Taipei, should one of these countries get into a shooting war with China. Though a questionable tradeoff even during the Cold War, it is even less so today. The "security" for America in this implicit pledge has always rested on avoiding a faraway war in the first place using a tenuous nuclear deterrent against China or any other potentially aggressive power. The deterrent is tenuous, because friends and foes alike might wonder what rational set of U.S. leaders would make this ridiculously bad tradeoff if all else failed. Of course these East Asian nations are not quarreling because the islands

or stone outcroppings are intrinsically valuable, but because primarily they, depending on the particular dispute involved, are in waters that have natural riches -- fisheries or oil or gas resources. In one dispute, the Senkaku or Diaoyu dispute -- depending on whether the Japanese or Chinese are describing it, respectively -- the United States just interjected itself, in response to the Chinese expansion of its air defense zone over the islands, by flying B-52 bombers through this air space to support its ally Japan. The United States is now taking the nonsensical position that it is neutral in the island kerfuffle, even though it took this bold action and pledged to defend Japan if a war ensues. Predictably and understandably, China believes that the United States has chosen sides in the quarrel.

## 2AC

### Allies

#### **--No impact to unit cohesion – commanders will adapt to litigation to maintain chain of command**

Dunlap 9 (Charles J., Major General, USAF, is Deputy Judge Advocate General, Headquarters U.S. Air Force, “Lawfare: A Decisive Element of 21st-Century Conflicts?” Joint Force Quarterly – issue 54, 3d

quarter 2009, www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA515192‎)

Of course, the availability of expert legal advice is absolutely necessary in the age of lawfare. The military lawyers (judge advocates) responsible for providing advice for combat operations need schooling not only in the law, but also in the characteristics of the weapons to be used, as well as the strategies for their employment. Importantly, commanders must make it unequivocally clear to their forces that they intend to conduct operations in strict adherence to the law. Helping commanders do so is the job of the judge advocate. Assuring troops of the legal and moral validity of their actions adds to combat power. In discussing the role of judge advo- cates, Richard Schragger points out: Instead of seeing law as a barrier to the exercise of the clients power, [military lawyers] understand the law as a prerequisite to the meaning- ful exercise of power.... Law makes just wars possible by creating a well-defined legal space within which individual soldiers can act without resorting to their own personal moral codes}\* That said, commanders should aim not to have a judge advocate at the elbow of every rifleman, but rather to imbue troops with the right behaviors so they instinctively do the right thing on the battlefield. The most effective way is to carefully explain the enemy's lawfare strategies and highlight the pragmatic, real-world impact of Abu Ghraib-type incidents on the overall success of the mission. One of the most powerful motivators of troop conduct is the desire to enhance the security of fellow soldiers. Making the connection between adherence to law and troop safety is a critical leader- ship task. Integral to defensive lawfare operations is the education of the host nation population and, in effect, the enemy themselves. In many 21\*-century battlespaces, these audiences are not receptive to what may appear as law imposed by the West. In 1999, for example, a Chinese colonel famously argued that China was "a weak country, so do we need to fight according to your rules? No. War has rules. but those rules arc set by the West……[I]f you use those rules, then weak countries have no chance." To counter such beliefs, it is an essential lawfare technique to look for touchstones within the culture of the target audience. For example, in the early 1990s, the International Committee of the Red Cross produced an illustrated paperback that matched key provi- sions of the Geneva Convention "with bits of traditional Arab and Islamic wisdom!\*" Such innovations ought to be reexamined, along with creative ideas that would get the messages to the target audience. One way might be to provide audio cassettes in local languages that espouse what arc really Geneva Convention values in a context and manner that tit with community religious and cultural imperatives. The point is to delegitimize the enemy in the eyes of the host nation populace. This is most effectively accomplished when respected indigenous authorities lead the effort. Consider Thomas Friedman's favor- able assessment to the condemnation by Indian Muslim leaders to the November 2008 Mumbai attacks: The only effective way to stop (terrorism) is tor "the village"—the Muslim community itself— to say "no more" When a culture and a faith community delegitimize this kind of behavior, openly, loudly and consistently, it is more impor- tant than metal detectors or extra police.\* Moreover, it should not be forgotten that much of the success in suppressing violence in Iraq was achieved when Sunnis in Anbar Province and other areas realized that al Qaeda operatives were acting contrary to Iraqi, and indeed Islamic, sensibilities, values, and law. It also may be possible to use educa- tional techniques to change the attitudes of enemy lighters as well. Finally, some critics believe that "lawfare\* is a code to condemn anyone who attempts to use the courts to resolve national security issues. For example, lawyer-turned- journalist Scott Horton charged in the luly 2007 issue ot Harper's Magazine that "lawfare theorists\* reason that lawyers who present war-related claims in court "might as well be terrorists themselves."™ Though there are those who object to the way the courts have been used by some litigants.\*0 it is legally and morally wrong to paint anyone legitimately using legal processes as the "enemy." Indeed, the courageous use of the courts on behalf of unpopular clients, along with the insistence that even our vilest enemies must be afforded due process of law. is a deeply embedded American value, and the kind of principle the Armed Forces exist to preserve. To be clear, recourse to the courts and other legal processes is to be encouraged: if there are abuses, the courts are well equipped to deal with them. It is always better to wage legal battles, however vicious, than it is to fight battles with the lives of young Americans. Lawfare has become such an indel- ible feature of 21st-century conflicts that commanders dismiss it at their peril. Key leaders recognize this evolution. General James Jones. USMC (Ret.), the Nation's new National Security Advisor, observed several years ago that the nature of war has changed. "It's become very legalistic and very complex." he said, adding that now "you have to have a lawyer or a dozen."\*' Lawfare. of course, is about more than lawyers, it is about the rule of law and its relation to war. While it is true, as Professor Eckhardt maintains, that adherence to the rule of law is a "center of gravity" for democratic societ- ies such as ours—and certainly there arc those who will try to turn that virtue into a vulnerability—we still can never forget that it is also a vital source of our great strength as a nation." We can—and must—meet the chal- lenge of lawfare as effectively and aggressively as we have met every other issue critical to our national security.

### 2AC – Circumvention

#### Ex Post review constrains executive behavior

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)

**Since 9/11,** **the CIA and Joint Special Operations Command** (JSOC) **have used armed drones** to kill thousands of people **in places far removed from conventional battlefields**. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. **Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue**, **those aiming to bring the program in line with our legal traditions** and moral intuitions **should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. 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 degreeof **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.

