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#### Restrictions on authority prohibit- the aff is a condition

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

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

**Vote neg  
limits and ground- anything can indirectly affect war powers--also makes the topic bidirectional because conditions can enhance executive power**

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#### Politics is Schmittian – trying to fight the executive on their own battlefield is naïve – the aff is just a liberal knee-jerk reaction that swells executive power

Kinniburgh, 5/27 **–** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### Legality is what feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

#### The alt is to reject the aff in favor of building a culture of resilience

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

We do not yet live under a plebiscitary presidency. In such a system, the president has unchecked legal powers except for the obligation to submit to periodic elections. In our system, Congress retains the formal power to make law. It has subjected presidential lawmaking to complex procedures and bureaucratic checks,1 and it has created independent agencies over which the president in theory has limited control. The fed­eral courts can expect the executive to submit to their orders, and the Supreme Court retains certain quasi-lawmaking powers, which it exercises by striking down statutes and blocking executive actions. The federal system is still in place. State legal institutions retain considerable power over their populations. But these legal checks on executive authority (aside from the electoral constraint) have eroded considerably over the last two hundred years. Congress has delegated extensive powers to the executive. For new initia­tives, the executive leads and Congress follows. Congress can certainly slow down policymaking, and block bills proposed by the executive; but it cannot set the agenda. It is hard to quantify the extent of congressional control over regulatory agencies, but it is fair to say that congressional intervention is episodic and limited, while presidential control over both the executive and independent agencies is strong and growing stronger. The states increasingly exercise authority at the sufferance of the national government and hence the president. The federal courts have not tried to stop the erosion of congressional power and state power. Some commentators argue that the federal courts have taken over Con­gress’s role as an institutional check. It is true that the Supreme Court has shown little compunction about striking down statutes (although usually state statutes), and that it rejected some of the legal theories that the Bush administration used to justify its counterterrorism policies. However, the Court remains a marginal player. The Court ducked any legal rulings on counterterror policies until the 2004 Hamdi decision, and even after the Boumediene decision in 2008, no detainee has been released by final judicial order, from Guantanamo or elsewhere, except in cases where the government chose not to appeal the order of a district judge. The vast majority of detainees have received merely another round of legal process. Some speculate that judicial threats to release detainees have caused the administration to release them preemptively. Yet the judges would incur large political costs for actual orders to release suspected terrorists, and the government knows this, so it is unclear that the government sees the judi­cial threats as credible or takes them very seriously. The government, of course, has many administrative and political reasons to release detainees, quite apart from anything the courts do. So the executive submits to judi­cial orders in part because the courts are careful not to give orders that the executive will resist. In general, judicial opposition to the Bush administration’s counterter­rorism policies took the form of incremental rulings handed down at a gla­cial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, tar­geted assassinations, the immigration sweeps, even coercive interrogation. The (limited) modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan. The 9/11 attack provided a reminder of just how extensive the presi­dent’s power is. The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant stat­utory authority, and the Supreme Court has steadfastly refused to address the ultimate merits of the executives constitutional claims, these claims were never tested in a legal or public forum. But it is worth trying to ima­gine what would have happened if Congress had refused to pass the Autho­rization for Use of Military Force and the Supreme Court had ordered the executive to release detainees in a contested case. We think that the execu­tive, backed up as it was by popular opinion, would have refused to obey. And, indeed, for just that reason, Congress would, never have refused its imprimatur and the Supreme Court would never have stood in the execu­tive’s way. The major check on the executives power to declare an emer­gency and to use emergency powers is—political. The financial crisis of 2008-2009 also revealed the extent of executive power. Acting together, the Fed, the Treasury, and other executive agencies spent hundreds of billions of dollars, virtually nationalizing parts of the financial system. Congress put up a fuss, but it could not make policy and indeed hardly even influenced policy. Congress initially refused to supply a blank check, then in world-record time changed its mind and gave the blank check, then watched helplessly as the administration adopted pol­icies different from those for which it said the legislation would be needed. Courts played no role in the crisis except to ratify executive actions in tension with the law.2 What, then, prevents the executive from declaring spurious emergencies and using the occasion to consolidate its power—or for that matter, consolidating its power during real emergencies so that it retains that power even after normal times return? In many countries, notably in Latin America, presidents have done just that. Citing an economic crisis, or a military threat, or congressional gridlock, executives have shut down independent media, replaced judges with their cronies, suppressed political opposition, and ruled by dictate. Could this happen in the United States? The answer is, very probably, no. The political check on the executive is real. Declarations of emergency not justified by publicly visible events would be met with skepticism. Actions said, to be justified by emergency would not be approved if the justification were not plausible. Separation of powers may be suffering through an enfeebled old age, but electoral democracy is alive and well. We have suggested that the historical developments that have under­mined separation of powers have strengthened democracy. Consider, for example, the communications revolution, which has culminated (so far) in the Internet Age. As communication costs decrease, the size of markets expand, and hence the scale of regulatory activity must increase. Localities and states lose their ability to regulate markets, and the national govern­ment takes over. Meanwhile, reduced communication costs increase the relative value of administration (monitoring firms and ordering them to change their behavior) and reduce the relative value of legislation (issuing broad-gauged rules), favoring the executive over Congress. At the same time, reduced communication costs make it easier for the public to mon­itor the executive. Today, whistleblowers can easily find an audience on the Internet,; people can put together groups that focus on a tiny aspect of the government s behavior; gigabytes of government data are uploaded onto the Internet and downloaded by researchers who can subject them to rigorous statistical analysis. It need not have worked out this way. Govern­ments can also use technology to monitor citizens for the purpose of suppressing political opposition. But this has not, so far, happened in the United States. Nixon fell in part because his monitoring of political enemies caused an overwhelming political backlash, and although the Bush administration monitored suspected terrorists, no reputable critic suggested that it targeted domestic political opponents. Our main argument has been methodological and programmatic: researchers should no longer view American political life through the Madisonian prism, while normative theorists should cease bemoaning the decline of Madisonianism and instead make their peace with the new political order. The center of gravity has shifted to the executive, which both makes policy and administers it, subject to weak constraints imposed by Congress, the judiciary, and the states. It is pointless to bewail these developments, and futile to argue that Madisonian structures should be reinvigorated. Instead, attention should shift to the political constraints on the president and the institutions through, which those political con­straints operate—chief among them elections, parties, bureaucracy, and the media. As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public s trust. The irony of the new political order is that the executive, freed from the bonds of law, inspires more distrust than in the past, and thus must enter ad hoc partnerships with political rivals in order to persuade people that it means well. But the new system is more fluid, allowing the executive to form those partnerships when they are needed to advance its goals, and not otherwise. Certain types of partnership have become recurrent pat­terns—for example, inviting a member of the opposite party to join the president’s cabinet. Others are likely in the future. In the place of the clockwork mechanism bequeathed to us by the Enlightenment thinking of the founders, there has emerged a more organic system of power sharing and power constraint that depends on shifting political alliances, currents of public opinion, and the particular exigencies that demand government action. It might seem that such a system requires more attention from the public than can reasonably be expected, but the old system of checks and balances always depended on public opinion as well. The centuries-old British parliamentary system, which operated in. just this way, should provide reason, for optimism. The British record on executive abuses, although hardly perfect, is no worse than the American record and arguably better, despite the lack of a Madisonian separation of legislative and executive powers

