# 1AC

### 1AC Allied Coop Adv

#### Adv 1- Allied terror cooperation:

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

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

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

#### Lack of legal oversight on targeted killing collapses allied cooperation on terrorism, which is critical to intelligence sharing.

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

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

#### Drone policy is more important than the spying and data scandal to European partners-threatens allied intelligence cooperation.

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.

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

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

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

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

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

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

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

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

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

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

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

#### Only judicial ex post review provides the accountability necessary to solve confidence in targeting—key to viability of the program

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

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

#### Accountability is impossible from executive internal measures- no one trusts Obama on drones—Court action is key.

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.

### 1AC Imminence Adv

#### Advantage 2- Imminence:

#### The executive’s current definition of imminence is so vague and broad it makes overuse and abuse of the drone program 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."

#### 2 Impacts- first, Pakistan

#### This broad definition of imminence has increased the frequency of attacks and the scope of who can be targeted, which decreases the program’s effectiveness because it reduces the ratio of high-value decapitations to accidental kills

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

The Bush administration's increased reliance on the program started in 2008; however, it is with the Obama administration that we see the most rapid proliferation of attacks. The final phase of the drone program is characterized by an even greater increase in attack frequency and an expansion of the target list to include targets of opportunity and unidentified militants of dubious rank — and funerals.12 As of May 2011, the CIA under the Obama administration has conducted nearly 200 drone strikes. This suggests that the drone target list now includes targets of opportunity, likely including some selected in consultation with the Pakistani authorities in order to facilitate the increasingly unpopular program. This development, in turn, has now decreased the effectiveness of the program when assessed in terms of the ratio of high-value to accidental kills. As Figure 2 shows, the steady increase in drone attacks conducted in Pakistan between 2004 and 2010 has resulted in a far higher number of deaths overall, but a lower rate of successful killings of high-value militant leaders who command, control and inspire organizations. If we define a high-value target as an organizational leader known to intelligence sources and the international media prior to attack and not someone whose death is justified with a posthumous militant status, we see fewer and fewer such hits — the alleged killing of al-Qaeda commander Ilyas al-Kashmiri in 2009 and again in June 2011 notwithstanding.13 Data analysis shows that at the beginning of the drone program (2002-04), five or six people were killed for each defined high-value target. As part of that high-value target's immediate entourage, they were much more likely to be militants than civilians. By 2010, one high-value target was killed per 147 total deaths. The increased lethality of each attack is due to larger payloads, broader target sets such as funeral processions, and probable new targeting guidelines (including targets of opportunity).14 Over time, these more deadly drone attacks have failed to effectively decapitate the leadership of anti-U.S. organizations but have killed hundreds of other people subsequently alleged to be militants; many were civilians.15 The rapidly growing population of survivors and witnesses of these brutal attacks have emotional and social needs and incentives to join the ranks of groups that access and attack U.S. targets in Afghanistan across the porous border. Drone attacks themselves deliver a politically satisfying short-term "bang for the buck" for U.S. constituencies ignorant of and indifferent to those affected by drone warfare or the phenomenon of blowback. In the Pakistani and Afghan contexts, they inflame the populations and destabilize the institutions that drive regional development. In addition to taking on an unacceptable and extrajudicial toll in human life, the drone strikes in unintended ways complicate the U.S. strategic mission in Afghanistan, as well as the fragile relationship with Pakistan. As a result, the U.S. military's counterinsurgency project in Afghanistan becomes a victim of the first two forms of blowback.

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “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 escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan collapse risks war with India and loose nukes

Twining 13 (Daniel Twining is Senior Fellow for Asia at the German Marshall Fund, Pakistan and the Nuclear Nightmare, Sept 4, http://shadow.foreignpolicy.com/posts/2013/09/04/pakistan\_and\_the\_nuclear\_nightmare)

The Washington Post has revealed the intense concern of the U.S. intelligence community about Pakistan's nuclear weapons program. In addition to gaps in U.S. information about nuclear weapons storage and safeguards, American analysts are worried about the risk of terrorist attacks against nuclear facilities in Pakistan as well as the risk that individual Pakistani nuclear weapons handlers could go rogue in ways that endanger unified national control over these weapons of mass destruction. These concerns raise a wider question for a U.S. national security establishment whose worst nightmares include the collapse of the Pakistani state -- with all its implications for empowerment of terrorists, a regional explosion of violent extremism, war with India, and loss of control over the country's nuclear weapons. That larger question is: Does Pakistan's nuclear arsenal promote the country's unity or its disaggregation? This is a complicated puzzle, in part because nuclear war in South Asia may be more likely as long as nuclear weapons help hold Pakistan together and embolden its military leaders to pursue foreign adventures under the nuclear umbrella. So if we argue that nuclear weapons help maintain Pakistan's integrity as a state -- by empowering and cohering the Pakistani Army -- they may at the same time undermine regional stability and security by making regional war more likely. As South Asia scholar Christine Fair of Georgetown University has argued, the Pakistani military's sponsorship of "jihad under the nuclear umbrella" has gravely undermined the security of Pakistan's neighborhood -- making possible war with India over Kargil in 1999, the terrorist attack on the Indian Parliament in 2001, the terrorist attack on Mumbai in 2008, and Pakistan's ongoing support for the Afghan Taliban, the Haqqani network, Lashkar-e-Taiba, and other violent extremists. Moreover, Pakistan's proliferation of nuclear technologies has seeded extra-regional instability by boosting "rogue state" nuclear weapons programs as far afield as North Korea, Libya, Iran, and Syria. Worryingly, rather than pursuing a policy of minimal deterrence along Indian lines, Pakistan's military leaders are banking on the future benefits of nuclear weapons by overseeing the proportionately biggest nuclear buildup of any power, developing tactical (battlefield) nuclear weapons, and dispersing the nuclear arsenal to ensure its survivability in the event of attack by either the United States or India. (Note that most Pakistanis identify the United States, not India, as their country's primary adversary, despite an alliance dating to 1954 and nearly $30 billion in American assistance since 2001.) The nuclear arsenal sustains Pakistan's unbalanced internal power structure, underwriting Army dominance over elected politicians and neutering civilian control of national security policy; civilian leaders have no practical authority over Pakistan's nuclear weapons program. Whether one believes the arsenal's governance implications generate stability or instability within Pakistan depends on whether one believes that Army domination of the country is a stabilizing or destabilizing factor. A similarly split opinion derives from whether one deems the Pakistan Army the country's most competent institution and therefore the best steward of weapons whose fall into the wrong hands could lead to global crisis -- or whether one views the Army's history of reckless risk-taking, from sponsoring terrorist attacks against the United States and India to launching multiple wars against India that it had no hope of winning, as a flashing "DANGER" sign suggesting that nuclear weapons are far more likely to be used "rationally" by the armed forces in pursuit of Pakistan's traditional policies of keeping its neighbors off balance. There is no question that the seizure of power by a radicalized group of generals with a revolutionary anti-Indian, anti-American, and social-transformation agenda within Pakistan becomes a far more dangerous scenario in the context of nuclear weapons. Similarly, the geographical dispersal of the country's nuclear arsenal and the relatively low level of authority a battlefield commander would require to employ tactical nuclear weapons raise the risk of their use outside the chain of command. This also raises the risk that the Pakistani Taliban, even if it cannot seize the commanding heights of state institutions, could seize either by force or through infiltration a nuclear warhead at an individual installation and use it to hold the country -- and the world -- to ransom. American intelligence analysts covering Pakistan will continue to lose sleep for a long time to come.

#### Miscalculation means this could escalate to nuclear winter and extinction

Hundley 12 (TOM HUNDLEY, Senior Editor-Pulitzer Center, “Pakistan and India: Race to the End,” http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### Scenario 2- Yemen and Somalia:

#### Drone overuse wrecks stability in Yemen—errors and collateral damage are high now.

Greenfield and Kramer 13 (DANYA GREENFIELD & DAVID J KRAMER, Time to curb American drones, April 5,

http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/international/05-Apr-2013/time-to-curb-american-drones)