#### Obama thinks there will be political backlash and his lawyers won’t go for bad arguments

Bradley and Morrison 13 (Curtis A. Bradley\* and Trevor W. Morrison\*\*113 Colum. L. Rev. 1097, May, ESSAY: PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, lexis)

In situations where legal plausibility or some similar standard is the touchstone, determining noncompliance can be especially difficult. If the correct view of the practice-based law of presidential power is often hard to discern, determining what views are reasonable on such matters can be even more challenging. Such judgments will often (indeed, perhaps always) be debatable. But that difficulty is not unique to this topic; it is a feature of legal argumentation generally. In any event, the fact that the legality of a particular presidential action may be debatable does not mean that law cannot operate as a constraint in that context. 78 Even if the President is advised that there is a minimally plausible argument in favor of the action in question, the law might still constrain him not to act if the argument is perceived as being too weak. The relative perceived strength of a legal argument, in other words, might have a constraining effect. 79 [\*1118] Consider, for example, the confrontation that developed in the summer of 2011 between the Obama Administration and Republican leaders in Congress over whether to increase the statutory debt ceiling. When a legislative extension appeared unlikely, some commentators suggested, based on either novel constitutional arguments or pure policy grounds, that the President could and should unilaterally exceed the debt ceiling. 80 Others insisted that such unilateral action would be unconstitutional because it would usurp Congress's constitutional authority "to borrow money on the credit of the United States." 81 Historical practice was potentially relevant to the issue in that, as noted by Professor Erwin Chemerinsky, "throughout American history, the debt ceiling always has been set and raised by statute, not executive decision-making." 82 President Obama did not attempt to address the issue unilaterally and instead continued to seek a legislative extension of the ceiling, which he ultimately obtained. In explaining his decision, Obama stated publicly that he had consulted with his lawyers about the argument that he had the authority to extend the debt ceiling unilaterally, and noted that "they're not persuaded that that is a winning argument." 83 [\*1119] When the debt ceiling issues returned in late 2012 and early 2013, a similar scenario unfolded. Some commentators and Democrats in Congress suggested a variety of legal arguments that Obama could invoke in support of unilateral action. 84 But the President appeared once again to wave off these arguments, and executive branch officials cited legal considerations in support of that decision. 85 [\*1120] In light of the novelty of the issue, the conclusion of executive branch lawyers that there was no "winning argument" might not have reflected a belief that a unilateral extension of the debt ceiling was disallowed by a single correct view of the law. Instead, it is possible that they acknowledged some uncertainty in this area but were still skeptical about the unilateral authority arguments. That skepticism might have entailed a conclusion that the arguments exceeded the boundaries of even mere plausibility, or it might have entailed a judgment that the arguments, though minimally plausible to some executive lawyers, risked exposing the President to political sanctions from congressional or other opponents who might reasonably characterize the state of the law differently and claim that he had acted illegally. Either way, if the perceived weakness of the arguments contributed to the President's decision not to attempt a unilateral extension, the law would have had a constraining effect even though its precise contours were uncertain. 86 To be sure, an administration determined to pursue a particular agenda aggressively might treat bare plausibility as the only legal constraint and also push the limits of plausibility beyond where others would go. Some observers might see certain actions of the George W. Bush Administration in the war on terror as examples of such an approach. 87 As a general matter, however, if in areas of legal uncertainty the relative weakness of a legal argument makes it less likely that the President will pursue the action in question, then uncertainty about the correct view of the law would not, by itself, prevent the law from operating as a constraint. 88

#### All your evidence assumes Obama wants to circumvent – not true

Baker 2013(Peter, , New York Times, “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.”

### AT: No Access

#### Solves – they get a megaphone

Murphy and Radsan 13 (Richard W. Murphy Texas Tech University School of Law Afsheen John Radsan William Mitchell College of Law “Notice and an Opportunity to Be Heard Before the President Kills You,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2293686)

On many occasions, the federal courts have intoned that the core of due process is notice and an opportunity to be heard before the government deprives a person of life, liberty, or property.187 The central idea is to “ensure that the person threatened with loss has an opportunity to present his side of the story to a neutral decisionmaker at a time when the deprivation can still be prevented.”188 This promotes accuracy insofar as it enables a targeted person to provide pertinent information about adjudicative facts. It also appeals to the deep-seated intuition that fairness and justice require the government to let persons subject to its power “have their say” before that power is deployed against them.189 Promoting accuracy, fairness, and legitimacy, in addition to serving the private interests of the targets, also serves obvious public interests. The government should base its actions—especially those that will harm targeted individuals—on an accurate understanding of the adjudicative facts. Holding other factors equal, it is better to live under a government that is both fair and appears to be fair than to live under a government that either wields coercive power arbitrarily or appears to do so. Even so, process carries obvious costs. As Justice Thomas intimated in his Hamdi dissent,190 extending notice and an opportunity to be heard to a suspected terrorist poses problems. Notice might allow the target of a missile strike to “get away.” Notice might also endanger sensitive sources and methods of intelligence if the target is able to track down how the United States discovered his identity and his activities. Further, the “opportunity to be heard” could prove counterproductive if poorly designed to fit the issues and concerns of targeting. Importing hearsay limitations into the proceedings, for example, might put undue strain on the government’s ability to make its case and might lead to excessive false negatives.191 These sorts of problems highlight that many forms of formal process for targeted killing would be impracticable and unreasonable. Due process is nothing if not flexible, however. The requirement, for instance, of a pre-deprivation hearing is commonly characterized as a prime element of due process. The Court nonetheless sidesteps this element in a variety of emergency situations, approving procedures that lack pre-deprivation hearings for seizure of enemy property in wartime,192 seizure and destruction of food unfit for human consumption,193 and suspension from public school of students “whose presence poses a continuing danger to persons or property.”194 Where a pre-deprivation hearing poses too many problems, post-deprivation procedures may suffice. With this sort of flexibility, the question is not whether some forms of process for targeted killing would be unreasonable and thus “undue.” No, the real due-process question is whether any forms of notice and an opportunity to be heard might be practicable, reasonable, and beneficial. Consider the following possibility: The United States should maintain a public list of members of QTA whom the United States has concluded pose a severe enough threat to merit targeting. To the extent security concerns reasonably permit, the United States should also provide public justifications for placements on the list. Ayman al-Zawahiri, the leader of al Qaeda, would presumably be the first name. In our interconnected age, publication on the Internet would give notice to listed persons that they may be targeted as well as partial notice of the grounds supporting their selection. And a statement in the Federal Register might be added for good measure. One can think of this proposal as formalizing and generalizing the approach to notice that the United States government informally extended to al-Awlaki himself. Somebody in government leaked the highly classified information that al-Awlaki was on the kill list. One motive may have been to provide a form of notice consistent with his due process rights. If that was a reason for the government’s disclosure, it provides tacit support from the United States that the kill list could and should be published. Along with notice by publication would come at least an informal opportunity to be heard. As Judge Bates noted in his al Aulaqi opinion, al-Awlaki knew perfectly well that he had been targeted by the United States. If he had wished, he could have contested this targeting himself: either in court after turning himself in or via video-conferencing or some other means.195 Building on Judge Bates’ point, it bears repeating that the United States’ conflict with QTA is a highly public matter in many respects. The impact of a drone strike, unlike a brush pass between an intelligence officer and a human source, cannot be hidden from all eyes. Persons who appear on the proposed list would have a megaphone for responding to eager audiences among journalists and human rights workers. This opportunity to respond would not be a perfect substitute for formal proceedings before a neutral judge, but it would foster a form of public accountability that the United States could not ignore.