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#### The Executive Branch should limit self-defense targeted killings to outside an armed conflict and create “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; 2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government. Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected within the executive branch? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

#### Internal checks comparatively solve better and don’t link to politics

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. 76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. 77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. 78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. 79

### 1NC DA

#### NSA reforms will pass – former obstacles overcome

Hawkings, 3-25-’14 (David, “Hill’s Bipartisan Deadlock on Phone Records May Be Easing” Roll Call, blogs.rollcall.com/hawkings/obama-nsa-reform-plan-could-ease-congressional-deadlock-on-spying/2/)

Eight months ago, in one of its most important and fascinatingly nonpartisan votes of recent memory, the House came up just seven members short of eviscerating the government’s vast effort to keep tabs on American phone habits. The roll call revealed a profound divide in Congress on how assertively the intelligence community should be allowed to probe into the personal lives of private citizens in the cause of thwarting terrorism. It is a split that has stymied legislative efforts to revamp the National Security Agency’s bulk data collection programs. Until now, maybe. Senior members with jurisdiction over the surveillance efforts, in both parties and on both sides of the Hill, are signaling generalized and tentative but nonetheless clear support for the central elements of a proposed compromise that President Barack Obama previewed Tuesday and will formally unveil by week’s end. The president, in other words, may be close to finding the congressional sweet spot on one of the most vexing problems he’s faced — an issue that surged onto Washington’s agenda after the secret phone records collection efforts were disclosed by former NSA contractor Edward Snowden. If Obama can seal the deal, which he’s pledged to push for by the end of June, it would almost surely rank among his most important second-term victories at the Capitol. It also would create an exception that proves the rule about the improbability of bipartisan agreement on hot-button issues in an election season. “I recognize that people were concerned about what might happen in the future with that bulk data,” Obama said at a news conference in The Hague, where he’s been working to gain support for containing Russia from a group of European leaders who have their own complaints about U.S. spying on telephone calls. “This proposal that’s been presented to me would eliminate that concern.” The top two members of the House Intelligence Committee, GOP Chairman Mike Rogers of Michigan and ranking Democrat C.A. Dutch Ruppersberger of Maryland, introduced their own bill to revamp surveillance policy Tuesday — and declared they expect it would track very closely with the language coming from the administration. They said they had been negotiating with White House officials for several weeks and viewed the two proposals as compatible. At their core, both the Obama and House bills would end the NSA practice of sucking up and storing for five years the date and time, duration and destination of many millions of phone calls placed or received by Americans. Instead, the phone companies would be required to retain this so-called metadata (and comparable information about email and Internet use) for 18 months, their current practice. And the government would have to obtain something like a search warrant from the Foreign Intelligence Surveillance Court, meaning in each discreet case a judge would limit how deeply the telecom companies would have to query their databases in hopes of finding calling patterns that suggest national security threats. Since both Rogers and Ruppersberger have been prominent defenders of the bulk collection system, any agreement they reach that has Obama’s blessing can be expected to pass the House. It should garner support from a lopsided majority of the 217 House members (three-fifths of the Republicans and two-fifths of the Democrats) who voted to stick with the status quo last July. And it stands a chance to win over at least some on the other side — an unusual coalition of 94 mostly libertarian-leaning tea party Republicans and 111 liberal Democrats, who say NSA searches of the databases should be limited to information about existing targets of investigations. But one leader of that camp vowed to work for the defeat of any measure that looks like either the Obama or Intelligence panel plans. Republican Rep. Jim Sensenbrenner of Wisconsin, who as chairman of House Judiciary a decade ago was instrumental in writing the Patriot Act, believes that law has been grossly misapplied by the NSA to invade personal privacy much too easily. Sensenbrenner said he would continue to push his measure to almost entirely prevent the NSA from looking at telecommunications metadata. But the sponsor of the companion Senate bill, Judiciary Chairman Patrick J. Leahy, D-Vt., said he would remain open to finding the makings of a deal in the Obama plan. Leahy signaled the legislative negotiating would be much smoother if Obama suspended the bulk data collection during the talks. Much more enthusiastic was Calfornia’s Dianne Feinstein, the Democratic chairwoman of the Senate Intelligence Committee, who said she generally supports the House proposal and views Obama’s plan “a worthy effort.” Her committee’s top Republican, the retiring Saxby Chambliss of Georgia, was a bit more equivocal but gave a strong indication he was eager to cut a deal based on the ideas from the House and the White House.

#### Plan tanks capital and derails the agenda – empirics prove

Kriner ’10 Douglas L. Kriner, assistant professor of political science at Boston University, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### NSA reforms key to credibility – absent that, they’ll lose the ability to do surveillance

Sasso, 3-25-’14 (Brendan, “Why Obama and His NSA Defenders Changed Their Minds” National Journal, www.nationaljournal.com/tech/why-obama-and-his-nsa-defenders-changed-their-minds-20140325)

It was only months ago that President Obama, with bipartisan backing from the heads of Congress's Intelligence committees, was insisting that the National Security Agency's mass surveillance program was key to keeping Americans safe from the next major terrorist attack. They were also dismissing privacy concerns, saying the program was perfectly legal and insisting the necessary safeguards were already in place. But now, Obama's full-speed ahead has turned into a hasty retreat: The president and the NSA's top supporters in Congress are all pushing proposals to end the NSA's bulk collection of phone records. And civil-liberties groups—awash in their newly won clout—are declaring victory. The question is no longer whether to change the program, but how dramatically to overhaul it. So what changed? It's not that Obama and his Hill allies suddenly saw the error of their ways and became born-again privacy advocates. Instead, with a critical section of the Patriot Act set to expire next year, they realized they had no choice but to negotiate. If Congress fails to reauthorize that provision—Section 215—by June 1, 2015, then the NSA's collection of U.S. records would have to end entirely. And the growing outrage prompted by the Snowden leaks means that the NSA's supporters would almost certainly lose an up-or-down vote on the program. Rep. Adam Schiff, a Democratic member of the House Intelligence Committee, said that looming sunset is what forced lawmakers to the bargaining table. "I think what has changed is the growing realization that the votes are simply not there for reauthorization," he said in an interview. "I think that more than anything else, that is galvanizing us into action." Obama and the House Intelligence Committee leaders believe their proposals are now the NSA's best bet to retain some power to mine U.S. phone records for possible terror plots. Senate Intelligence Committee Chairwoman Dianne Feinstein, another leading NSA defender, also indicated she is on board with the changes, saying the president's proposal is a "worthy effort." And though the Hill's NSA allies are now proposing reforms to the agency, they don't seem particularly excited about it. At a Capitol Hill press conference Tuesday, Rep. Mike Rogers, the Republican chairman of the House Intelligence Committee, and Rep. Dutch Ruppersberger, the panel's top Democrat, often sounded like they were arguing against their own bill that they were unveiling. "I passionately believe this program has saved American lives," Rogers said. Ruppersberger said if the program had been in place in 2001, it may have prevented the Sept. 11 attacks. But the lawmakers acknowledged there is broad "discomfort" with the program as it is currently structured. "We need to do something about bulk collection because of the perception of our constituents," Ruppersberger admitted. Under their legislation, the vast database of phone records would stay in the hands of the phone companies. The NSA could force the phone companies to turn over particular records, and the Foreign Intelligence Surveillance Court would review the NSA orders after the fact. But Rogers rejected a reporter's suggestion that the NSA should have never had control of the massive database of phone records in the first place. "There was no abuse, no illegality, no unconstitutionality," he said. For all their hesitance, however, Rogers and company much prefer their version to a competing proposal to change the way the government gathers information. That would be the USA Freedom Act, a proposal from Senate Judiciary Committee Chairman Patrick Leahy and Rep. Jim Sensenbrenner that Rogers and his ilk fear would go too far in hamstringing the NSA. The USA Freedom Act would require the NSA to meet a tougher standard for the data searches and would limit other NSA programs, such as Internet surveillance of people overseas. Additionally, President Obama is expected to unveil his own plan to reform the controversial phone data collection program this week. According to The New York Times, Obama's proposal would also keep the database in the hands of the phone companies. His plan would have tougher judicial oversight than the House bill by requiring pre-approval from the court for every targeted phone number, the newspaper reported. But though the momentum has shifted and officials seem to be coalescing around a framework for overhauling the NSA program, the question is far from settled. Leahy and Sensenbrenner are not backing off from their USA Freedom Act, and outside groups will continue their policy push as well.