The US has played a significant role in Yemen’s transition, which ensured the exit of former president Ali Abdullah Saleh, in exchange for immunity, and inaugurated a unity government and consensus president overseeing a national dialogue launched last month. The US has pledged support for the dialogue, which will lead to a constitutional referendum and new elections. To many Yemenis, however, Washington is narrowly focused on the short-term security concerns and the fight against terrorism. The US, they think, cares little about real political change. As Yemen’s transition enters a critical stage, Washington has an opportunity to change this image by redirecting its policy to greater emphasis on stability, prosperity and democracy, which will advance both US and Yemeni interests. Despite considerable US humanitarian aid and development support to their government, most Yemenis associate US engagement with the ongoing drone campaign to destroy Al-Qaeda in the Arabian Peninsula (AQAP) and they see it as having little regard for its effect on civilians. A number of former US military and intelligence officials argue that the drone programme’s costs may exceed its benefits. Retired General Stanley McChrystal has articulated the hazards of overreliance on drones, and General James E Cartwright, former vice-chairman of the Joint Chiefs-of-Staff, cautioned last month against unintended consequences, arguing that no matter how precise drone strikes may be, they breed animosity among targeted communities and threaten US efforts to curb extremism. With drone attacks breeding discontent and anti-American sentiment, the Barack Obama administration must rethink how the US can advance its objectives without letting tactics dictate strategy. Washington seeks to balance multiple priorities in Yemen: Supporting stability in the Arabian Peninsula, disrupting terrorist networks, securing waterways and aiding Yemen’s transition to democracy. By focusing primarily on acute, short-term threats, the US risks the long-term security that benefits both nations and can be achieved only through a sustained investment in the humanitarian, economic and political development of the Yemeni people. Thirty-one foreign policy experts and former diplomats sent a letter to President Obama last week that said the administration’s expansive use of unmanned drones in Yemen is proving counterproductive to US security objectives: As faulty intelligence leads to collateral damage, extremist groups ultimately win more support. The lack of transparency and accountability behind the drone policy set a dangerous global precedent and damage Washington’s ability to influence positive change in Yemen and the region. Drone strikes heighten animosity towards the US and Yemen President Abd Rabbo Mansour Hadi’s government for compromising Yemeni sovereignty. The US, the letter counselled, should reduce its reliance on drone strikes and instead invest in a long-term security agenda. This will include strengthening institutions that enhance the capacity and professionalism of Yemen’s security forces - not only counterterrorism units - to address threats to internal security. Washington already supports the restructuring of Yemen’s military, a step mandated by the transition agreement, but the Defence and State departments should ensure that America’s military assistance does not repeat the mistakes made during Saleh’s tenure - such as ignoring power concentrated in the hands of elites or not prosecuting human rights abuses. And building a capable police force recruited from residents in partnership with local communities is essential to securing this territory. Americans and Yemenis have a strong shared interest in combating extremism, as Al-Qaeda and its local affiliate, Ansar Al Sharia, spread out in the south and pledge acts of terrorism against both Yemeni and US targets. The US should not ignore this threat, but beyond the security portfolio, Yemenis need to feel that Washington is committed to supporting democratic institutions and the prosperity of the Yemeni people. Although the State Department and the US Agency for International Development are engaging Hadi’s government on development and humanitarian issues, most Yemenis feel only the negative effects of US counterterrorism policy. Rather than the steady stream of military delegations, a more robust economic assistance programme and public diplomacy strategy - including a visit by Secretary of State John Kerry and other high-level diplomats - will signal support for Yemen’s transition and its democratic aspirations. Yemen’s national dialogue is an ideal opportunity to break with a legacy of corrupt leaders who sought personal gain at the nation’s expense. The Obama administration can encourage this process by providing international cover for the difficult decisions delegates must make to craft a new political system based on equitable power-sharing, active citizenship and tolerance. This requires the administration to examine its own policies and shift course where the status quo undermines America’s shared interests. Despite negative attitudes towards US policy, Yemenis are eager to have an authentic partnership with the US - built on transparency, accountability and a demonstrated commitment to their future.

#### Executive overreliance causes blowback and instability in Yemen and Somalia- risks violent escalation.

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

It is possible that the exchange of personnel among the military, the intelligence community and the Department of Defense will clear up the confusion over command and targeting, though this is far from given. The more serious forms of blowback stemming directly from the effects of extrajudicial killing, however, do not seem to have been addressed. If the Pakistani campaign spawned purposeful vengeance, like the Khost bombing, and opportunities for recruitment of noncombatants for retaliatory attacks, then the same purposeful and accidental escalation will most likely occur in the Arabian Peninsula and the Horn of Africa, compounding Yemen's and Somalia's volatility. In many ways, Yemen resembles both Afghanistan and Pakistan, and the undeclared drone war there will share the most dysfunctional characteristics of both sides of the Af/Pak theatre. Like Afghanistan, Yemen is a fragmented tribal society ideally suited for harboring pockets of militancy in a de-centered system with strong social ties.33 Like Pakistan, Yemen's military and the other institutions of a failing state may still function well enough to both channel counterterror funds from the United States and apply them according to its own interests and criteria.34 Another whisky-swilling military steeped in hypocrisy and addicted to counterterror as a way to make a living is hardly the ideal local spotter for U.S. attacks from the skies.35 Drone warfare as it has evolved in the Af/Pak theatre is not the answer to Yemen's unrest. The lessons of drone warfare in Pakistan are clear. First, if extrajudicial dispatching of high-value targets is a goal, such targets are best dealt with as Osama bin Laden was — through face-to-face assaults by crack JSOC troops based on reliable intelligence. Second, chronic testing of national sovereignty through an undeclared war of drone attacks puts fragile governing structures in the target country under enormous pressure while exacerbating social volatility, a recipe for unpredictable outcomes.36 Third, the complacency engendered in the American public, which is largely blind to the costs and consequences of, and anesthetized to, the legal and moral issues of drone warfare, precludes recognition, let alone discussion of this new form of warfare. Finally, a trend in increasing "collateral damage" ­— in which thousands of noncombatants may be extrajudicially killed, traumatized and materially damaged — fuels instability and escalates violent retaliation against convenient targets. With Yemen and Somalia as the east-west axis of a maritime system that unites South Asia with the Horn of Africa through one of the world's most sensitive and pirate-infested shipping channels, counterterror measures must be both precise and well-reasoned. The Pakistani model is neither. Drone strikes leave little scope for the civic reform that the Arab Spring in Yemen demands.37

#### Instability in Yemen and Somalia makes maritime terrorism in critical chokepoints around the Horn of Africa inevitable.

Ulrichsen 11 (Kristian Coates, The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula, Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

Multiple fault lines have thus opened up, facilitated by (and accelerating) processes of state weakness and the relative empowerment of non-state actors. The result is more political violence and endemic criminality in and off the coast of Somalia and the Horn. Nevertheless, the new dimension to this nexus of terrorism, piracy, gun-running and people-smuggling is its growing transregional dimension. This defines the core challenge facing the regional and global security agenda, in addition to attempts at diplomatic mediation and conflict resolution throughout the area. Intensifying illicit networks and rent-seeking criminality are part of a broader pressure on fragile state structures. They are already struggling to control and adapt to pressures arising from the accelerated flows of information, communication and migration in a rapidly globalizing environment. The coincidence of these processes in Somalia and Yemen is changing the geopolitics of insecurity in the Horn of Africa and the Arabian Peninsula, as the following sections detail. MARITIME AND ENERGY SECURITY The problem of fragile and collapsed states on both sides of the Bab al-Mandab introduces potent new elements of maritime and energy security into the regional — and global — equation. The incidence of maritime piracy in the Gulf of Aden and the Red Sea more than doubled in 2008-09, and their operational reach steadily increased. Much of the piracy was launched from the semi-autonomous region of Puntland, on Somalia's tip of the Horn, where patterns of rent-seeking and gangsterism converge with the absence of effective state authority and licit sources of income. Moreover, at least one of the seven different groups of pirates operating off the Somali coast is believed to be based in the Socotra archipelago in Yemen, while at least some of the financial proceeds are believed to pass through money-laundering channels in Dubai and Kenya.44 This underlines the growing regional and international risk from both maritime piracy and maritime terrorism. Incidents such as the seizure of the Sirius Star by Somali-based pirates in November 2008 and the attack on the Japanese supertanker M Star in the Strait of Hormuz in July 2010 illustrate both phenomena. Maritime commerce and international shipping that link the oil-exporting Gulf states to Western economies must navigate two regional chokepoints, the Strait of Hormuz and the Bab el-Mandab, in addition to the hazardous waters of the Gulf of Aden and the Red Sea. Pirates' growing aggressiveness has centered on this geostrategically and commercially vital region. It reflects the interlocking dangers stemming from a crisis of governance and spreading conflicts. In 2009, the International Maritime Board recorded a total of 406 actual and attempted attacks, the majority of which occurred in the Gulf of Aden and off the Somali coast.45 However, due to underreporting, often for fear of higher insurance premiums, the figures may be much higher. Numerous factors underlie the rise in maritime piracy off the Somali coast. These include opportunistic motivations, which are among the principal drivers of pirate groups, as well as the ready availability of targets (through high volumes of trade passing by) and means (including inadequate law enforcement and ready access to weaponry). It is contextualized by the impact of conflict, poverty and weak state capacity.46 Indeed, in the Somali case, state collapse is a major determinant of piracy. Piracy declined sharply during the short-lived projection of power and authority by the UIC in 2006 and subsequently resurged following their removal through the reappearance of pirate groups operating under warlord protection.47 With the TFG unable to control its territory, let alone its coastline and territorial waters, increased naval patrolling activity by external actors (including the EU, NATO, China, Russia, India and Iran) may offer a degree of protection to shipping but leaves untouched the root causes of piracy as a symptom of state collapse and lack of legitimate economic opportunities. Maritime terrorism presents the second major threat to international security at sea. It has similar causal facilitators to maritime piracy; the erosion of governance in littoral regions creates security gaps that may be exploited by terrorist organizations. The threat from maritime terrorism is low-level yet potentially high-impact. It encompasses subthreats ranging from maritime criminality to better-organized groupings of insurgents or militants who take advantage of the pressure on littoral states to exploit their maritime resources and the fuzzy margins between domestic and international governance of international waterways and shipping lanes. Although the number of maritime terrorist incidents has been relatively small, it does present a challenge to a global supply chain and logistical system increasingly predicated on "just-in-time" deliveries. It also encompasses the role of non-state actors with access to sophisticated weaponry operating in international waters where jurisdiction is unclear and the "seams of globalization" become vulnerable to exploitation.48