### 2AC Restriction

#### 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.

#### 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.”

#### Their interpretation is flawed

#### A. Over limits- core cases revolve around regulating behavior not banning policies. Their interp eliminates topic lit.

#### B. Affirmative Ground-Ban policies are dead against agent counterplans. Err aff because the range of good affs is small and the neg is strapped with generics.

#### ---Reasonability-competing interpretations causes substance crowd. Good is good enough when the topic is already limited and our aff is squarely in the lit

#### No effects voter – the affirmative garners all solvency from the topical, fiated parts of the plan – the PQD advantages are about the grounds of the case which are a necessary part of any judicial restriction

#### Not a voter – reject the portions of the affirmative that are effectual, not the team

### 2AC – Counterplan

#### Links to politics- Obama will have to spend capital defending the process- specifically drains focus away from other agenda items\*\*

McNeal 13 (Gregory McNeal, Five Ways to Reform the Targeted Killing Program, April 23, 2013, <http://www.lawfareblog.com/2013/04/five-ways-to-reform-the-targeted-killing-program/>)

Reform 5: Establish an Independent Review Board The transparency related accountability reforms specified above have the ability to expose wrongdoing; however that’s not the only goal of accountability. Accountability is also designed to deter wrongdoing. By exposing governmental activity, transparency oriented reforms can influence the behavior of all future public officials—to convince them to live up to public expectations. The challenge associated with the reforms articulated above is a bias towards the status quo. Very few incentives exist for elected officials to exercise greater oversight over targeted killings and interest group advocacy is not as strong in matters of national security and foreign affairs as it is in domestic politics. To overcome the bias towards the status quo, Congress should consider creating an independent review board composed of individuals selected by the minority and majority leadership of the House and Senate, thus ensuring bi-partisan representation. The individuals on the review board should be drawn from the ranks of former intelligence and military officers, lending their report enhanced credibility. These individuals should be responsible for publishing an annual report analyzing how well the government’s targeted killing program is performing. The goal would be a strategic assessment of costs and benefits, including the fiscal costs, potential blowback, collateral damage and other details that are currently held deep within the files of the targeting bureaucracy. This board, like many prior commissions can be successful because they signal the executive’s interest in maintaining credibility and winning the support of the public. It also shows his willingness to give up control of information that allows others to subject the executive branch to critiques. Similarly, Congress may prefer this solution because it allows them to claim they are holding the executive branch accountable while at the same time shifting the blame for poor accountability decisions to others. The board could review the program in its entirety, or could conduct audits on specified areas of the program. The challenge associated with such an approach is similar to the oversight challenges we see today. Will the agencies provide information to the board members? Maybe not. However, the dynamic here is a bit different, and it suggests that that agencies may cooperate. First, for the board to be successful it will require the president to publicly support it from the outset. A failure on his part to do so may impose political costs on him by suggesting he has something to hide. That cost may be more than he wants to bear. Second, once the president publicly binds himself to the commission, he will need to ensure it is successful or he will again suffer political costs. Those costs may turn into an ongoing political drama, drawing attention away from his other public policy objectives. Third, the board members themselves, once appointed, may operate as independent investigators who will have an interest in ensuring that they are not stonewalled. Fourth, because these members will be appointed by partisan leaders in Congress, the individuals chosen are likely to have impressive credentials, lending them a platform for lodging their critiques.

#### Wouldn’t actually check executive power or increase transparecy

ACLU et al 13 (Letter on Behalf of the American Civil Liberties Union, Amnesty International, Center for Human Rights & Global Justice, Center for Civilians in Conflict, Center for Constitutional Rights, Global Justice Clinic, Human Rights First, Human Rights Institute, Human Rights Watch, Open Society Foundations, Re: Shared Concerns Regarding U.S. Drone Strikes and Targeted Killings, April 11,

http://www.emptywheel.net/wp-content/uploads/2013/04/130412-Drone-Letter.pdf)

Judicial review is a central pillar of checks and balances. It is essential for accountability and transparency. Yet, the administration’s position is that judicial review is “not appropriate”5 in targeted killings cases and it has invoked broad interpretations of the political question and immunity doctrines, Bivens special factors, and the state secrets privilege to obstruct litigation. We do not believe that accountability and transparency will be improved by recent proposals to establish a FISA-like court to sanction lethal targeting operations.6 On the contrary, a special targeted killing court would give a veneer of judicial review to decisions to launch lethal strikes without offering a meaningful check on executive power. Instead, we urge the administration to cease making broad claims of non-justiciability or political question, to prevent cases alleging human rights or constitutional violations from being heard on their merits.