#### Domestic wiretapping key to stopping terrorism – empirically successful

Hewitt 8 Michael, post graduate for Honors Program at Liberty university, Wiretapping: A Necessity for Effectively Combating Terrorism in the 21st Century, http://digitalcommons.liberty.edu/cgi/viewcontent.cgi?article=1040&context=honors

In analyzing post 9-11 wiretapping, it is necessary to analyze the effects that its use has had on national security and domestic society in the realm of National Security, wiretapping has proven to be instrumental in the identification and prosecution of terrorists, effectively helping to diminish this threat. In the domestic realm, wiretapping has proven to be an effective means of preventing terrorist attacks in the U.S., and of putting Americans at ease. The most obvious evidence that the use of wiretapping has been successful in protecting American national security is the "fact that there has been no serious terrorist incident on American shores since its passage in 2001" (Spangler, 2005, para. 13). Senator Orrin Hatch, R-Utah, and a staunch defender of the Patriot Act and its wiretapping provisions, has pointed out that “because of necessary secrecy laws, we may never know the full positive effects the Patriot Act is having on terrorism” (Spangler, 2005, para. 13). Hatch did however note that the Justice Department has credited key provisions of the Patriot Act with playing a role in the terrorism-related convictions of hundreds of suspects. It has largely been the tools of wiretapping and other forms of electronic surveillance, which have received the credit for the success of hundreds of anti-terrorism operations since 2001. Most notable among these operations was the "recent apprehension in England of scores of suspects, who were charged with making plans to blow up as many as ten airliners traveling to the United States" (Criminal, 2006, para. 24). In this operation, electronic surveillance played an instrumental part in allowing British agents to monitor the activities of a terrorist cell. "'We have been looking at meetings, movement, travel, spending and the aspirations of a large group of people' said Peter Clarke, head of Scotland Yard's anti-terrorism branch" (ABCNews, 2006, para. 2). In this case, British agents substantially monitored the terrorist cell before making the arrests. (ABCNews, 2006, para. 24) Another such situation was the uncovering of "evidence indicating that a Pakistani charity was diverting funds originally contributed for earthquake relief to finance the planned terrorism attacks on these jumbo jets" (Criminal, 2006, para. 16). It is, however, difficult to attain the exact details of the results of these operations, because in these investigations, "details leading up to the filing of formal charges is not usually revealed" (Criminal, 2006, para. 16). It is known however, that since September 11, 2001 thousands of individuals classified as terrorists have been subjected to electronic surveillance procedures. The surveillance, specifically wiretapping, of individuals suspected of terrorist activities, has resulted in nearly a 20% conviction rate (Criminal 2006).

#### High risk of nuke terror—an attack turns multilat and makes the US hardline

Vladimir Z. Dvorkin ‘12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Nuclear terrorism causes global nuclear escalation – national retaliation goes global- 1NC

### Solvency

#### Executive will give the Congress and the courts the finger – secrecy, media and lying

Branfman 13 Fred, Director of Project Air War, interviewed the first Lao refugees brought down to Vientiane from the Plain of Jars in northern Laos, visited U.S. airbases in Thailand and South Vietnam, talking with U.S. Embassy officials, Alternet, 6-9

Whatever his personal beliefs prior to becoming President Mr. Obama, as the Executive's titular leader, has necessarily signed up to support the secrecy, lying, and disinformation it employs to enjoy maximum flexibility from democratic oversight in order to pursue its policies of overt and covert violence. Two important new books - Jeremy Scahill's Dirty Wars and Mark Mazzetti's The Way of the Knife - describe how, in near-total secrecy, the U.S. Executive is a world of its own. Over the last 12 years, Executive officials have unilaterally and secretly launched, escalated or deescalated wars; installed and supported massively corrupt governments, savage warlords, or local paramilitary forces, and overthrown leaders that have displeased it; created the first unit of global American assassins and fleets of machines waging automated war; engaged in vicious turf wars for more money and budget; spied on Americans including the media and activists on a scale unmatched in U.S. history; compiled 3 different sets of global "kill lists" independently operated by the White House, CIA and Pentagon/JSOC; used police-state tactics while claiming to support democracy, e.g. when it fed retina scans, facial recognition features and fingerprints of over 3 million Iraqi and Afghani males into a giant data base; incarcerated and tortured, either directly or indirectly, tens of thousands of people without evidence or trial; and much more. All of these major activities are conducted entirely by the Executive Branch, without meaningful Congressional oversight or the knowledge of the American people. The foundational principle of the U.S. Constitution is that governments can only rule with the "informed consent" of the people. But the U.S. Executive Branch has not only robbed its people of this fundamental right. It has prosecuted those courageous whistleblowers who have tried to inform them. The U.S. mass media, dependent upon the Executive for their information and careers, and run by corporate interests benefiting from Executive largesse, predominately convey Executive Branch perspectives on an hourly basis to the American people. Even on the relatively few occasions when they publish information the Executive wishes to keep secret, it has little impact on Executive policies while maintaining the illusion that the U.S. has a "free press". The U.S. Executive is essentially free to conduct its activities as it wishes. In future articles in this space we will explore three key features of the U.S. Executive Branch: (1) Evil - If evil consists of murdering, maiming, and making homeless the innocent, and/or waging the “aggressive war” judged the “supreme international crime” at Nuremberg, the U.S. Executive Branch is today clearly the world’s most evil institution. It has killed, wounded or made refugees of an officially-estimated 21 million people in Iraq and Indochina alone, far more than any other institution since the time of Stalin and Mao. President Obama is the first U.S. President to acknowledge, in his recent "counterterrorism" speech, that this number has included killing "hundreds of thousands" of civilians in Vietnam whom it officially claimed it was trying to protect. Former Secretary of Defense Robert McNamara put the total number of Vietnamese killed at 3.4 million. [38] (2) Lawlessness - If illegality consists of refusing to obey the law, the Executive is clearly the most lawless institution in the world. It routinely violates even timid legislative attempts to control its unilateral war-making. And no nation on earth has signed fewer international laws, and so failed to observe even those it has signed. These include measures like those intended to clean up the tens of millions of landmines and cluster bombs [39] with which it has littered the world, refused to clean up, and which continue to murder and maim tens of thousands of innocent people until today. (3) Authoritarianism - And if "authoritarianism" consists of a governing body acting unilaterally, regularly deceiving its own citizenry, neutering its legislature ,and prosecuting those who expose its lies, the U.S. Executive is clearly the most undemocratic institution in America. Indeed its deceiving its own people - keeping its activities secret and then lying about and covering them up when caught - throws its very legitimacy into question.