#### These attacks risk global economic collapse

Neubauer 13 (Sigurd, Defense and foreign affairs specialist, member of the International Institute for Strategic Studies, Somalia: A Terrorist-Piracy Nexus?, May 22, http://www.huffingtonpost.com/sigurd-neubauer/somalia-piracy\_b\_3320406.html)

Piracy, like terrorism has been a scourge of mankind for centuries and, though its practitioners, real (Blackbeard, Anne Bonny and Henry Morgan) and mythical (Captain Jack Sparrow in the Pirates of the Caribean movie stories) have achieved heroic stature in popular culture, its contemporary manifestations represent a major threat to the global economy and to national security. Significant strides have been made in recent years towards combating piracy, especially off the coast of Somalia, but a robust international grand strategy is urgently needed in order to forestall an ever more dangerous global threat as pirates develop ever more sophisticated organizational structures, many of which are already linked to criminal gangs and even, in some cases to terrorist groups. Their activities already impose heavy financial and human costs not only on the maritime industry but also on the countries from which they operate. Heretofore, the area around Somalia has been the most dangerous area but significant progress has been made in reducing piracy there. Last year, pirates succeeded in capturing 13 vessels, compared to 49 in 2010 and 28 in 2011, according to the International Maritime Organization (IMO). Part of that success can at least be partially explained by the European Union's heavy naval presence around the Horn of Africa, in the Gulf of Aden while improving intelligence sharing with NATO, the Combined Maritime Forces (CMF), the UK Maritime Trade Operations (UKMTO), and the International Maritime Bureau (IMB) Piracy Reporting Center. Additional measures implemented by shipping companies such as providing more armed security aboard merchant vessels while securing the ship's perimeter with razor or barbed wire have also led to the significant decrease in the number of piracy attacks. Equally important, however, was the 2009 implementation of the Djibouti Code of Conduct, a code concerning the repression of piracy and armed robbery against ships. Under the code, aside from committing themselves to abiding by various counter-piracy United Nations Security Council Resolutions, the signatories also pledged to overhaul their domestic counter-piracy legislation. As a result, a record number of pirates were sentenced by local courts around the world last year. The significance of these developments should not, however, be overstated. First, the cost remains enormous -- in 2011, it is estimated that Somali piracy cost the global economy an estimated 7 billion USD through higher insurance premiums, security enhancements, and business disruption and earned the pirates some 160 million USD in ransoms. These figures do not include the psychological burdens borne by the captives or the costs imposed on Somalia. And, the actual costs are probably even higher due to widespread underreporting. Second, while piracy off the coast of Somalia has decreased, pirates are gradually focusing their efforts where patrols are not available for protection, now operating in the wider Indian Ocean. As pirates are extending their reach from Oman to the Maldives, they have also proven to be excellent entrepreneurs, building large well-financed organizations that are able to execute ever more sophisticated attacks such as hijacking oil tankers off the coast of Nigeria and stealing the valuable cargo. Moreover, pirate groups are becoming increasingly international and are extending their reach from national bases to neighbors -- from Nigeria, for example to Benin and the Ivory Coast, usually in cooperation with powerful local elements. Economically speaking, piracy already presents an enormous challenge and it is conceivable that as pirates face stiffer resistance on the high seas by an increasingly stronger international naval presence, their political and ideological motivations could radicalize over time. Currently, terrorist groups already cooperate with criminal gangs to raise funds and piracy could potentially become a lucrative source of income for radical groups. A second plausible scenario is that as pirates struggle to capture more ships, pirates could resort to attacking shipping directly as criminal motivations could subside to radical ideology propagated by al Qaeda and its splinter groups. Hence, it is easy to envision a nightmare scenario wherein terrorists, supported by a pirate group, hijack an oil tanker not just to steal the oil or collect the ransom but to blow it up in a major port with devastating economic consequences across the globe. A separate threat scenario that should not be underestimated entails terrorists capturing a liqueﬁed natural gas carrier that can be used as a ﬂoating bomb, which can either be detonated at a major port or near a flotilla of ships in the open seas. Piracy and terrorism can also be used as means to exert economic warfare against the United States and the international community as maritime attacks oﬀer terrorists an alternate means of causing mass economic destabilization. After all, terrorists have already attacked ships -- al Qaeda, the USS Cole (2000), Abu Sayyaf a ferryboat in the Philippines (2004) and the Mumbai attacks (2008).

#### Nuclear war

Merlini, Senior Fellow – Brookings, 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (~357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

#### 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.

#### The plan is key- Ex post review resolves the broad definition of imminence- redress key to check the errors which cause blowback.

Hafetz, former ACLU National Security Project attorney, 13 (Jonathan Hafetz, former senior attorney at the ACLU’s National Security Project, a litigation director at NYU’s Brennan Center for Justice, and a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons, P.C, Reviewing Drones, March 8, 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.

#### The plan would result in a balanced definition of imminence. The court would apply a standard that still allows decapitation of high value targets and out-of-battlefield operations– Hamdi proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Su- preme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that al- lows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### Wake Plan

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 1AC Solvency

#### Ex post review makes our drone operations better—incentivizes better intel gathering and it doesn’t chill battlefield ops

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

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted.

#### 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.

#### Judicial review of targeted killing operations increases the quality of executive decision-making-- electoral bias makes unilateral executive action prone to error

Dragu 13 (Tiberiu Dragu, prof of politics at NYU, and Oliver Board, On Judicial Review in a Separation of Powers System, https://files.nyu.edu/tcd224/public/papers/judicial.pdf)

In this section, we illustrate the applicability of our theory, and its policy implications, in the context of drone strikes and counterterrorism policy more generally. The public debate about the use of unmanned drones to kill suspected terrorists highlights the contending views on the appropriateness of (non-expert) judicial review as a means of checking the contours of (expert) counterterrorism policy.27 Perhaps more than any other counterterrorism pol- icy, targeted killings illustrate the presumed tension between dispensing policy-making to those institutions with superior expertise and the rule-of-law ideal of checking the legality of executive action, or at least one important aspect of it: judicially-enforced due process of law. Since 9/11, the CIA and the military have used unmanned drones to kill individuals sus- pected of terrorist activity in places far from any battlefield, without being charged, without a trial, and without any form of judicial approval. The president makes the determination of who should be targeted and can order the killings of non-citizens and citizens alike without any judicial oversight.28 Lower-level executive officials, working for the intelligence agencies in charge of terrorism prevention, recommend to the president who should be the next to die on the basis of available intelligence. These nominations go to the White House, where the president approves the names on the kill list. The president also decides if (and when) to undertake a drone strike that can result in civilian casualties and makes the final call on "signature strikes," which target suspicious behavior rather than specific terrorist suspects.29 In short, under the current regime, the president is "the prosecutor, the judge, the jury and the executioner, all rolled into one."30 The policy of targeted killings, as implemented, raises important legal questions, even if one accepts that drone strikes are not inherently illegal.31 Because the task of identifying terrorist suspects is inherently riddled with errors, it is impossible to know with certainty whether potential targets are dangerous terrorists or just people with the wrong association. As a result, innocent people can mistakenly be targeted even if lower-level executive officials make their recommendations for the kill list in good faith. And when those targeted to be killed have not been convicted in a court of law, the use of lethal force against non-citizens and citizens might infringe upon their due process rights.32 A drone strike aimed at an American citizen without adequate evidence to show that he or she is a terrorist posing an imminent danger can raise serious constitutional problems.33 Because of the risk of inadvertently killing innocent people by executive fiat and because abuses of power are likely when the executive carries unilaterally such a campaign of deaths, drone policy, some argue, should be subjected to some form of judicial review. A growing number of lawmakers, scholars, and public officials have embraced this idea and proposed an independent court to oversee drone strikes on the account that it would improve the existing status-quo, at least from a legal accountability perspective.31 One of the strongest criticisms against such institutional development is the argument that judicial oversight of drone strikes jeopardizes the effectiveness of the policy because judges lack the necessary expertise to review targeted killing decisions. Former solicitor general, Neal Katyal, has forcefully articulated this expertise rationale against judicial review of drone strikes. Katyal argues that "[t]he drone court idea is a mistake" because "(experts, not generalists" ought to decide on drone strikes.35 In this view, the harm to counterterrorism policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of judicial oversight. Simply put, asymmetric institutional competence makes it desirable, on balance, for the executive to undertake drone strikes without independent judicial oversight. These contending per- spectives on the appropriateness of judicial review are not unique to drone policy but are emblematic of public and scholarly discussions about how to devise counterterrorism policy more generally (Cole 2003, Posner 2006). Our analysis has relevance for existing debates on the scope of judicial review in the con- text of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) govern- mental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below. First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991). Second, the president, like all elected representatives, is a politician making choices un-der the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overre- action (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006: Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be neces- sary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, "it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illus- tration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011). Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insu- lated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive deci-sions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for countert- errorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to de- sign the institutional structure of liberal governments when the social objective is terrorism prevention. This expertise rationale for judicial review does not depend on whether the court approves or not a particular counterterrorism action. Critics of judicial review of drone strikes, for example, point to the record of the FISA court -it approves almost all warrants requests- as evidence that a drone court designed on a similar template would be ineffective. That judicial review can have a positive expertise effect is not predicated upon how intensely the court turns down counterterrorism policies, or upon how the court would assess a specific counterterrorism policy on its legal merits. It is based on analyzing the counterfactual of how much information is available for counterterrorism decision-making by comparing the scenario in which a court reviews counterterrorism policy with a scenario in which that policy- making process is free of judicial oversight. It may very well be unnecessary for the court to reject the choices of executive officials because those choices are adjusted in anticipation that drone strikes need to pass the muster of judicial review. What our theory suggests is that, on average, counterterrorism policy-making can be more rigorous on expertise grounds with judicial oversight that in its absence.