#### Breaking the PQD is key to solve climate change

Flynn 13 (James, J.D. Candidate, 2013, Georgia State University College of Law; Assistant Legislation Editor, Georgia State University Law Review; Visiting Student, Florida State University College of Law, “CLIMATE OF CONFUSION: CLIMATE CHANGE LITIGATION IN THE WAKE OF AMERICAN ELECTRIC POWER V. CONNECTICUT”, lexis, accessed 1/5/2014)

2. Turning Up the Heat on Congress: Litigating to Legislate The only solution to anthropogenic global warming is a concerted global effort. 264 Such an effort cannot succeed without the leadership, or at least support, of the United States. 265 Real change in the United States requires comprehensive legislation that covers all facets of global warming: greenhouse gas emissions, land use, efficiency, and sustainable growth. In addition to maximizing time until the EPA either issues regulations or is prevented from doing so by Congress, litigation advances the goal of such comprehensive legislation in three ways. First, litigation keeps the pressure on fossil fuel companies and other large emitters. Comprehensive legislation is a near impossibility as long as the largest contributors to global greenhouse gas emissions are able to exert powerful control over the nation's [\*862] energy policy and the climate change discussion. 266 While the companies have the financial resources to battle in court, it is imperative that advocates and states make them do so. One need only look at the tobacco litigation of the 1960s through the 1990s to understand that success against a major industry is possible. 267 Here, though, the stakes are even higher. The chances of obtaining a largescale settlement from the fossil fuel industry is likely smaller now that the Court has ruled that some federal common law nuisance claims are displaced, because lower courts may hold that nuisance claims for money damages are also displaced. 268 However, advocates of climate change legislation should keep trying to obtain such a settlement through other tort remedies. A substantially damaging settlement may encourage fossil fuel companies to reposition their assets into more sustainable technologies to avoid more settlements, thus minimizing future emissions. Alternatively, if the fossil fuel companies feel threatened enough, they may begin to use their clout to persuade Congress to pass comprehensive legislation to protect their industry from such wide-ranging suits. 269 Second, litigation keeps the issue in the public consciousness during a time when the media is failing at its responsibilities to the public. 270 The media's coverage of climate change has been both inadequate and misleading. 271 Indeed, some polls suggest Americans [\*863] believe less in climate change now than just a few years ago. 272 Litigation, especially high-profile litigation, forces the issue into the public sphere, even though it may receive a negative connotation in the media. The more the public hears about the issue, the greater chance that people will demand their local and state politicians take action. Finally, litigation sends a clear message to Congress that simple appeasements will not suffice. 273 Comprehensive legislation is needed--legislation that mandates consistently declining emissions levels while simultaneously propping up replacement sources of energy. 274 Fill-in measures, like the EPA's authority to regulate emissions from power plants, are not sufficient. Humans need energy, and there can be no doubt that we must strike a balance between energy needs and risks to the environment. Catastrophic climate change, however, is simply a risk that we cannot take; it overwhelms the short-term benefits we receive from the burning of fossil fuels. 275 Advocates and states must demonstrate to Congress [\*864] through continuing litigation that the issue is critical and that plaintiffs like those in Kivalina and Comer are suffering genuine losses that demand redress that current statutes do not currently provide. CONCLUSION American Electric proved less important for the precedent it set than for the questions it left unanswered. While courts wrestled over standing, the political question doctrine, and displacement in climate change nuisance cases in the years preceding American Electric, the Supreme Court relied only on the clear displacement path illuminated by its earlier decision in Massachusetts. While the decision in American Electric narrowed the litigation options that climate change advocates have at their disposal, it subtly sent a message to Congress that greater federal action is needed. In writing such a narrow ruling, Justice Ginsburg also sent a message to states and advocates--whether intentionally or not--that climate change litigation is not dead. Until Congress enacts comprehensive climate change legislation, global warming lawsuits will, and must, continue.

#### Extinction

Deibel-prof IR National War College-7—Prof IR @ National War College (Terry, “Foreign Affairs Strategy: Logic for American Statecraft,” Conclusion: American Foreign Affairs Strategy Today)

Finally, there is one major existential threat to American security (as well as prosperity) of a nonviolent nature, which, though far in the future, demands urgent action. It is the threat of global warming to the stability of the climate upon which all earthly life depends. Scientists worldwide have been observing the gathering of this threat for three decades now, and what was once a mere possibility has passed through probability to near certainty. Indeed not one of more than 900 articles on climate change published in refereed scientific journals from 1993 to 2003 doubted that anthropogenic warming is occurring. “In legitimate scientific circles,” writes Elizabeth Kolbert, “it is virtually impossible to find evidence of disagreement over the fundamentals of global warming.” Evidence from a vast international scientific monitoring effort accumulates almost weekly, as this sample of newspaper reports shows: an international panel predicts “brutal droughts, floods and violent storms across the planet over the next century”; climate change could “literally alter ocean currents, wipe away huge portions of Alpine Snowcaps and aid the spread of cholera and malaria”; “glaciers in the Antarctic and in Greenland are melting much faster than expected, and…worldwide, plants are blooming several days earlier than a decade ago”; “rising sea temperatures have been accompanied by a significant global increase in the most destructive hurricanes”; “NASA scientists have concluded from direct temperature measurements that 2005 was the hottest year on record, with 1998 a close second”; “Earth’s warming climate is estimated to contribute to more than 150,000 deaths and 5 million illnesses each year” as disease spreads; “widespread bleaching from Texas to Trinidad…killed broad swaths of corals” due to a 2-degree rise in sea temperatures. “The world is slowly disintegrating,” concluded Inuit hunter Noah Metuq, who lives 30 miles from the Arctic Circle. “They call it climate change…but we just call it breaking up.” From the founding of the first cities some 6,000 years ago until the beginning of the industrial revolution, carbon dioxide levels in the atmosphere remained relatively constant at about 280 parts per million (ppm). At present they are accelerating toward 400 ppm, and by 2050 they will reach 500 ppm, about double pre-industrial levels. Unfortunately, atmospheric CO2 lasts about a century, so there is no way immediately to reduce levels, only to slow their increase, we are thus in for significant global warming; the only debate is how much and how serous the effects will be. As the newspaper stories quoted above show, we are already experiencing the effects of 1-2 degree warming in more violent storms, spread of disease, mass die offs of plants and animals, species extinction, and threatened inundation of low-lying countries like the Pacific nation of Kiribati and the Netherlands at a warming of 5 degrees or less the Greenland and West Antarctic ice sheets could disintegrate, leading to a sea level of rise of 20 feet that would cover North Carolina’s outer banks, swamp the southern third of Florida, and inundate Manhattan up to the middle of Greenwich Village. Another catastrophic effect would be the collapse of the Atlantic thermohaline circulation that keeps the winter weather in Europe far warmer than its latitude would otherwise allow. Economist William Cline once estimated the damage to the United States alone from moderate levels of warming at 1-6 percent of GDP annually; severe warming could cost 13-26 percent of GDP. But the most frightening scenario is runaway greenhouse warming, based on positive feedback from the buildup of water vapor in the atmosphere that is both caused by and causes hotter surface temperatures. Past ice age transitions, associated with only 5-10 degree changes in average global temperatures, took place in just decades, even though no one was then pouring ever-increasing amounts of carbon into the atmosphere. Faced with this specter, the best one can conclude is that “humankind’s continuing enhancement of the natural greenhouse effect is akin to playing Russian roulette with the earth’s climate and humanity’s life support system. At worst, says physics professor Marty Hoffert of New York University, “we’re just going to burn everything up; we’re going to heat the atmosphere to the temperature it was in the Cretaceous when there were crocodiles at the poles, and then everything will collapse.” During the Cold War, astronomer Carl Sagan popularized a theory of nuclear winter to describe how a thermonuclear war between the Untied States and the Soviet Union would not only destroy both countries but possibly end life on this planet. Global warming is the post-Cold War era’s equivalent of nuclear winter at least as serious and considerably better supported scientifically. Over the long run it puts dangers from terrorism and traditional military challenges to shame. It is a threat not only to the security and prosperity to the United States, but potentially to the continued existence of life on this planet

### 2AC – NSA Politics

#### 1NC link is a docket argument about debates on the senate floor over legislation – plan doesn’t trigger it – we’re the DC Court

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.