#### Aff use of "zone of active hostilities" guarantees circumvention – it’s impossible to define the precise geographic scope and what constitutes active hostilities

Daskal 13 Jennifer C. Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April, 2013 161 U. Pa. L. Rev. 1165

Consistent with treaty and case law, overt and sustained fighting are key factors in identifying a zone of active hostilities. Specifically, the fighting must be of sufficient duration and intensity to create the exigent circumstances that justify application of extraordinary war authorities, to put civilians on notice, and to justify permissive evidentiary presumptions regarding the identification of the enemy. n133 The presence of troops on the [\*1207] ground is a significant factor, although neither necessary nor sufficient to constitute a zone of active hostilities. Action by the Security Council or regional security bodies such as NATO, as well as the belligerent parties' express recognition of the existence of a hot conflict zone, are also relevant. Linking the zone of active hostilities primarily to the duration and intensity of the fighting and to states' own proclamations suffers, however, from an inherent circularity. A state can itself create a zone of active hostilities by ratcheting up violence or issuing a declaration of intent, thereby making previously unlawful actions lawful. n134 It is impossible to fully address this concern. The problem can, however, be significantly reduced by insisting on strict compliance with the law-of-war principles of distinction and proportionality and by vigorously punishing states for acts of aggression. n135 There will, of course, be disagreement as to whether a state's escalation of a certain conflict constitutes aggression, particularly given underlying disagreements about who qualifies as a lawful target. The zone approach is helpful in this regard as well: it narrows the range of disagreement by demanding heightened substantive standards as to who qualifies as a legitimate target outside the zones of active hostilities. Under the zone approach, the escalation of force must be aimed at a narrower set of possible military targets until the increased use of force is sufficiently intense and pervasive enough to create a new zone of active hostilities. 3. Geographic Scope of the Zone A secondary question relates to the geographic scope of the zone of active hostilities. In answering the related question of the scope of the overarching armed conflict, the Tadic court defined the conflict as extending throughout the state in which hostilities were conducted (in the case of international armed conflict) n136 and the area over which a party had territorial control (in the case of a noninternational armed conflict that did not extend [\*1208] throughout an entire state). n137 Neither approach, however, maps well onto the practical realities of a transnational conflict between a state and a non-state actor. In many cases, the non-state actor and related hostilities will be concentrated in a small pocket of the state. It would be contrary to the justifications of exigency and proper notice to define the zone of active hostilities as extending to the entire state. A territorial control test also does not make sense when dealing with a non-state actor, such as al Qaeda, which does not exercise formal control over any territory and is driven more by ideology than territorial ambition. This Article suggests a more nuanced, albeit still imperfect, approach: If the fighting is sufficiently widespread throughout the state, then the zone of active hostilities extends to the state's borders. If, however, hostilities are concentrated only in certain regions within a state, then the zone will be geographically limited to those administrative areas or provinces in which there is actual fighting, a significant possibility of fighting, or preparation for fighting. This test is fact-intensive and will depend on both the conditions on the ground and preexisting state and administrative boundaries.

#### No political will to enforce the plan

Druck 12 Druck, JD – Cornell Law, ‘12¶ (Judah, 98 Cornell L. Rev. 209)

There are obvious similarities between the causes and effects of the public scrutiny associated with the larger wars discussed above. In each situation, the United States was faced with some, or even all, of the traditional costs associated with war: a draft, an increasingly large military industry, logistical sacrifices (such as rationing and other noncombat expenses), and significant military casualties. n114 Americans looking to keep the United States out of foreign affairs ob-viously had a great deal on the line, which provided sufficient incentive to scrutinize military policy. In the face of these potentially colossal harms, the public was willing to assert a significant voice, which in turn increased the willingness of politicians to challenge and subsequently shift presidential policy. As a result, public scrutiny and activism placed a President under constant scrutiny in one war, delayed U.S. intervention in another, and even helped end two wars entire-ly. Thus, we may extract a general principle from these events: when faced with the prospect of a war requiring heavy domestic sacrifices, and absent an incredibly compelling reason to engage in such a war (as seen in World War II, for example), n115 the public is properly incentivized to emerge and exert social (and, consequently, political) pressure in order to engage and shift foreign policy. However, as we will see, the converse is true as well. B. The Introduction of Technology-Driven Warfare and Shifting Wartime Doctrines The recent actions in Libya illustrate the culmination of a shift toward a new era of warfare, one that upsets the system of social and political checks on presidential military action. Contrary to the series of larger conflicts fought in the twen-tieth century, this new era has ushered in a system of war devoid of some of the fundamental aspects of war, including the traditional costs discussed above. Specifically, through the advent of military technology, especially in the area of robotics, modern-day hostilities no longer require domestic sacrifices, thereby concealing the burden of war from main-stream consciousness. n116 By using fewer troops and introducing drones and other [\*228] forms of mechanized warfare into hostile areas more frequently, n117 an increased number of recent conflicts have managed to avoid many domestic casualties, economic damages, and drafts. n118 In a way, less is on the line when drones, rather than people, take fire from enemy combatants, and this reality displaces many hindrances and considerations when deciding whether to use drones in the first place. n119 This move toward a limited form of warfare has been termed the "Obama Doctrine," which "emphasizes air power and surgical strikes, rather than boots on the ground." n120 Under this military framework, as indicated by the recent use of drones in the Middle East, the traditional harms associated with war might become increasingly obsolete as technolo-gy replaces the need for soldiers. Indeed, given the increased level of firepower attached to drones, we can imagine a situation where large-scale military engagements are fought without any American soldiers being put in harm's way, without Americans having to ration their food purchases, and without teenagers worrying about being drafted. n121 For example, "with no oxygen-and sleep-needing human on board, Predators and other [unmanned aerial vehicles] can watch over a potential target for 24 hours or more - then attack when opportunity knocks." n122 Thus, if the recent actions in Libya are any indication of what the future will look like, we can predict a major shift in the way the United States carries out wars . n123 [\*229] C. The Effects of Technology-Driven Warfare on Politics and Social Movements The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm's way is a clear benefit, n124 as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: pub-lic apathy. By increasing the use of robotics and decreasing the probability of harm to American soldiers, modern war-fare has "affected the way the public views and perceives war" by turning it into "the equivalent of sports fans watching war, rather than citizens sharing in its importance." n125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven warfare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public's level of interest in foreign military policy. n126 In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobi-lize in order to challenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion. n127 Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success. n128 Yet we can imagine that most missions involving drone strikes will be "successful" in the eyes of [\*230] the public: even if a strike misses a target, the only "loss" one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the political risks associated with making critical statements about military action, especially if that action results in success, n129 we can expect even less congressional WPR en-forcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an example of the rule, rather than the exception, in gauging politi-cal reactions within a technology-driven warfare regime. Thus, when the public becomes more apathetic about foreign affairs as a result of the limited harms associated with technology-driven warfare, and Congress's incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues. n130 Perhaps unsurpris-ingly, nearly all of the constitutionally problematic conflicts carried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hostile forces. n131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law. n132 The result is that as wars become more limited, n133 unilateral presidential action will likely become even more un-checked as the triggers for WPR enforcement fade away. In contrast with the social and political backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action. n134