# 2AC

### 2AC – T-Restrictions

#### 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 regulation, not banning topic areas – their interp eliminates topic lit

#### B. Affirmative Ground- ban policy affs are dead against agent counterplans – err aff

#### ---Reasonability-competing interpretations incentivizes T debates instead of substance – the topic is already limited by areas and our aff is squarely in the lit

### 2AC – Special Forces CP

#### Perm – do the counterplan – “targeted killing” does not include Special Forces

Bachmann 13 (Sascha-Dominik, Associate Professor at the University of Bournemouth (UK), research focus on international legal subjects, “Targeted Killings: Contemporary Challenges, Risks and Opportunities”, http://jcsl.oxfordjournals.org/content/early/2013/05/31/jcsl.krt007.full)

An early example of ‘targeted killing’ in the history of armed conflict can be found in the military tactics applied mainly by snipers. Prominent and well-documented examples of sniper warfare can be found in the annals of the Eastern Front during World War II: German and Soviet forces used snipers to annihilate systematically the enemy’s mid-level military leadership: German losses to Soviet snipers were so severe during the battle for Stalingrad in autumn of 1942 that officers as well as non-commissioned officers had to adapt means of camouflage to blend in with their (enlisted) men and in order to avoid being targeted by enemy snipers.21 Operation ‘Neptune Spear’ as well as the alleged Israeli Mossad Operation to kill the Hamas official Mahmud al-Mabhuh in Dubai in 201122 involved the use of Special Forces on the ground, or intelligence operatives/assets respectively, constitute commando operations as well targeting operations in the wider sense. Such tactical capture and kill operations executed by Special Forces assets are not the focus of this short contribution: its focus is solely on targeted killing, as a means of warfare which is executed by using remotely piloted aircraft, UAVs or drones respectively, as weapons platform. Falling outside the scope of targeted killings discussed in this article is the continuing use of Improvised Explosive Devices (IEDs) in Iraq and Afghanistan by the Taliban and other affiliated groups. Targeted terrorism, involving the use of IEDs, suicide bombings or suicide attack squads as impressively shown in the 2011 Mumbai attacks, seem to constitute a hybrid form of unconventional warfare which combines elements of both, assassination and targeted killings in the widest sense. The scope of this article is on targeted killing as a means of warfare and hence does not warrant a further discussion of this form of attacks as a potential example for targeted killings. Targeted killing as a means of killing enemies of a state has been employed most frequently by the USA as part of its overall military strategy against Al-Qaeda and the Taliban.23 While the USA did not ‘invent’ this form of warfare it has taken the lead in advancing its development and overall design in respect of targeting processes, command and control as well as the use of increasingly sophisticated technology.24 The use of drones for executing kinetic, lethal, strikes against hostile and enemy targets has its tangible military benefits in terms of operational capabilities, readiness and its overall availability as a defensive as well as offensive form of warfare. Targeted killing by UCAS can be executed at very short notice and does not require the deployment of and the presence of substantial own forces in the theatre of operations. This availability and flexibility of using drones as a platform for the execution of targeted killings makes this form of warfare (without own casualties) so formidable when responding to present threats at an ad hoc basis. Consequently, both proliferation and expansion of the use of UCAS are increasing.25 Examples hereof are the present discussions in the UK to increase the availability of UAV systems for reconnaissance and combat, the RAF’s decision to relocate its UAV assets from the US to RAF Waddington near Lincoln and to establish a new Unmanned Air Systems Capability Development Centre (UASCDC) there. The overall capabilities of such airborne weapon platform systems has also found supporters among nations who were initially opposed to this form of warfare, such as Germany which for historical as well as political reasons has been known to be more reluctant to the use of force and to participate in combat operations in a more active role.26

#### Counterplan links to the net benefit – Special Forces conduct drone strikes

Currier 13 (Cora, covers national security, previously editorial staff at the New Yorker, “Everything We Know So Far About Drone Strikes”, http://www.propublica.org/article/everything-we-know-so-far-about-drone-strikes)

The CIA isn’t alone in conducting drone strikes. The military has acknowledged “direct action” in Yemen and Somalia. Strikes in those countries are reportedly carried out by the secretive, elite Joint Special Operations Command. Since 9/11, JSOC has grown more than tenfold, taking on intelligence-gathering as well as combat roles. (For example, JSOC was responsible for the operation that killed Osama Bin Laden.) The drone war is carried out remotely, from the U.S. and a network of secret bases around the world. The Washington Post got a glimpse – through examining construction contracts and showing up uninvited – at the base in the tiny African nation of Djibouti from which many of the strikes on Yemen and Somalia are carried out. Earlier this year, Wired pieced together an account of the war against Somalia’s al-Shabaab militant group and the U.S.’s expanded military presence throughout Africa.

#### “Targeted Killing” isn’t just drones or special ops – it also includes cruise missiles and AC-130’s

Atherton 13 (Kelsey, “Stop Calling It The Drone Memo”, http://www.popsci.com/technology/article/2013-02/drone-memo-about-more-just-drones)

Last Monday NBC published a white paper from the Department of Justice about the United States's targeted killing program. Soon media outlets from PBS to Huffington Post to the Wall Street Journal to NBC itself started calling it the "drone memo." Here's the thing: The paper hardly mentions drones. It just sets out rules for a targeted killing policy and lists "pilotless aircraft or so-called smart bombs" as possible tools for carrying out those killings. The policy itself is not technology-specific. Yet somehow drones have become shorthand for targeted killing. Why? While it's true that drones are the best-known tool for carrying out targeted strikes, they are only one of many methods by which the United States attacks individual terrorists from afar. Here are some others: AC-130 The AC-130 is a type of gunship built on the body of a troop transport that has been in service since Vietnam. In Vietnam, AC-130s were used to attack truck convoys that could not shoot down aircraft. They carry sophisticated sensor equipment and can linger over a target for a long time, making them an ideal tool for attacking an enemy base. In 2009, an AC-130 was used in Somalia as a targeted strike against the leader of al Qaeda in Somalia. AC-130s were part of the U.S. mission in Somalia even earlier, in a strike in 2007 against Ahmed Madobe, leader of an armed Islamic fundamentalist group. (Though he was targeted, he survived the first strike, and was later captured by Ethiopians). Tomahawk cruise missiles Tomahawk cruise missiles, in use since the 1980s, are also part of the targeted killing program. In 2009, missiles were fired at an alleged al Qaeda training camp, with the goal of eliminating al Qaeda deputy Muhammad al-Kazemi. This was hardly the first time cruise missiles were used to take out a militant leader. In 1998, at the order of Bill Clinton, the United States used cruise missiles to hit back after al Qaeda bombed U.S. embassies in Kenya and Tanzania. These attacks predate the War on Terror (and the legal justifications used), though the main target is pretty recognizable today: they were aiming for Osama bin Laden.