#### Court action shields Obama from controversy

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

#### Not a DA- too many bills, zero chance anything comes up for a vote this year

Brown 3-27 (Hayes, Privacy Advocates Skeptical Of Obama’s New NSA Reforms, http://thinkprogress.org/world/2014/03/27/3419777/nsa-reform-schiff/)

There’s also the legislative component to the proposal that has the privacy community concerned. “The executive branch doesn’t need Congress’s permission to end a practice that it never should have started,” the Brennan Center’s Elizabeth Goitein said. “The very fact that the president’s plan requires legislation means he has something in mind other than simply ending the program.” At present, there are several bills circulating in Congress designed to reform the NSA, from the sweeping USA FREEDOM Act — which many of the privacy groups criticizing the new proposal are backing — to more modest proposals focused on pieces of the problem. Rep. Adam Schiff (D-CA), a senior member of the House Intelligence Committee, who put forward a bill in January designed to take similar action as the President’s newly-announced plans. In an interview with ThinkProgress, Schiff said that the administration should move forward on ending bulk collection even without Congress acting. “The administration is proposing that the carriers main their data in a uniform format,” Schiff said. “If we were going to compel that, you might need legislation. But assuming we were going to defray the cost of the carriers to make those changes, that’s something that can be negotiated contractually with the carriers in a process that can begin now. So I would encourage the administration to begin the process of transitioning.” With the glacial pace at which Congress has operated lately, there’s reason to be concerned about the likelihood of any bill passing soon. “Given that this legislation will not be in place by March 28 and given the importance of maintaining this capability, I have directed the Department of Justice to seek a 90-day reauthorization of the existing program,” Obama said in his statement Thursday. Since the revelation of the Section 215 collection program last June, there have been three such 90-day renewals. And in a briefing call this morning, a senior administration official tacitly confirmed that should Congress not act, the renewals of the program in its current state could continue on indefinitely.

#### Link non-unique – Ukraine

Huntley 3/24 (Steven, “Obama fails to sell foreign policy”, http://www.suntimes.com/news/huntley/26412108-452/obama-fails-to-sell-foreign-policy.html)

President Barack Obama is at the Hague trying to build unity among European allies for tough sanctions against Russia for its abuse of Ukraine. Hanging over his effort will be the question of why Obama didn’t shore up support at home for his foreign policy with Congress? Surely he would be in a much stronger position in talking to European leaders, many wary of endangering trade, commercial and energy ties with Moscow, if he could point to a public display of bipartisan resolve with leaders of Congress. In times of overseas crisis — and Russia’s unlawful annexation of Crimea is that — a president is wise to orchestrate homefront solidarity before launching foreign policy initiatives. All evidence points to Russian President Vladimir Putin doing just that before he ordered troops to take over Crimea and organized a sham vote of residents of the peninsula, a majority of them ethnic Russians, asking for Moscow to annex Crimea. Putin had Russia’s media, most of it friendly or controlled by him, to whip up passions among Russians against America and for retaking an area long Russian until given by the Soviet Union to Ukraine in 1954. Being an authoritarian ruler, Putin had his secret police suppress dissenting voices. Obama has his own problems with war-weary Americans cautious about venturing into a fight far away. A CNN poll found 75 percent of Americans against sending military weapons and supplies to Ukraine and 52 percent opposed to even providing economic aid to the beleaguered government in Kiev. Clearly Obama left the home front less than completely secured before heading to Europe. Americans tend to rally behind a president during times of foreign trouble. Polling does show majority support for diplomatic and economic sanctions against Moscow. Yet Obama has done little to mobilize public opinion, mostly confining himself to public warnings to Putin, with little effect. Putin annexed Crimea, had his troops overwhelm Ukrainian forces there and massed Russian soldiers along Ukraine’s eastern border, raising fears of a further invasion. Calling leaders from Capitol Hill to the White House is an obvious way to build support. But Obama has only disdain for Republicans, and they reciprocate the feeling. Still, strong bipartisan sentiment against Russia’s violation of international norms exists and Obama could have harnessed it. Not doing so has had the unhappy effect of seeing an economic aid package to Kiev stall in the Senate. The House passed a bill authorizing a $1 billion loan guarantee. But the usual stalemate ensued when Obama and Senate Democrats insisted on adding a provision to achieve a long-sought goal to overhaul the International Monetary Fund, which Republicans oppose. The unfortunate result was that Obama traveled to Europe seeking unity there without exercising the leadership required to demonstrate unity at home. European nations already were bickering behind the scenes over how to apportion the economic pain sure to come from tough sanctions against Russia. Ukraine is disappointed Obama turned down its request that the United States supply its forces with small arms. Obama is taking hits from Republicans who see weakness in his response to overseas crises. Only Putin can take pleasure from such disarray. Strength, like charity, begins at home.