#### Executive branch lawyers will circumvent

Cheng 12 Cheng, co-director – Institute for Global Law, Justice, & Policy and professor @ NYU Law, ‘12¶ (Tai-Heng, 106 A.J.I.L. 710)

Lubell's analysis of drone attacks shows the limits of his method in clarifying the law as it stands. He explains that "IHL and human rights law can lead to differing conclusions" about the legality of drone attacks (p. 258). Under human rights law, "the intentional killing of the individuals is likely to have been unlawful" (p. 255). In contrast, in an armed conflict, "[t]argeting [persons] could be lawful under IHL if they are seen to be non-civilians" (p. 257). Although he proposes various criteria for selecting between human rights law and IHL, Lubell ultimately concludes: "While the concurrent applicability of human rights and IHL is a legal reality, the lack of an agreed approach to interpretation leads to difficulties of implementation in practice" (pp. 258-59), resulting in "difficulty in achieving certainty on this matter" (p. 258). Ruys's survey of state practice to determine whether customary international law currently permits the use of force against nonstate actors in a foreign state illustrates the limits of his method in identifying clear legal rules, even within a single legal regime. He concedes that the legal significance of relevant incidents is open to interpretation. For example, whether the invasion of Afghanistan by the United States and its allies extended the right of self-defense to armed attacks by nonstate actors is open to "a wide range of possible interpretative outcomes depending on one's point of view" (p. 442). Similarly, a "possible interpretation" of Turkey's attacks on Iraqi Kurds in 2008 (p. 461) is that it changed the law to authorize force against nonstate actors, but an observer could also conclude that "States felt uncomfortable about setting a new precedent" (p. 462). Likewise, when Ethiopian troops were sent in 2006 into Somalia to fight the Union of Islamic Courts that threatened Ethiopia, the lack of legal debates among states about Ethiopia's actions "impede[s] the analysis" of that incident (p. 470). Based on his review of events, Ruys proposes that the attack **[\*713]** on these nonstate actors is "not unambiguously illegal" (p. 487). This triple negative assessment of legality leaves much room for further clarification of the law. Lubell's and Ruys's analyses of preemptive self-defense also show how policy appraisals of what the law ought to be can shape the law as it stands. Both authors argue that customary international law prohibits the use of preemptive force against a nonimminent threat. Lubell supports his contention with a Security Council resolution that "strongly condemn[ed] Israel for carrying out a pre-emptive strike [in 1981] against the Osiraq nuclear reactor in Iraq" (p. 61). However, he also concedes that this evidence of *opinio juris* against preemptive attacks is inconclusive because the resolution "can be the result of a number of factors, including a perception that the circumstances of that particular case may not have warranted an attack due to a lack of exhaustion of viable alternatives as well as no imminent need" (*id.*). Faced with this inconclusive evidence of state practice and *opinio juris*, the reader might infer that Lubell believes that preemptive self-defense is legally prohibited for policy reasons. Quoting Rosalyn Higgins, he emphasizes a "primary and fundamental concern . . . that preemption will become 'a pretext for unprovoked aggression'" (p. 62). Ruys similarly rejects the legality of preemptive self-defense on policy grounds. As noted, Ruys argues that the 2003 invasion of Iraq by the United States and its allies did not constitute state practice and *opinio juris* permitting preemptive self-defense because, inter alia, the states that supported the invasion did not justify it with a broad reading of Article 51 of the UN Charter and "a majority of States apparently held the opinion that the operation violated the UN Charter" (pp. 317-18). His footnotes show, however, that, while many states opposed the invasion, the number was far short of "a majority of States" in the world and that some of those states criticized the invasion as illegitimate rather than a violation of the Charter (p. 317 nn.338-39). Ruys also acknowledges that Michael Reisman has found numerous statements by states about the legality of preemptive force but minimizes their importance as "political sabre-rattling . . . rather than as reliable manifestations of States' *opinio juris*" (pp. 333-34). Based on these interpretations of evidence, Ruys concludes that "it is impossible to identify *de lege lata* a general right of pre-emptive--and a fortiori preventive--self-defence" (p. 342). Taken alone, this analysis of preemptive self-defense might persuade some readers. Yet when studied alongside Ruys's analysis of the use of force against terrorists, doubts emerge. Just as Ruys's evidence for the acceptance of preemptive self-defense is mixed, his evidence for the legality of use of force against nonstate actors is not entirely persuasive. While Ruys dismisses statements by states in favor of preemptive self-defense as political and not legal, he characterizes the acquiescence of some states to the use of force against nonstate actors to be "a fickle barometer of *opinio juris*" (p. 462). However, although he claims that a right of preemptive self-defense does not exist because no evidence clearly supports it, Ruys concludes in contrast, as noted, that the use of force against nonstate actors is "not unambiguously illegal" (p. 487) in spite of the equivocal evidence. Although his assessment about the legality of force against nonstate actors is couched in qualified terms, the practical difference with his position on preemptive force is sharp. If policy makers accept his view, they may choose to attack, without clearly breaking the law, nonstate actors who have attacked the state of those policy makers. However, if they use force preemptively against a state or nonstate actor, they will have acted unlawfully. Certainly, one might finely parse the evidence to argue that state practice as well as *opinio juris* in support of the use of force against nonstate actors was stronger than the evidence in support of preemptive force, thereby justifying Ruys's conclusions that the former is "not unambiguously illegal" while the latter remains clearly illegal. However, another equally plausible--and perhaps more compelling--explanation is that Ruys was guided by his differing policy appraisals of the use of force against nonstate actors versus the use of preemptive force. When considering the use of force against nonstate actors, Ruys emphasizes "the delicacy of balancing the national security interests of a State that falls victim to non-State attacks and the fundamental rights to sovereignty" [\*714] (*id.*). He explicitly acknowledges the competing policy concerns of magnified "destructive potential" of terrorists through modern technologies (p. 488) versus the risks of "increased legitimacy of the non-State group [once they are attacked] or a further degradation of the authority of the 'host State' . . . [or] military escalation" (*id.*). In contrast, Ruys appraises preemptive force as "highly undesirable from a *de lege ferenda* perspective" because it would usurp the Security Council's responsibility for keeping international peace and because the right to use preemptive force would be open to abuse (p. 324). While acknowledging that supporters of preemptive self-defense "stress time and again . . . the increasing speed and destructive potential of modern weaponry" (p. 257), Ruys neither explicitly assesses the weight of this policy concern relative to the potential for abuse nor explains why he chose not to do so. These methodological observations about Ruys's and Lubell's findings do not significantly diminish their contribution to international legal scholarship. Quite the contrary. Their books are not just studies on the use of force. They are also case studies of contemporary positivism. Ruys's and Lubell's methods reveal how much it has in common with other international legal theories. As discussed earlier, Lubell recognizes that the choice between IHL and human rights law can lead to different conclusions about the legality *vel non* of drone attacks, but the methods of choosing among legal theories remain unclear. This conclusion is consistent with Martii Koskemenmi's recent critical legal studies research showing uncertainty about the legality of actions where different legal regimes may apply to the same international problem and where each regime may lead to a different legal conclusion. n1 Ruys asserts that the legal significance of "incidents"--a term of art proposed by Reisman to describe basic epistemic units in international law n2 --is determined by claims and counterclaims among states (p. 51). This view comes close to the conceptualization of law in policy-oriented jurisprudence as an ongoing process of communication among relevant actors, n3 with which international legal process and constructivist international relations theories also seem to agree. n4