#### And those cause worse blowback than drones

Byman 13 (Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, “Why Drones Work: The case for washington’s weapon of choice,” 92 Foreign Aff. 32 (2013), Accessed at Hein Online)

A 2012 poll found that 74 percent of Pakistanis viewed the United States as their enemy, likely in part because of the ongoing drone campaign. Similarly, in Yemen, as the scholar Gregory Johnsen has pointed out, drone strikes can win the enmity of entire tribes. This has led critics to argue that the drone program is shortsighted: that it kills today's enemies but creates tomorrow's in the process. Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as SEAL team raids or cruise missile strikes, would make the United States more popular.

### 2AC – Constitution Amendment

#### Permutation do both

#### Normal means of a constitutional amendment is delay – the neg must defend normal means, its key to aff offense

Barr 4(Bob, Washington Times. http://www.washtimes.com/commentary/20040418-102137-7612r.htm)

In the American political system, the Constitution was meant to operate like people who freeze their credit cards in a block of ice. That is, when faced with supremely important and emotional decisions involving things like the censorship of unpopular ideas or the seizure of firearms, the Constitution makes us walk to the corner and take a time out. Specifically, we have to get a two-thirds supermajority in both chambers of Congress and then three-quarters of the states to agree. It is an amazingly onerous process. The last amendment to the Constitution — the 27th — which set limits on congressional pay, was initially proposed in the states' petitions to the first Constitutional Congress in the 1780s but only started to move in the 1990s. It took more than two centuries to finally earn a spot alongside free speech and the right not to self-incriminate.

#### Delay kills legitimacy of drone program – means no solvency for all our internal links

Bell 5/18/12 (Josh, Media Strategist, “Government Asks for Another Delay in Targeted Killing FOIA Lawsuit” <https://www.aclu.org/blog/national-security/government-asks-another-delay-targeted-killing-foia-lawsuit>)

We’ve just learned that the Obama administration has asked the court for another extension for filing briefs in the ACLU’s FOIA lawsuit seeking information about the government’s targeted killing program (see the government’s letter here, and the ACLU’s response opposing the request here). Responding to the news, ACLU Deputy Legal Director Jameel Jaffer said: “We are disappointed and frustrated with the administration's eleventh-hour request for more time to answer a Freedom of Information Act request it should have responded to months ago. The FOIA law was meant to guarantee not just access to information but timely access, and the administration's serial requests for delay are tantamount to a denial of this right. The administration's request for further delay is particularly remarkable because, over the last few weeks, several senior officials have given public speeches about the targeted killing program. The program is plainly not a secret. It should not take the administration months to acknowledge as much to the courts.” Our FOIA request, filed last October, asks for information relating about the targeted killings of three U.S. citizens in Yemen: Anwar al-Awlaki, his 16-year-old son Abdulrahman al-Awlaki, and Samir Khan. The targeted killing program goes beyond the law by claiming unprecedented authority for the executive branch. Releasing information about how the program works is the first step in the process of bringing it in line with the Constitution.

#### Links to politics- Congress has to call the Convention even if 2/3 of the states suggest it

Black 12 (Eric, writer for the Minn Post, analyzing politics and government of Minnesota and the United States, the historical background of topics and other issues. He is a former reporter for the Star Tribune, “Fixing our system: Would another constitutional convention do the trick?,” http://www.minnpost.com/eric-black-ink/2012/12/fixing-our-system-would-another-constitutional-convention-do-trick)

As you may know, there is a way to amend that Constitution that doesn’t require congressional approval. Article V of the Constitution says that if two-thirds of all state legislatures petition Congress to do so, Congress must call for a convention to propose amendments to the Constitution after which, whether Congress likes them or not, the proposed amendments would be referred to the states for ratification. (As with any amendments, ratification requires the agreement of three-fourths of the states.)

#### Only the plan solves operative legal effect, the counterplan is only symbolic

Strauss-prof law Chicago-01 114 Harv. L. Rev. 1457

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutionayl change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place.

### 2AC – Court Politics

#### No link – the aff happens in the D.C. Circuit

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

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

#### Means the court won’t have to spend capital – lower court decisions shield them

GEWIRTZMAN-Law prof NYU-12

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1646&context=aulr>

AMERICAN UNIVERSITY LAW REVIEW [Vol. 61:457

B. Percolation’s Constitutional Benefits Percolation’s value remains highly contested, even though very little is actually known about how percolation actually operates within constitutional law or the extent to which the interpretive system benefits from prolonged periods of circuit court exploration and experimentation.134 Percolation’s fans, including several prominent jurists,135 have sung its praises despite the potential for splits and differences among the circuits. Among other things, a robust percolation process allows the Court to use its limited monitoring resources more efficiently,136 minimizes the Court’s expenditures of political capital,137 incentivizes lower court judges to take their job more seriously,138 and lets the Court measure support for a potential ruling among lower court judges, who are ultimately charged with applying the rule and whose allegiance is necessary for the Court to enforce its will.139 Percolation may also result in “better” law by removing the Supreme Court from the equation entirely. There are risks every time the Court decides to intervene in a dispute, including the risk that the Court will magnify and nationalize a localized judicial mistake.140 Indeed, intervention by the high court, even when lower federal courts are divided, can create more problems than it solves due to the potential for division, inconsistency, and compromise in a decision issued by a closely divided, multi-member Court.141 Like the precedent model, percolation claims legitimacy by serving a range of constitutional values, including experimentalism, intra- and inter- branch deliberation, pluralism, and judicial restraint.142

#### **Link non-unique**

#### A. The Supreme Court has statistically ruled against Obama more than any other president

McLaughlin, Washington Times, 6/26 (Seth, “Obama administration has lost two-thirds of Supreme Court cases”, http://www.washingtontimes.com/news/2013/jun/26/obama-administration-lost-two-thirds-of-cases-duri/?page=all)

President Obama celebrated the Supreme Court’s decisions Wednesday on gay marriage, but overall it has been a rocky term before the court for his administration, winning just more than a third of the cases in which it was involved. Lawyers said the government traditionally averages about a 70 percent winning percentage before the high court. Its advantages are so great that the Justice Department’s chief Supreme Court attorney, the solicitor general, is dubbed the “10th Justice.” But during the 2012-13 term, which began in October and ended Wednesday, the court rejected Mr. Obama’s arguments on property rights, affirmative action, voting rights and other issues. “Despite some notable victories, the Obama administration has had an unusually poor batting average at the high court,” said Adam Winkler, a constitutional law professor at UCLA. “Like last year, the Obama administration lost more cases than it won.” By Mr. Winkler’s count, the Obama administration has won 39 percent of the cases in which it has been a party in the litigation, and won 50 percent of the cases in which the government filed a “friend of the court” brief backing one side or the other. Mr. Winkler said a good portion of the administration’s poor batting average can be traced to ideological differences between the Obama administration and the five conservative-leaning Supreme Court justices. Indeed, the administration backed the losing argument in 11 cases that were decided 5-4, and one case that was decided 5-3. “What arguments can you make to a court that is determined to overturn the Voting Rights Act?” Mr. Winkler said. “The court is hostile to the administration’s arguments and the administration is not presenting the best arguments. So there is lot of blame to go around.” Still, not all of the cases were ideological battles. The Obama administration was on the losing end of several 9-0 decisions, including last year when the court held that churches have the right to make employment decisions free from government interference over discrimination laws, and said an Idaho couple could challenge the Environmental Protection Agency over government claims that they could not build a home on private property that was deemed a protected wetland. The nine justices also agreed this month to clear the way for California raisin growers to challenge the constitutionality of a Depression-era farming law that makes them keep part of their annual crop off the market. The losses continued to pile up for Mr. Obama this week after the court went against the wishes of the White House in cases that involved affirmative action in Texas, private property rights in Florida and a challenge to the Voting Rights Act of 1965. Ilya Somin, a constitutional law professor at George Mason University, said it is striking to take into account the number of times the Obama administration has been on the losing end of unanimous decisions. “When the administration loses significant cases in unanimous decisions and cannot even hold the votes of its own appointees — Justices Sonia Sotomayor and Elena Kagan — it is an indication that they adopted such an extreme position on the scope of federal power that even generally sympathetic judges could not even support it,” said Mr. Somin, adding that presidents from both parties have a tendency to make sweeping claims of federal power. “This is actually something that George W. Bush and Obama have in common.” The president scored at least a partial victory Wednesday in perhaps the biggest cases of the term when the court invalidated the 1996 Defense of Marriage Act, which defines marriage for the purpose of federal law as a legal union between one man and one woman. The court also ruled that the supporters of California’s Proposition 8, the ban on gay marriage that voters passed by referendum in 2008, did not have the standing to argue the case in court. Relaying Mr. Obama’s reaction, White House spokesman Jay Carney said the president described the DOMA ruling as “historic” and the Proposition 8 ruling as a “tremendous victory.” The rulings, though, were not complete victories for Mr. Obama’s stances. The court did not decide whether same-sex marriage is a constitutional right or address whether the California law is unconstitutional. “They made an argument in the Prop 8 case; it was rejected,” Mr. Winkler said. “They made an argument in the DOMA case; it was rejected. So they are happy with the results of today’s cases, but their arguments were not accepted by the court.”