#### NSA reform not sufficient to ward of legal challenges—there can still be cases to remedy past violations or to deter similar action in the future

Nelson 14 (Steven, Obama NSA Reform May Reduce Privacy, Kill Constitutional Challenges, Jan 13, http://www.usnews.com/news/articles/2014/01/13/obama-nsa-reform-may-reduce-privacy-kill-constitutional-challenges)

Harvard Law School professor Richard Fallon says damages sought by plaintiffs actually may be what keeps cases against the program going. The cases would "probably [be] moot" if the program ends, he says, "unless the plaintiffs seek damages for past harms." Martin Redish, a law professor at Northwestern University, sees two possible outcomes if Obama terminates the NSA's in-house retention of phone records. Courts either would decide the cases are moot because the government shows the collection is permanently over – possibly in conjunction with judges wanting to avoid the contentious issue – or the challenges would proceed based on the potential of similar conduct in the future, he says. "Mootness is largely a discretionary doctrine and, some respected scholars believe, the court often invokes it to avoid politically delicate or difficult issues," Redish says. "This strategic practice has sometimes been referred to as invocation of the 'passive virtues,'" he explains, meaning "use of the justiciability doctrines by the Supreme Court strategically to avoid difficult questions which the court does not wish to decide at this time." Before denouncing the NSA program as "almost Orwellian" and issuing a preliminary injunction, Leon expressed hesitance about overruling 15 Foreign Intelligence Surveillance Court judges – each of whom were appointed by the Supreme Court's chief justice to seven-year terms and secretly authorized the data collection using a liberal interpretation of Section 215 of the Patriot Act. Pauley dismissed the ACLU's lawsuit after determining the program "lawful," citing in part the FISC court decisions. [ALSO: Hackers Attack NASA's Website to Protest NSA] Although it's possible courts will slip out of the debate, Redish notes judges also may decide to keep the challenges alive if the program ends.

### 2AC – Schmitt

#### Material implications key --- single instances of discourse don’t spill over

**Ghughunishvili 10** Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

**As provided by the Copenhagen School securitization theory is comprised by speech act**, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. **The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized** by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. **To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them**. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. **The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered**. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where **a single speech does not create the discourse, but it is created through a long process, where context is vital**. 28 He indicates: **In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it**. **In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization**. 29 This type of approach seems more plausible in an empirical study, as **it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches**.

#### Schmitt’s account of politics is wrong and the alternative fails

Scheppele 2004

Kim Lane, John J. O'Brien Professor of Comparative Law and Professor of Sociology, University of Pennsylvania, May, University of Pennsylvania Journal of Constitutional Law, 6 U. Pa. J. Const. L. 1001, pg.1082-1083

In this Article, I have tried to explain why the logic of Schmitt's analyses no longer work as a practical matter to justify states of exception, even when it is clear to the international community that something fundamental has changed in the world system since 9/11. The institutional elaboration of a new international system that has occurred since Schmitt's time make his ideas seem all the more dangerous, and yet all the more dated. There are simply fewer states in the world willing to tolerate either Schmitt's conception of politics or his conception of the defining qualities of sovereignty. Schmitt's philosophy has, in short, been met with a different sociology. For his ideas to be either persuasive or effective, they must be more than internally coherent or even plausible; they must be loosed in a context in which they can win against other competing ideas. Precisely because of the horrors of the twentieth century, much of the international community that has entrenched both democracy and the rule of law has turned away from these extra-legal justifications for states of exception. Instead, such states have attempted to embed exceptionality as an instance of the normal, and not as a repudiation of the  [\*1083]  possibility of normality. Only the United States, with its eighteenth-century constitution and Cold War legacy of exceptionalism, seems to be soldiering on in this new legal space of conflict unaware that the defining aspect of the new sovereignty is that even the new sovereign is bound by rules.

#### Legal restraints work – presidents follow the law

Cole 10 (David Cole is a professor at Georgetown University Law Center, “Breaking Away,” http://www.newrepublic.com/article/magazine/politics/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror)

To dismiss the changes Obama has introduced as merely rhetorical, however, as Goldsmith and others have done, is to miss the critical difference between lawless and law-abiding exercises of state power. The Constitution, domestic law, and international law permit democracies to take aggressive action to defend themselves against attacks like the ones we suffered on September 11. But they insist that when the state employs coercion to achieve security, it must abide by rules designed to forestall government abuse and respect human rights. Bush blatantly disregarded this principle; Obama has embraced it. It is true that, by the end of his term, Bush had been compelled to curtail his most aggressive assertions of power. Waterboarding was out, many of the disappeared prisoners had been transferred to Guantánamo and identified, the military commissions had been improved, and courts were reviewing Guantánamo detentions. But Bush adopted these changes grudgingly, after losing before the courts, Congress, and public opinion. And as the declassified torture memos illustrate, his administration continued to obstinately reinterpret the laws against torture and cruel, inhuman, and degrading treatment in order to permit the CIA to do precisely what Congress, the courts, and international law had forbade. By contrast, Obama has willingly accepted the limits of law. Critics on all sides undermine their credibility if they fail to acknowledge the significant differences between Obama and Bush. Liberals risk sounding as if no national security policy short of ordinary criminal law enforcement will suffice, while conservatives and moderates appear tone-deaf to the difference that the rule of law makes to the legitimacy of state power. For both advocates of civil liberties and defenders of Bush, it is tempting to accuse the Obama administration of being no better than its predecessor. But if we fail to recognize the changes he has instituted, we run the risk of contributing to a misleading historical narrative that will support future presidents who might choose to repeat Bush’s errors. On issues of executive power, history can play an important role. Even if Obama himself is unlikely to unleash the tactics of the previous administration, a future president might justify doing so by pointing to the fact that observers from across the political spectrum agreed that both Bush and Obama had embraced the same policy. There are, however, two areas in which Obama has come up painfully short, and that is on issues of transparency and accountability. These failures threaten to undermine the good that Obama has otherwise done, because if U.S. counterterrorism policy is to succeed, it is critical to restore the trust that Bush’s policies so recklessly squandered.

#### The alternative collapses NATO which is critical to upholding deterrence which prevents the most proximate causes of war---the theory is useful despite flaws

Lupovici 10 Amir, assistant professor in the Department of Political Sciences at Tel Aviv University, International Studies Quarterly, "The Emerging Fourth Wave of Deterrence Theory--Toward a New Research Agenda", onlinelibrary.wiley.com/doi/10.1111/j.1468-2478.2010.00606.x/pdf