#### The executive will redefine the law to violate and ignore the plan

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13, mss]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to remake the laws of war by consciously violating them and then creating new legal concepts to provide juridical cover for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (Obama is hardly a novice atthis game of stretching the law to suit the convenience of, shall we say, thenational interest? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama redefined the meaning of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

#### CIA drones means targeted killing regulation is impossible – they’ll shift responsibility

Alston, professor – NYU Law, ‘11 (Philip, 2 Harv. Nat'l Sec. J. 283)

But the most significant problem by far with double-hatting is its impact in terms of accountability. Already in 2003, Colonel Kathryn Stone had noted that "[w]hen the CIA and SOF operate together on the battlefield, the legal distinctions regarding operating authorities and procedures, and accountability, can become blurred." n247 In Singer's view one of the motivations for the practice was to avoid accountability. He argues that the CIA was given operational responsibilities because "no one wanted to have a public debate about the use of force in a third country" and this could be avoided by secretly using the CIA instead. The result, he says, is to flout "the intent, if not the letter, of the most important legal codes that originally divided out roles in realms of policy and war." n248 A recent Congressional study also concludes that one of the actual objectives of the "unprecedented use of U.S. SOF in clandestine and covert roles as well as being assigned to the CIA" is precisely to blur the boundaries of responsibility and accountability. n249 This deliberate undermining of the distinction between intelligence gathering and operational activities has grave implications in terms of both domestic and international accountability. Domestically, DOD and especially JSOC foreign killing operations are subject to virtually no meaningful accountability, and the same applies to the CIA.

### Drones

#### Geographic restrictions reverse this- create safe heavens that make attacks inevitable

Blank, 10 – Emory University School of Law International Humanitarian Law Clinic director

[Laurie, "Defining the Battlefield in Contemporary Conflict and Counterterrorism: Understanding the Parameters of the Zone of Combat," Georgia Journal of International and Comparative Law, Vol. 39, No. 1, 9-16-10, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1677965, accessed 8-19-13, mss]

The ramifications of including areas within the zone of combat, such as the accompanying authority to use lethal force as a first resort, raise a variety of policy considerations. The two primary considerations weigh directly against each other and perhaps, as a result, lend credence to the need for a middle ground in defining the zone of combat. First, some argue that creating geographic limits to the battlefield has the problematic effect of granting terrorists a safe haven. For example, a member of al Qaeda can be a legitimate target as a result of continuous participation in hostilities, thus losing any immunity from attack he might have had by dint of being a civilian.105 If the zone of combat is limited geographically to certain areas, then this member of al Qaeda can avoid being targeted—and thus regain civilian immunity, in essence—simply by crossing an international border even while remaining active in a terrorist organization engaged in a conflict with the U.S.106 Geographic limits designed to curtail the use of governmental military force thus effectively grant terrorists a safe haven and extend the conflict by enabling them to regroup and continue their attacks.

#### Plan no solve signature strikes which destroys Yemeni stability and creates an al Qaeda safe haven

Emker 2013(Stacey, Whitehead School of Diplomacy and International Relations, January 14, "Analyzing the US Counterterrorism Strategy in Yemen", http://blogs.shu.edu/diplomacy/2013/01/analyzing-the-us-counterterrorism-strategy-in-yemen/)