#### No Russia war-no motive or capability

**Betts, Columbia war and peace studies professor, 2013**

(Richard, “The Lost Logic of Deterrence”, Foreign Affairs, March/April, ebsco, ldg)

These continuities with the Cold War would make sense only between intense adversaries. Washington and Moscow remain in an adversarial relationship, but not an intense one. If the Cold War is really over, and the West really won, then continuing implicit deterrence does less to protect against a negligible threat from Russia than to feed suspicions that aggravate political friction. In contrast to during the Cold War, it is now hard to make the case that Russia is more a threat to NATO than the reverse. First, the East-West balance of military capabilities, which at the height of the Cold War was favorable to the Warsaw Pact or at best even, has not only shifted to NATO's advantage; it has become utterly lopsided. Russia is now a lonely fraction of what the old Warsaw Pact was. It not only lost its old eastern European allies; those allies are now arrayed on the other side, as members of NATO. By every significant measure of power -- military spending, men under arms, population, economic strength, control of territory -- NATO enjoys massive advantages over Russia. The only capability that keeps Russia militarily potent is its nuclear arsenal. There is no plausible way, however, that Moscow's nuclear weapons could be used for aggression, except as a backstop for a conventional offensive -- for which NATO's capabilities are now far greater. Russia's intentions constitute no more of a threat than its capabilities. Although Moscow's ruling elites push distasteful policies, there is no plausible way they could think a military attack on the West would serve their interests. During the twentieth century, there were intense territorial conflicts between the two sides and a titanic struggle between them over whose ideology would dominate the world. Vladimir Putin's Russia is authoritarian, but unlike the Soviet Union, it is not the vanguard of a globe-spanning revolutionary ideal.

#### The Court decides each case on the facts, not based on political calculations.

Rosen 12 (Jeffrey, legal affairs editor of The New Republic, “Welcome to the Roberts Court: How the Chief Justice Used Obamacare to Reveal His True Identity,” June 29, http://www.newrepublic.com/blog/plank/104493/welcome-the-roberts-court-who-the-chief-justice-was-all-along#)

Of course, it didn’t all come down to judicial temperament. In the most divisive constitutional cases, the substance of legal arguments will always play a part. Arguments by liberal scholars who care about constitutional text and history, such as Neil Siegel of Duke Law School, were reflected in Chief Justice Roberts’s opinion about the taxing power. Justice Ginsburg’s defense of Congress’s power to pass the mandate under the commerce clause adopted New Textualists arguments by Jack Balkin of Yale Law School about how the framers of Article VI of the Virginia Plan during the Constitutional Convention would have wanted Congress to coordinate economic action in areas where the states were powerless to act on their own. The majority opinion also vindicated Solicitor General Don Verrilli’s decision to emphasize the breadth of Congress’s taxing power. But in the end, there are good arguments on both sides of any constitutional question, and justices have broad discretion to pick and choose among competing legal arguments based on a range of factors—including concerns about text, history, precedent, or institutional legitimacy. The fact that Roberts chose to place institutional legitimacy front and center is the mark of a successful Chief. As Roberts recognized, faith in the neutrality of the law and the impartiality of judges is a fragile thing. When I teach constitutional law, I begin by telling students that they can’t assume that it’s all politics. To do so misses everything that is constraining and meaningful and inspiring about the Constitution as a framework for government. There will be many polarizing decisions from the Roberts Court in the future, and John Roberts will be on the conservative side of many of them. But with his canny performance in the health care case, Roberts has given the country a memorable example of what it means to be a successful Chief Justice.

### 2AC – State Secrets DA

#### No link – state secrets is a question of standing –breaking it in this instance simply grants standing, it doesn’t “destroy the doctrine”

EFF 12 (Electonric Frontier Foundation “The State Secrets Privilege”, https://www.eff.org/nsa-spying/state-secrets-privilege)

What is the State Secrets Privilege The Supreme Court recognized the ‘state secrets’ privilege in the 1953 case United States v. Reynolds. The 1953 privilege was much more limited than how the government interprets it today. Invoking the Privilege: As the Supreme Court said at the time, it can only be invoked where “‘there is a reasonable danger’ that disclosure [of evidence] will ‘expose military matters which, in the interest of national security, should not be divulged.’ The invocation must come from “the head of the department which has control over the matter, after actual personal consideration of that office.” Impact of the Privilege: Under Reynolds, the government could exempt individual pieces of evidence from discovery—evidence that only the government possessed—if their release would harm national security. The case could still go forward with other evidence. The Supreme Court recently confirmed this interpretation, saying “The privileged information is excluded and the trial goes on without it.” Critically, the privilege could not exempt underlying facts from judicial review if plaintiffs had the same evidence from another source.

#### N/U – state secrets privilege has already been reduced – Jewel v NSA

DailyKos 13 (“State Secrets, Slightly Rolled Back”, <http://www.dailykos.com/story/2013/07/09/1222315/-State-Secrets-Slightly-Rolled-Back>)

In 2012, back in district court, the government moved to dismiss, for sovereign immunity, and on State Secrets grounds. In Jewel v. NSA, under the Ninth Circuit, a frequently cited opinion is the Ninth Circuit Mohamed v Jeppesen Dataplan. In 2002, Binyam Mohamed was flown to a secret prison in Morocco. While there, he got regular slicings of his penis, by a scalpel, among other treatment. In 2010, the Ninth Circuit said he had no judicial redress for this. Even the most fundamental issues of justice cannot be heard, in the United States, if state secrets are at stake. It was an extreme ruling in American jurisprudence. In December 2005, following press revelations, President George W. Bush held a press conference to defend the NSA spying. He chose to acknowledge details of the spying program. In June 2013, following press revelations, President Barack Obama held a press conference to defend the NSA spying. He chose to acknowledge details of the spying program. No President has ever held a press conference to defend the slicing of Binyam Mohammed's penis, or to acknowledge details about it. This makes a difference in our current legal system. And such are the legal and political issues of our day. The district court has released an opinion in Jewel v. NSA. In this case, State Secrets assertions have been slightly rolled back. There are two styles of State Secrets. Reynolds. A standard about denying specific evidence in the case. The state secrets privilege is a common law privilege that permits the government to bar the disclosure of information if “there is a reasonable danger” that disclosure will “expose military matters which, in the interest of national security, should not be divulged.” United States v. Reynolds, 345 U.S. 1, 10 (1953). Opinion Totten. If the government has done something especially embarrassing and illegal, the whole case can be barred from proceeding. Alternatively, the state secrets privilege may be invoked to bar litigation of the matter in its entirety where “the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.” Totten v. United States, 92 U.S. 105, 107 (1875). Where the very subject matter of the lawsuit is a matter of state secret, the action must be dismissed without reaching the question of evidence. This opinion rolls back from the extreme version of a states secrets bar on the whole lawsuit. Judgments about state secrets are more balanced and considered. In determining whether the privilege attaches, the Court may consider a party’s need for access to the allegedly privileged materials. See Reynolds, 345 U.S. 19 at 11. Lastly, the “ultimate question to be resolved is how the matter should proceed in light of the successful privilege claim.” Because the New York Times and Guardian revelations have made the government publicly defend the program, the case as a whole can proceed. Totten does not apply. Given the multiple public disclosures of information regarding the surveillance program, the Court does not find that the very subject matter of the suits constitutes a state secret. In other words, the government’s many attempts to assuage citizens’ fears that they have not been surveilled now doom the government’s assertion that the very subject matter of this litigation, the existence of a warrantless surveillance program, is barred by the state secrets privilege. Government ability to deny specific evidence will still exist. Reynolds is still in play. However, here, the Court finds there would be significant evidence that would be properly excluded should the case proceed. The case thus becomes a matter of the amount of evidence that can be disclosed.

### 2AC – PQD

#### The PQD is already dead in the realm for foreign policy

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising in the context of foreign or military affairs. Rather, lower federal courts should adjudicate these claims on their merits by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine” as a nonjusticiability doctrine in cases involving individual rights – even those arising in a foreign policy context. In fact, a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the so-called “political question doctrine” as a true nonjusticiable doctrine to dismiss individual rights claims (and arguably, not to any claims at all), even those arising in the context of foreign or military affairs. This includes the seminal “political question” case of Marbury v. Madison. Rather, the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, the post-9/11 Supreme Court cases of Hamdi v. Rumsfeld, Rasul v. Bush, and Bush v. Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss individual rights claims as nonjusticiable, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs rather than finding the claim nonjusticiable.