The ﬁrst three waves of deterrence theory made some signiﬁcant theoretical contributions not only to the study of deterrence but with regard to security studies in general. These theories constituted how scholars thought about deterrence for many years, and in this way they helped to solidify the realist school of international relations (Jervis 1979:290–291).5 Essential inﬂuences of the third wave can also be seen in the framing of theoretical issues, such as enduring rivals (Huth and Russett 1993; and compare Lieberman 1995 with Stein 1996), conventional deterrence (Mearsheimer 1983; Shimshoni 1988), extended deterrence (Huth 1988), and psychological and cognitive understanding of decision making (Jervis 1985; Lebow and Stein 1987, 1989; Morgan 2003:134–142, 149–151; see also Levy 1992).6 Furthermore, the methodological impact of this wave can also be seen (Achen and Snidal 1989:161; Lebow and Stein 1990:346–351), not only in the ﬁeld of security studies but in international relations and political science as well (Maoz 2002:172–174; see also King, Keohane, and Verba 1994:24, 134– 135).¶ The ﬁrst three waves of deterrence theory also signiﬁcantly inﬂuenced policymaking. The un-intuitive implications of deterrence literature were evident in the strategies and relations of the superpowers, in particular with regard to the strategy of MAD aimed at stabilizing relations between opponents, as demonstrated in the SALT agreements of 1972 (Adler 1992; Garthoff 1994:647, 849– 852; Evangelista 1999). Deterrence theories allowed policymakers to organize strategic knowledge into a clear conceptual framework that was easier to ‘‘sell,’’ providing them with strategic language and jargon (Jervis 1979:291; Kaplan 1991:171–172) that included concepts such as massive retaliation, invulnerability, assured destruction, counterforce, pre-emptive strike, ﬁrst strike, second strike, and ﬂexible response. While some of these concepts were not completely new (Quester 1966:1–2; Chilton 1985:115), they gained inﬂuence primarily in the context of deterrence.¶ Scholars, mainly of the ﬁrst two waves, based the idea of deterrence upon apolitical and ahistorical arguments (Jervis 1979:322–323; Kaplan 1991:109; Trachtenberg 1991:40, 44–46), and as a result paid very little attention to its operation in reality. Ironically, this obfuscation of empirical contradictions and problems led to the consensus on its validity.7 As Adler argues, ‘‘because the science of nuclear strategy has no empirical reference points and data banks, it cannot be falsiﬁed’’ (Adler 1992:107).8 In other words, deterrence could become a heuristic tool, supplying simple, and even simplistic, solutions to complicated foreign policy problems. This made it more attractive than other strategic options to decision makers. Moreover, the concept of deterrence could force rationality on decision making, so that deterrence practices became a convincing—and even justiﬁable—option (Kaplan 1991:72–73; Morgan 2003:13).

## 1AR

### \*\*\*Nato good

#### Nato still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

### \*\*\*Wf

#### Over-deterrence is bullshit

Kent 10/14/13 (Andrew, is a Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2330476)

Though Goldsmith lists “civil trials” as part of his detailed description of the post-9/11 accountability, the book barely addresses them, and for good reason. As we have seen, Bivens suits have played a relatively small role in the national security area because the courts of appeals have not allowed them to go forward. Goldsmith’s account of the effectiveness of this new ecology of transparency provides interesting context for thinking about the way the courts have equilibrated doctrine in the national security area. On the one hand, it might be said that his account undermines one of the Supreme Court’s most potent arguments against monetary liability for federal officials—the fear that it will “over-deter,” cause excessive caution that damages the public interest, especially in the national security area where boldness is arguably more necessary.208 It might seem farfetched to think that a civil tort suit will by itself cause significant over-deterrence for, say, a senior CIA official who is also worried about investigations by the inspector general, DOJ prosecutors and an internal accountability board; congressional scrutiny; foreign civil and criminal trials ginned up by NGOs; and public scrutiny and calumny in the press or NGO reports. This is especially the case if, as seems likely,209 the official has personal liability insurance or can request reimbursement of costs and indemnification from his agency, or both. It is likely true, as Goldsmith suggests, that all of these accountability mechanisms put together have caused some over-deterrence. But it does not seem credible that civil torts suits would alone tip the balance from appropriate deterrence to overdeterrence.

#### Inserting hafetz into the debate – the paragraph right after his card says aff

Jonathan Hafetz 13, Associate Professor of Law, Seton Hall University School of Law, 3/8/13, “Reviewing Drones,” http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes. Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large. For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings. Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat. Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge. Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate. Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

Government officials, moreover, would be liable only if they violate clearly established legal standards. This limitation helps avoid chilling the use of drones where the law is uncertain, while still deterring their misuse. Critics will contend that civil suits would mark an unprecedented intrusion into executive decision-making. But in recognizing the right of enemy combatants to seek judicial review of their detention through habeas corpus, the Supreme Court has made clear that even a state of war is not a blank check for the president. It misses the essential teaching of these rulings to insist that courts can review the government's decision to deprive a person of his liberty, but not his life.

### \*\*\*Transparency CP

### Addon

#### CO2 in the atmosphere doesn’t make warming inevitable, we can still keep it below 2 degrees.

Hansen and Kharecha et al 2013

James, adjunct professor in the Department of Earth and Environmental Sciences at Columbia University, and Pushker, Ph.D. Geosciences and Astrobiology, NASA Goddard, Assessing "Dangerous Climate Change": Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature, 12-3-13, http://www.columbia.edu/~jeh1/mailings/2013/20131202\_PopularSciencePlosOneE.pdf

We conclude that the widely accepted target of limiting human-made global climate warming to 2 degrees Celsius (3.6 degrees Fahrenheit) above the preindustrial level is too high and would subject young people, future generations and nature to irreparable harm. Carbon dioxide (CO2) emissions from fossil fuel use must be reduced rapidly to avoid irreversible consequences such as sea level rise large enough to inundate most coastal cities and extermination of many of today's species. Unabated global warming would also worsen climate extremes. In association with summer high pressure systems, warming causes stronger summer heat waves, more intense droughts, and wildfires that burn hotter. Yet because warming causes the atmosphere to hold more water vapor, which is the fuel that drives thunderstorms, tornadoes and tropical storms, it also leads to the possibility of stronger storms as well as heavier rainfall and floods. Observational data reveal that some climate extremes are already increasing in response to warming of several tenths of a degree in recent decades; these extremes would likely be much enhanced with warming of 2°C or more. We use evidence from Earth's climate history and measurements of Earth's present energy imbalance as our principal tools for inferring climate sensitivity and the safe level of global warming. The inferred warming limit leads to a limit on cumulative fossil fuel emissions. It is assessed that humanity must aim to keep global temperature close to the range occurring in the past 10,000 years, the Holocene epoch, a time of relatively stable climate and stable sea level during which civilization developed. The world cooled slowly over the last half of the Holocene, but warming of 0.8°C (1.4°F) in the past 100 years has brought global temperature back near the Holocene maximum. We note that policies should emphasize fossil fuel carbon, not mixing in carbon from forest changes as if it were equivalent. Most of the carbon from fossil fuel burning will stay in the climate system for of order 100,000 years. Of course carbon dioxide from deforestation also causes warming and policies must address that carbon source, but good land use policies could restore most of that carbon to the biosphere on a time scale of decades to centuries. However, maximum biospheric restoration is likely to be only comparable to the past deforestation source, so fossil fuel sources must be strictly limited. We conclude that human-made warming could be held to about 1°C (1.8°F) if cumulative industrial-era fossil fuel emissions are limited to 500 GtC (gigatons of carbon, where a gigaton is one billion metric tons) and if policies are pursued to restore 100 GtC into the biosphere, including the soil. This scenario leads to reduction of atmospheric CO2 to 350 ppm by 2100, as needed to restore Earth's energy balance and approximately stabilize climate. In contrast, we conclude that the target to limit global warming to 2°C, confirmed by the 2009 Copenhagen Accord of the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change, would lead to disastrous consequences. For example, Earth's history shows that 2°C global warming is likely to result in eventual sea level rise of the order of six meters (20 feet). Moreover, we note that such a warming level would induce "slow amplifying feedbacks". These amplifying feedbacks include a reduction of ice sheet area, vegetation changes including growth of forests in high latitudes of Asia and North America that are now sparsely vegetated, and an increase of atmospheric gases such as nitrous oxide and methane. These slow feedbacks are small if climate stays within the Holocene range, but substantial if warming reaches 2°C or more.