The United States has placed great emphasis on fighting the militant Islamic group based in Yemen, Al Qaeda in the Arabian Peninsula (AQAP) because it has been characterized as one of the most dangerous Al-Qaeda affiliates worldwide. AQAP has demonstrated its intent to carry out attacks within U.S. borders, and against U.S. interests in Yemen. Replacing the long established Al-Qaeda threats emanating from South Asia and North Africa, the Obama Administration has identified AQAP as the most immediate threat to the U.S. homeland. Since the ouster of President Ali Abdullah Saleh in February 2012, the transitional government of President Abd Rabbu Mansour Hadi remains weak outside the capital of Sana’a. Overall, Yemen is on the verge of becoming a failed state with economic, social, and political challenges that AQAP is attempting to exploit in order to consolidate its power within the country. U.S. policy toward Yemen consists of three elements: combating AQAP in the short term, increasing development assistance, and advocating international support for stabilization. While all of these elements will go towards stabilizing Yemen, it is important to evaluate the effectiveness of the U.S. counterterrorism strategy against AQAP in the short term, particularly its utilization of targeted killings through its covert drone campaign. Over the past year, the U.S. has accelerated its drone campaign in Yemen and in April 2012 the Obama Administration significantly expanded the authority of the CIA and U.S. Joint Special Operations Command (JSOC) to use “signature strikes.” This tactic permits strikes without knowing the identity of a person and to hit targets based solely on intelligence demonstrating patterns of suspicious behavior. In order to measure the utility of this counterterrorism policy, the costs of drone strikes in Yemen must be compared to the benefits of the operation. Consequently, it is important to examine the effects within the domestic context to determine if the alleged air strikes against AQAP alienate the local Yemeni population, and strengthen anti-American sentiment. Taking this view reveals that short term tactical gains through drone strikes cause too much collateral damage and exacerbate rather than ameliorate the terrorist threat over the long term. Three distinct forms of blowback are heavily cited as the cost of U.S. drones strikes in Yemen. Foremost, it has been asserted that U.S. drones cause purposeful retaliation by AQAP against the government of Yemen. Purposeful retaliation is most often demonstrated through public statements made by AQAP after an attack. Hours after a U.S. drone strike killed five suspected Al-Qaeda militants in southern Yemen in March 2012, militants blew up a liquid-natural gas pipeline in Shabwah which transports gas to a facility whose leading stakeholder is the French oil company, Total. The second form of blowback centers on collateral damage, the unintended death or injury of Yemen civilians, unrelated to AQAP targets. Al-Qaeda exploits U.S. errors in drone strikes, giving it ample material for propaganda. In effect, AQAP has a higher likelihood of recruiting new members and can increase sympathy for Al-Qaeda linked militants. Anger over collateral damage in this type of scenario has been demonstrated quite a few times since the U.S. began its drone campaign against AQAP. In 2010, AQAP’s sharpest gains domestically began with the botched Yemeni counterterrorism raid on ‘A’yd al-Shabwani and a U.S. drone strike that killed Marib’s deputy governor, Jabir al-Shabwani who was also known as a prominent sheik. Since al-Shabwani was a pro-government leader and had been asked to negotiate with tribes purportedly hiding Al-Qaeda militants on behalf of Sana’a, the news of the drone strike sparked outrage throughout Marib and resulted in a series of retaliatory attacks against military bases, oil pipelines, and electrical grids by Al Shabwan tribesmen. The collateral damage involved with this strike was a gift to the Al-Qaeda narrative, which cited the casualties as evidence of the incompetency of President Saleh and U.S. callousness. The third form of blowback typically identified asserts that drones strikes help to further destabilize Yemen instead of providing more security. When state power is essentially exercised from above through both strikes and surveillance, it undermines the weak central government and leaves a security vacuum to be filled on the ground. Given the central government’s limited state capacity, the ground is more easily controlled by insurgent groups. From this standpoint, drone strikes in Yemen indirectly caused the Ansar-Al Sharia movement to take control of the Southern Provinces. Partially due to the Arab Spring, the central government under President Saleh was unable to deliver any form of governance, law enforcement, or social services in the Shabwah and Abyan provinces throughout 2011. Conversely, the Southern provinces experienced a sharp increase in the number of U.S. drone strikes. Although the purpose was to provide security, the strikes intensified anti-regime sentiment and helped create a movement focused on the near enemy, the Saleh regime. Ansar al-Sharia represented itself as the means for expressing grievances with the government, and by providing rule of law and social services as a functioning state apparatus. As a result, Ansar al-Sharia was able to fill the void and win supporters within society while providing AQAP a safe-haven. On the other hand, drone strikes in Yemen have been beneficial in the fight against AQAP. As previously stated, AQAP is plotting terrorist attacks against U.S. targets and maintains the capability to attack within U.S. borders. Compared to other military objectives in the “war on terror,” there are no troops on the ground in Yemen, reducing the cost of military intervention and anti-American resentment through occupation. In addition, military pressure on AQAP through occupation would likely inflict far more civilian casualties on the Yemeni population than collateral damage from drone strikes. From this standpoint, drones are seen as an efficient tool to gather intelligence and target AQAP members. When direct action is taken, drone strikes are conducted in concert with the Yemeni government to avoid civilian casualty. President Hadi publicly endorsed U.S. drone strikes in September 2012, making Yemen a reliable counterterrorism partner. This factor is crucial when assessing the effectiveness of drones in Yemen under former President Saleh compared to President Hadi. While former President Saleh pledged Yemen’s support to the U.S. in the “war on terror,” U.S. officials and Yemeni experts questioned Saleh’s commitment and saw him as an unreliable partner and source of intelligence. John Brennan, President Obama’s chief counterterrorism advisor, has made frequent public visits to Yemen over the past year. When speaking of President Hadi’s counterterrorism efforts, Brennan has stated that “the cooperation has been more consistent, more reliable and with a more committed and determined focus.” With this, the information provided by the Yemeni government under President Hadi has greatly improved the efficacy of the drone campaign, and helped in avoiding catastrophic mistakes. The conventional understanding of drones and collateral damage is not a sufficient or systematic explanation of recruitment within the domestic context of Yemen. Christopher Swifts’ interviews with tribal leaders, Islamic Politicians, Salafist clerics, and other sources all revealed that AQAP recruitment is not motivated solely by U.S. drone strikes, but driven by economic desperation. AQAP insurgents lure young Yemeni men with the promise of a rifle, a car, and a salary of four-hundred dollars a month, which is a fortune when half the population is living on less than two dollars a day. AQAP has employed a soft power approach by fulfilling social needs in order to build networks of mutual dependency. Despite the general antipathy for drone strikes, a majority of the Yemeni’s interviewed expressed that AQAP posed a serious threat to their country and had a pragmatic view of the U.S. drone campaign. As long as drones target legitimate terrorists, Yemenis grudgingly acknowledge their utility. With this, it is important to note Yemen’s religious majority and nationalism. The population of Yemen is almost entirely Muslim, made up of Zaydis and Shaf’is. Zaydis are found mostly in North and Northwest Yemen and belong to a branch of Shi’a Islam. Zaydis form the the Huthi insurgent movement, and AQAP statements in Inspire have connected the movement to threats posed by Shi’a in eastern Saudi Arabia, Iran and Iraq. Since AQAP has attacked two Huthi processions in 2010 and threatened supporters, Zaydi Yemenis do not represent practical recruitment options for AQAP. On the hand, the majority of Yemenis are Shafi’is making up the South and East. The Shafi’is school follows one of the four Sunni schools of Islamic jurisprudence and is considered a relatively moderate form of Islam. While Islamic radicalism is prevalent within the country, Shafi’is is culturally very different and is not exactly fertile breeding grounds for extremist ideology. As a result, the Al-Qaeda ideology does not go hand-in-hand with the majority of the Yemeni people. Analysis of AQAP’s history suggests that the group’s resiliency within Yemen is due to a group of local Yemeni leaders who understand the local language, tribal customs, and developed relationships with prominent sheiks. Unlike predecessor jihadist groups in Yemen, AQAP has exercised strategic discipline in creating coherent, but nuanced propaganda. The group assimilates broadly popular grievances into a single narrative proposing international jihad as the only solution. The group exploits common malcontent with the Yemeni government over injustices including corruption, the absence of public services and political reform, and unequal distribution of profits from oil. In addition, AQAP has not explicitly called for the outright dissolution of tribal identity like AQAM in Afghanistan Somalia, Iraq, and Pakistan. Within Yemen, AQAP targets Western interests, Yemeni security officials, and economic sectors such as oil and tourism. The group has specifically avoided Yemeni civilian casualties in bombings and suicide attacks. Also, AQAP has avoided potentially divisive American and European targets, such as the many Western-language students, foreign aid, and medical workers who remained in Yemen until 2010. With this, AQAP leaders recognized the importance of managing perceptions in order to sustain legitimacy and have even denied responsibility for terrorist attacks that did not fit with its narrative. The most direct way to reduce AQAP’s viability in Yemen, while simultaneously limiting its capacity to attack the US, requires the removal of its local leadership through drone strikes who are responsible for the group’s strategic guidance. With this, it important to note that drone strikes represent only one tool in the U.S.’s comprehensive policy towards Yemen. The costs of U.S. drone strikes correspond with three distinct forms of blowback that have helped to strengthen AQAP’s narrative and increased recruitment and sympathy for Al-Qaeda linked militants. However, the costs do not outweigh the utility of drone strikes against AQAP within the domestic context. While the U.S. acted more unilaterally in Yemen under President Saleh, the Obama Administration is now working in concert with the transitional government of President Hadi. With this, the relationship between the U.S. and Yemen has transformed into a working partnership in the fight against AQAP. As a partnership, this counterterrorism policy is beneficial for both Yemeni and international support. While Yemen is facing a number of issues, debilitating AQAP represents the first step in improving the overall security situation. By targeting AQAP’s local leadership, the U.S. can eliminate the individuals who are most responsible for maintaining the group’s coherency and strategic guidance. Furthermore, it can be presumed that the AQAP members next in line will be less skilled and will be more prone to violence in order to consolidate power. The leadership will make more mistakes, such as targeting Yemeni civilians, and undermine the group’s legitimacy within Yemen. Based on this analysis, the U.S. should halt signature strikes in Yemen until there is better intelligence on the ground. Since signature strikes are based on behavioral patterns instead of positive identification, they are more likely to kill Yemeni civilians and fuel sympathy and recruitments for AQAP. Although the Obama Administration should maintain the covert drone campaign, it would be beneficial for both the U.S. and the transitional government of President Hadi to target only key, local Yemeni leaders of AQAP.