#### No extinction-empirically denied

**Carter et al., James Cook University adjunct research fellow, 2011**

(Robert, “Surviving the Unpreceented Climate Change of the IPCC”, 3-8, <http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html>, ldg)

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos *et al*., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world." In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate.

#### Federal court intervention is critical to uphold climate regulations

Deartherage, attorney, 12 (Scott D., partner with Patton Boggs LLP, “Climate Change Litigation: Federal Court Opens Door to EPA Regulation of Greenhouse Gases”, http://www.pattonboggs.com/ViewpointFiles/7a780134-ba7d-4ed8-b1b2-f14b6f013689/CA\_DEC\_Legal.pdf)

Federal courts have issued opinions that have assisted certain industries and business groups that are opposed to the courts stepping in to address climate change and greenhouse gas emissions. These cases have taken quite a bit of steam out of the individuals or entities that want to address climate change through the courts. However, another federal court decision opened the door to the U.S. Environmental Protection Agency’s (EPA) regulation of greenhouse gases under the federal Clean Air Act (CAA). This case has in general freed the EPA to issue regulation under what is known as the Prevention of Significant Deterioration program of the CAA. The EPA’s ability to regulate greenhouse gases was addressed by the U.S. Supreme Court in 2007, when the court considered a challenge to the EPA’s decision during the Bush administration not to grant a private petition to regulate greenhouse gases emitted from automobiles. The decision in that case opened the door and made it hard for the EPA not to regulate greenhouse gases under the CAA. Once the Obama administration came into power, the EPA moved forward with decisions and regulations to limit greenhouse gas emissions from automobiles, largely through increased fuel efficiency standards negotiated with the automobile manufacturer. This decision led to regulation of greenhouse gas emissions from larger industrial emitters, including coal-fired and natural-gas fired power plants, refineries, among others. Of course, litigation followed challenging those regulations. The EPA’s regulations focused on only the largest emitters, over 75,000 or 100,000 tons of greenhouse gases, depending on timing and other criteria—even though a reading of the act would suggest any emitter over 250 tons per year would be regulated. This limitation resulted in a nickname of the regulation as the “Tailoring Rule,” because it was “tailored” to the largest emitters. The EPA said it would look at smaller emitters over time and determine whether to address those sources. The litigation challenging the EPA rules was brought by various industry and non-governmental groups, states and companies. The case,Coalition for Responsible Regulation v. EPA, was decided by the D.C. Circuit Court of Appeals and a decision was handed down in June 2012. The decision upheld the EPA rules unanimously, by both Democratic and Republican appointed judges. The court decided the case largely on three grounds. The first relates to the EPA’s decision that the emission of greenhouse gases causes or contributes to air pollution that may be reasonably anticipated to endanger public health or welfare of human health—known as the “Endangerment Finding.” This was decision made with respect to mobile sources, such as cars, trucks or trains. The court concluded that it would defer to the EPA’s scientific decision. The court stated that the EPA “is not required to re-prove the existence of the atom every time it approaches a scientific question.” The decision was not surprising based on the historical Supreme Court precedent that directs courts to defer to administrative agencies on scientific and technical issues. Whatever one’s view of climate change and its occurrence or cause, the challenge to climate science itself was not a likely winner based on the conclusions of the scientific academies in the U.S. and other developed and major developing countries and the United Nations’ Intergovernmental Panel on Climate Change. Future challenges along these lines are not likely to succeed. The second ground was that the EPA then moved forward with regulating mobile sources. The court upheld the EPA’s decision because it concluded that the EPA did not have any discretion to not issue such rules once the agency made the Endangerment Finding. This is why the challengers first went after the basic scientific conclusions underpinning the EPA greenhouse gas mobile rules. Again, this decision was not surprising. The third ground was more surprising. The challengers had asserted that the decision not to regulate smaller sources was inconsistent with the clear language of the CAA. However, the court did not consider this argument. Instead, the court ruled that the challengers lacked standing to challenge the decision not to regulate the smaller sources. Standing here means the ability to bring a court action because the party is injured or harmed by a particular act or, here, regulation. This is a basic tenet of federal litigation under Article III of the U.S. Constitution. The court concluded that regulating fewer industries than more does not harm the plaintiffs (one would think this would be a decision supported by many of the groups challenging the rules) so that the plaintiffs had no standing to challenge the decision. While one would think there could be some basis for such an argument of economic harm where larger industries are regulated but smaller ones are not, but the parties had not addressed this issue, at least in the court’s opinion. Ironically, industry had been attempting in litigation to limit environmental groups’ and other plaintiffs’ ability to bring environmental suits under federal statutes or tort claims as one means of limiting those cases. In this case, the federal courts tightening of standing requirements resulted in the courts refusing to hear the complaint that the EPA failed to follow the CAA. The case may ultimately be heard by the Supreme Court, but it would not be surprising if the case were upheld by that court. If the issue of standing were reversed, the issue of the Tailoring Rule itself could be remanded to the D.C. Circuit for review. At this point, the litigation from an overall perspective in the federal courts appears to have moved out of the tort realm. What may happen to cases filed in state courts remains to be seen. The federal litigation may now be focused on challenges of EPA regulations. So far those cases have favored the EPA’s ability to regulate greenhouse gases. With the re-election of President Obama, it appears likely that the EPA will continue to pursue greenhouse gas regulation. The question is will the regulations issued beyond the Tailoring Rule present better opportunities for legal challenge than the Coalition for Responsible Regulation case.

# 1AR

### Terror

#### And, Nuclear terrorism attacks escalate and cause extinction. [yellow wasn’t in 1ac]

**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

## Court Politics

### AT: SC Normal Means

#### Key National Security Cases are heard in D.C.

Congressional Quarterly News 8/19/13

HEADLINE: Nonpartisan Judgeship Plan Meets Partisan Senate Debate over D.C. Circuit

A proposal by Senate Democrats to create 91 new federal judgeships is likely to become tied up in the partisan debate over President Barack Obama's three nominees to a powerful federal appeals court in the District of Columbia. The Senate Judiciary Committee has a Sept. 10 hearing to evaluate the proposal, which would create 70 permanent and 21 temporary judgeships at both the district and appellate court levels. The bill (S 1385), introduced by Sen. Chris Coons, D-Del., and Judiciary Chairman Patrick J. Leahy, D-Vt., also would convert eight existing temporary district court judgeships into permanent positions. The plan is based on recommendations made in April by the nonpartisan Judicial Conference of the United States, a group of judges that sets policy for the lower federal courts and is led by Chief Justice John G. Roberts Jr. The conference said in a letter to Leahy that increasing caseloads have "created enormous difficulties" in courts around the country, while singling out five district courts in Arizona, Delaware and Texas as "struggling with extraordinarily high and sustained workloads." The conference noted that Congress has not passed a so-called "omnibus" bill to create new judgeships since 1990, when lawmakers authorized 85 new positions, including 80 permanent and five temporary judicial seats. Since then, Congress has occasionally approved smaller batches of new judgeships, but the overall number of authorized positions has increased by just 28, according to data from the Administrative Office of the U.S. Courts. "Congress has left the judicial staffing of our federal courts essentially unchanged for 23 years, despite rapidly growing caseloads," Coons, the chairman of the Judiciary Subcommittee on Bankruptcy and the Courts, said in a July 30 statement when he introduced his legislation. "This bill would provide much-needed relief to our overburdened courts, ensuring that they are better prepared to administer justice quickly and efficiently." But the legislation also provides Democrats with a new political tool in their debate with Republicans over Obama's three nominees to the Court of Appeals for the District of Columbia Circuit. New Democratic Argument Obama nominated Patricia Ann Millett, Cornelia T.L. Pillard and Robert L. Wilkins to the D.C. Circuit on June 4, saying vacancies on the court have gone unfilled for years. It is widely seen as the second most-powerful court in the country and handles crucial administrative and national security cases. Leahy has pushed hard to bring the nominees to the Senate floor, and the Judiciary Committee approved Millett on a 10-8 party-line vote on Aug. 1. Republicans counter that Obama is trying to stack the D.C. Circuit in his favor, noting that the court's eight active judges are divided evenly between four Democratic and four Republican appointees. Republicans were quick to highlight remarks that Majority Leader Harry Reid, D-Nev., made in an interview with Nevada Public Radio on Aug. 9, when he said that Democrats want to confirm at least one more judge to the court because "that will switch the majority." Republicans also argue that the D.C. Circuit is underworked, based on the total number of appeals it handles each year. GOP senators are rallying behind a proposal (S 699) -- authored by Sen. Charles E. Grassley of Iowa and cosponsored by every other Republican on the Judiciary Committee -- that would eliminate one of the court's vacant seats and allocate the other two to circuits they say are busier. But the Coons-Leahy measure gives Democrats a new argument against Grassley's bill. They can tout their own proposal as an alternative that would address judicial caseloads nationally in a way recommended by the judiciary itself. Those recommendations do not include any reduction in the number of judgeships for the D.C. Circuit -- a point that Democrats are sure to invoke as they push for the confirmation of the president's three pending nominees.