### Links to politics

#### Transparency links to politics and the executive won’t comply – status quo bias.

McNeal, Pepperdine University law professor, 3-14-13

[Gregory, “The Politics of Accountability for Targeted Killings” <http://www.lawfareblog.com/2013/03/the-politics-of-accountability-for-targeted-killings/#.Ut69FtIo7tQ>, accessed 1-21-14, TAP]

Imagine how this would play out in practice. Intelligence Committee members themselves would need to contact just the appropriators (not their staff). When contacting them, the Intelligence Committee members would not be able to disclose to the appropriators any details about classified activities other than the general line items in the budget that relate to those activities. Thus, the intelligence overseers would need to convince other members to cut off funds based on generalized concerns, rather than any specific details. And all of this assumes that the members have the time and inclination to spend on fighting these fights. Given these facts, when it comes time to threaten to cut off funding for some executive branch malfeasance, it is not surprising that the executive branch sees these threats as hollow and may choose to delay or even ignore a congressional request. While the threat may exist, in reality it is an idle one as only a handful of members will be able to find out the information necessary to make a credible threat, they will not be able to share that information publicly, and they will not be able to share it with other members to build broader congressional support for withholding funds associated with the inappropriate activity. In short, diffused authority combined with secrecy may allow the executive branch to dodge accountability. These are some of the oversight challenges and that is why it’s critical for opponents of targeted killings to recognize that eight, not two committees have oversight jurisdiction. Those interested in holding the President’s feet to the fire need to encourage cross committee oversight which will allow champions of the political accountability cause to cobble together effective coalitions –those coalitions are necessary if political accountability is going to have any impact. Of course, reforming oversight of intelligence could also solve this problem, but efforts to do so have consistently failed. Which brings me to the cynical point. Does any member of Congress actually care? It seems that the targeted killing policy lacks a sufficiently numbered constituency that is impacted by the program. Are the issues in the targeted killing policy important enough for any individual member of Congress to take steps to change the policy? (real steps, versus political stunts) Will a member lose their seat over a failure to provide greater due process protections or more reliable targeting information in the kill-list creation process? Or is it more likely that they will lose their seat if they champion the cause of potential targets and one of those targets is not struck but subsequently carries out an attack? (even if it’s not “more likely” which side of that debate does any particular politician want to be on?) That is the political calculus facing policymakers and in that calculus, it seems difficult to justify changing targeting absent some clear benefit to national security or some clear political gain in a member’s home district. Moreover, even if individual policymakers agree that the policy should be changed, they may face substantial hurdles in their attempts to convince congressional leaders (who drive the legislative agenda) that the policy should be overhauled. This cynical account is merely describing what policy scholars call, the status quo bias. In such a political environment, little change is possible absent sufficient energy to overcome the current state of affairs.

### \*\*\*NSA

### A/T Losers Lose

#### Giving in on the IMF was a huge loss for Obama

Weisman 3-26 (Jonathan, Senate Democrats Drop I.M.F. Reforms From Ukraine Aid, http://www.nytimes.com/2014/03/26/world/europe/senate-democrats-drop-imf-reforms-from-ukraine-aid-package.html?\_r=0)

Senate Democrats, bowing to united House Republican opposition, dropped reforms of International Monetary Fund governance from a Ukraine aid package on Tuesday, handing President Obama an embarrassing defeat as he huddled in Europe with allies who have already ratified the changes. The monetary fund language would have enlarged the Ukraine loan package while finally ratifying changes dating to 2010 that only the United States has opposed. Mr. Obama himself negotiated those changes, and European allies conferring with him on Ukraine have been pressing for American action. But the need for speed on loans and direct assistance to Ukraine overcame the White House’s willingness for a fight. Senator Harry Reid of Nevada, the majority leader, said he was taking his lead from Secretary of State John Kerry, who had signaled that the administration would push for the monetary fund language separately.

### Courts

#### Obama fights it now and if they fail, it will reopen debate

Cannon 3/25 (Michael F., “Hobby Lobby isn't today's most important case: Column”, http://www.usatoday.com/story/opinion/2014/03/25/obamacare-irs-halbig-sebelius-health-care-insurance-column/6830651/)

The Obama administration has acquired a reputation for unilaterally rewriting laws (to say nothing of abusing the IRS's powers) for political purposes, but this one takes the cake. The IRS is literally spending billions of taxpayer dollars not only without congressional authorization – itself a federal crime – but contrary to the clearly expressed will of Congress. And it gets worse. Since that spending triggers penalties under Obamacare's employer and individual mandates, the IRS also plans to tax millions of Americans without congressional authorization. Dozens of employers and individuals who would be subject to those illegal taxes have filed four separate lawsuits to stop the illegal spending that triggers them. Halbig is the first to reach the appellate level. When a statutory provision is clear and the rest of the statute is consistent with that provision, that's supposed to be the end of the story. The Supreme Court has long held, "[If] Congress has spoken directly to the precise question at issue…that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Yet the Obama administration fears that if consumers in 34 states experience the full cost of Obamacare, Congress will have no choice but to reopen the law. It has therefore offered numerous arguments in defense of its unauthorized spending and taxes – not because any of these arguments have merit, but because none of them do. Nevertheless, a district court ruled against the Halbig plaintiffs based on a severely distorted view of Congress' intent. The court wrote, "there is no evidence that either the House or the Senate considered making tax credits dependent upon whether a state participated in the Exchanges."