Aff will happen in the D.C. Circuit

Kapur-TPM-7/31/13

The Next Filibuster Face-Off: Obama’s Judicial Nominees

http://tpmdc.talkingpointsmemo.com/2013/07/the-next-nuclear-test-obamas-judicial-nominees.php

The D.C. Circuit is often regarded as the country’s second most powerful court because it often has the final word over executive power decisions. It currently has eight active judges — four of whom were appointed by Democrats and four by Republicans.

Normal means plan would happen in D.C.

PFAW 13 (People for the American Way) http://www.pfaw.org/media-center/publications/america-s-progress-risk-restoring-balance-dc-circuit-court-appeals America's Progress at Risk: Restoring Balance to the D.C. Circuit Court of Appeals Introduction

Congress requires the D.C. Circuit to be the immediate and exclusive court to consider appeals of a breathtaking array of agency regulations and decisions. Moreover, even when parties appealing agency decisions have a choice of venues, they often choose to have their cases heard by the D.C. Circuit, sometimes due to its expertise in complex administrative matters and sometimes to take advantage of the court’s ideological imbalance. For the same reason, the D.C. Circuit is also a prime choice for those challenging congressionally passed statutes or presidential actions.

Wheeler-Brookings, Governance Studies-5/22/13 http://www.acslaw.org/acsblog/all/u.s.-court-of-appeals-for-the-district-of-columbia-circuit?page=2 Scuttling a President’s ‘Popular Imprint’ on the Judiciary

While the Supreme Court attracts the lion’s share of attention from the press and the public, it hears only a tiny fraction of the appeals filed each year. The nine Justices, who generally get to pick which appeals they will consider, heard only 79 cases during the 2011-2012 term. Only a tiny number of those cases were appealed from the D.C. Circuit. In contrast, the D.C. Circuit cannot simply choose not to hear an appeal. In the year that ended in September 2012, nearly 1,200 appeals were filed before the court. This means that when the D.C. Circuit makes a ruling, it is almost guaranteed to have the last word. And because of the D.C. Circuit’s jurisdiction it has the last word on a wide range of federal laws, including congressional enactments and regulations adopted by federal agencies and departments. By virtue of the types of cases it hears, the court has a unique ability to put its stamp on an enormous array of the nation’s laws in a way that other circuits simply do not. Congress requires the D.C. Circuit to be the immediate and exclusive court to consider appeals of a breathtaking array of agency regulations and decisions. Moreover, even when parties appealing agency decisions have a choice of venues, they often choose to have their cases heard by the D.C. Circuit, sometimes due to its expertise in complex administrative matters and sometimes to take advantage of the court’s ideological imbalance. For the same reason, the D.C. Circuit is also a prime choice for those challenging congressionally passed statutes or presidential actions. Much of the machinery of United States administrative law (the rules adopted by federal agencies that affect so many aspects of our society) runs through the D.C. Circuit. According to a September 2012 report by the Administrative Office of U.S. Courts, 43 percent of the appeals filed at the D.C. Circuit in the past year were related to administrative actions. For circuit courts overall, that number is only 15 percent.

## Special Forces

### 1AR Ext: Perm – Targeted Killing =/= Special Forces

#### Special ops are defined as assassinations, not targeted killing

Priest and Arkin 11 (Dana and William, “‘Top Secret America’: A look at the military’s Joint Special Operations Command”, http://articles.washingtonpost.com/2011-09-02/world/35273073\_1\_navy-seal-joint-special-operations-command-drones)

The SEALs are just part of the U.S. military’s Joint Special Operations Command, known by the acronym JSOC, which has grown from a rarely used hostage rescue team into America’s secret army. When members of this elite force killed Osama bin Laden in Pakistan in May, JSOC leaders celebrated not just the success of the mission but also how few people knew their command, based in Fayetteville, N.C., even existed. This article, adapted from a chapter of the newly released “Top Secret America: The Rise of the New American Security State,” by Washington Post reporters Dana Priest and William M. Arkin, chronicles JSOC’s spectacular rise, much of which has not been publicly disclosed before. Two presidents and three secretaries of defense routinely have asked JSOC to mount intelligence-gathering missions and lethal raids, mostly in Iraq and Afghanistan, but also in countries with which the United States was not at war, including Yemen, Pakistan, Somalia, the Philippines, Nigeria and Syria. “The CIA doesn’t have the size or the authority to do some of the things we can do,” said one JSOC operator. The president has given JSOC the rare authority to select individuals for its kill list — and then to kill, rather than capture, them. Critics charge that this individual man-hunting mission amounts to assassination, a practice prohibited by U.S. law. JSOC’s list is not usually coordinated with the CIA, which maintains a similar but shorter roster of names.

#### That’s critical – assassinations and targeted killings are distinct

Goppel 13 (Anna, “Killing Terrorists: A Moral and Legal Analysis”, google books, p 14)

As with targeted killing, assassination implies the intention to kill as well as the intention to kill a specific person.u Furthermore, neither targeted killing nor assassination comprise lethal force triggered by an imminent threat posed to the life of others. However, unlike the term ‘targeted killing’, the term ‘assassination’ does not reveal whether the act of lethal force has been carried out by state officials, by non-state agents on behalf of a state, or by non-state agents acting independent ly of any state involvement.23 In this respect, targeted killing appears to be a more limited concept of lethal force than assassination. Other than this rather technical difference, the second crucial distinction between targeted killing and assassination adds a moral and legal dimension and is, thus, of particular importance for the context addressed in this book. Assas sination represents illegal conduct. The term is hardly ever employed to denote legal behaviour and most definitions explicitly distinguish assassination from legal homicide.24 General definitions and peacetime definitions of assassination describe the practice for this purpose as unlawful killing or as murder25 In war time definitions, commentators distinguish assassination from lawful killing in warfare by describing it as the killing of a specific person by treacherous means.26 Thus defined, this understanding of assassination also reflects common linguistic usage of the term and corresponds to the way the term is used in legal documents.

### 1AR Ext: Judicial Review doesn’t hurt Special Ops

#### No impact – accountability for special forces is critical – your internal link evidence is about ex-ante review which is distinct from the plan

Ambinder 12 (Marc, former reporter for The Atlantic and National Journal, “How The Pentagon’s Top Killers Became (Unaccountable) Spies “, <http://www.wired.com/dangerroom/2012/02/jsoc-ambinder/>)

DR: What does that mean for holding JSOC accountable? This is an extraordinarily secretive military unit.

MA: There are a lot of buried caches in West Virginia and Virginia of JSOC documents. I only say that with some exaggeration. This is obviously a command that had to be secret when it was stood up in part because secrecy is the coin of realm when doing one-off special operations. The problem generally here is that by law, JSOC can’t really collect strategic intelligence or intelligence for its own sake, depending on where they are. In the war zone, in Iraq or Afghanistan, it’s different; they can collect and use intelligence there. But they also operate outside of designated war zones in North Africa, in South America, in Asia, and they use these intelligence collection techniques there as well. It’s under the rubric of what they call “Operational Preparation of the Environment.” Which is to say, any time there’s JSOC operation, you don’t want them to fly in blind, so you have to collect some intelligence. But in practice they really stretch that definition. Elements of JSOC run their own human intelligence sources. I didn’t put this in the book, but I had one former senior JSOC operator describing to me a very elaborate JSOC operation in Beirut where a dozen more human sources were recruited to steal a variety of documents, relating to international narcotics trafficking. Which sounds great, until you remember that it’s not law enforcement officers or the CIA doing it, but the U.S. military doing it. There are legal restrictions on what the CIA can do in terms of covert operations. There has to be a finding, the president has to notify at least the “Gang of Eight” [leaders of the intelligence oversight committees] in Congress. JSOC doesn’t have to do any of that. There is very little accountability for their actions. What’s weird is that many in congress who’d be very sensitive to CIA operations almost treat JSOC as an entity that doesn’t have to submit to oversight. It’s almost like this is the president’s private army, we’ll let the president do what he needs to do. As long as you don’t get in trouble, we’re not gonna ask too many questions. You don’t want the command to brief members of Congress before every operation. On other hand, regular briefings every three months might give some sense of the military intelligence collection that goes on. And when you collect intelligence, it’s not just satellites that’s listen to conversation. You’re making in a lot of cases very difficult, grey, moral choices like the CIA does all the time. There’s an argument to be made — incidentally, it’s one that Republican [Rep.] Mike Rogers, the head of the House intelligence committee agrees with — for more regular briefings from JSOC, to get a more granular sense of how JSOC uses and distributes the money it’s given for intelligence gathering. He understands that a lot of vital strategic intelligence isn’t being collected by CIA, it’s being collected by JSOC, in pursuit of legitimate objectives without oversight.