#### AQAP will retaliate with nukes

Williams 2011 (Sarah, Coordinator of the Fissile Materials Working Group and Herbert Scoville Jr. Peace Fellow at the Center for Science, Technology and sEcurity Policy, "After bin Laden: Nuclear terrorism still a top threat," Bulletin of Atomic Scientists - Fissile MAterials Working Group, May 13, www.thebulletin.org/web-edition/columnists/fissile-materials-working-group/after-bin-laden-nuclear-terrorism-still-top-t)

More than a decade ago, Osama bin Laden professed that "acquiring [chemical or nuclear] weapons is a religious duty." Since then, Al Qaeda operatives and leaders have restated their intention to acquire a nuclear capability.Experts broadly agree that Al Qaeda does not possess a nuclear device; however, it is generally accepted that it and other terrorist organizations continue to seek the materials necessary to build one. Two years ago in his landmark speech in Prague, President Barack Obama made securing "all vulnerable nuclear material around the world within four years" a top priority. Earlier this year, Director of National Intelligence James Clapper reiterated PDF the importance of the administration's commitment to the four-year goal in his testimony before the Senate Committee on Armed Services, noting that "poorly secured stocks of CBRN [chemical, biological, radiological, and nuclear materials] provide potential source material for terror attacks." Significant progress has been made in US efforts to secure nuclear material around the globe, but much remains to be done. The evolving threat. While Al Qaeda's anti-American ideology is unlikely to change after bin Laden's death, the loss of the group's founder and figurehead could affect Al Qaeda's structure. According to the Atlantic Council's J. Peter Pham, regional "branches" and "franchises" of the terrorist organization gained power during the decade that bin Laden was in hiding, and while united by their loyalty to Al Qaeda's mission, they are not necessarily subject to orders from a central leadership. The growing influence, strength, and operational capacity of these regional organizations (Al Qaeda in the Arabian Peninsula and Al Qaeda in the Islamic Maghreb, for example) are of particular concern with respect to the threat of nuclear terrorism. The best way to prevent Al Qaeda subgroups -- ideologically aligned, geographically disparate, and operating under regional leadership -- from gaining access to nuclear material is to secure existing sites and eliminate superfluous storage sites. Enough nuclear material to make tens of thousands of nuclear devices exists in dozens of locations worldwide. Without being able to predict how bin Laden's death might alter the operational capacity of Al Qaeda, a US priority must be securing this potential source material.

### Legal Regimes

#### No reverse modeling solvency – their Boyle ev says you need an internationally signed treaty that is enforced by a UN investigatory body to set norms – ZERO ev that strict scrutiny solves

#### Geographic limits aren’t sufficient – transparency and killing US citizens are key

Roberts, National Journal, 13

(Kristin, 3-21-13, “When the Whole World Has Drones,” http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, accessed 10-23-13, CMM)

America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts.¶ To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.

#### Drone arms race inevitable

USA Today 13 (1/9, http://www.usatoday.com/story/news/world/2013/01/08/experts-drones-basis-for-new-global-arms-race/1819091/, “Experts: Drones basis for new global arms race”, AB)

The success of U.S. drones in Iraq and Afghanistan has triggered a global arms race, raising concerns the remotely piloted aircraft could fall into unfriendly hands, military experts say. The number of countries that have acquired or developed drones expanded to more than 75, up from about 40 in 2005, according to the Government Accountability Office, the investigative arm of Congress. Iran and China are among the countries that have fielded their own systems. "People have seen the successes we've had," said Lt. Gen. Larry James, the Air Force's deputy chief of staff for intelligence, surveillance and reconnaissance. The U.S. military has used drones extensively in Afghanistan, primarily to watch over enemy targets. Armed drones have been used to target terrorist leaders with missiles that are fired from miles away.

#### Other countries will just cheat – and they already do – China and Russia don’t acknowledge targeting dissidents

#### \*No modeling US military posture – the “copycat” argument is flawed

Boot 2011 (Max Boot, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations in New York, leading military historian and foreign-policy analyst, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, October 9, 2011, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/)>

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the [University of Pittsburgh](http://www.commentarymagazine.com/2011/10/09/drone-arms-race/) and author ofMissile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”¶ This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.¶ The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.¶ Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected [assassination](http://www.independent.co.uk/news/world/europe/former-chechen-rebel-boss-assassinated-in-dubai-1657758.html) of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

#### Transparency doesn’t solve secret interpretation

Rumold 13 (Mark, staff attorney at the Electronic Frontier Foundation, “A New Year, a New FISA Amendments Act Reauthorization, But the Same Old Secret Law,” January 10, 2013 <https://www.eff.org/deeplinks/2013/01/new-year-new-fisa-amendments-act-reauthorization-same-old-secret-law>)

Secret Law? What Secret Law?

Senators have repeatedly complained that provisions of FISA have been secretly interpreted in ways that differ markedly from the language of the statute. These interpretations, according to the Senators, are contained in opinions issued by the FISC. But perplexingly, both the executive branch and other members of the Senate have taken the position that, despite the secrecy of the FISC opinions, those opinions do not constitute “the law” or “secret law.” For example, Senator Feinstein, in opposing Senator Merkley’s Amendment, stated (pdf): Nevertheless, I am concerned that what is happening is the term “secret law” is being confused with what the Foreign Intelligence Surveillance Court issues in the form of classified opinions based on classified intelligence programs. Senator Feinstein’s statement is remarkably similar to an argument made by the DOJ in a brief in EFF’s Patriot Act Section 215 FOIA case, yet another case involving a secret interpretation of surveillance law. In that brief, the DOJ argued that EFF “attempts to conflate the meaning of the word ‘secret’ in the phrase ‘secret law’ with the use of the word ‘secret’ for national security purposes.” (pdf) But this much is clear: when a court issues an opinion containing a significant interpretation of a public statute, that court’s opinion is the law. When the court’s opinion is withheld from the public, that opinion is a “secret,”even if the statute the opinion interprets is already publicly available. Because a court’s opinion constitutes the “law,” refusing to disclose those opinions to the public results in “secret law.” The basis for the government’s secrecy claim is irrelevant: the law is still “secret” whether the opinion is classified, protected by the attorney-client privilege, or kept secret for any other of the host of legal privileges available to the government.

#### Congress wants CIA drones for outside zones of hostilties

**Dozier 2/10** Kimberley, AP Intelligence writer “OBAMA OFFICIALS WEIGH DRONE ATTACK ON US SUSPECT” http://hosted.ap.org/dynamic/stories/U/US\_AMERICAN\_TERROR\_SUSPECT?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

U.S. officials said both Senate and House appropriators have blocked funding that would transfer the CIA's stealth RQ-170 drone fleet to the Pentagon. Some **lawmakers want the White House to first come up with a fix for targeting suspects in areas where the Pentagon is banned from operating - either by leaving some part of the CIA operation running or by granting the Pentagon authority to strike covertly despite the location - meaning they could legally deny the operation.** Lawmakers like Senate Intelligence Committee Chairwoman Dianne Feinstein, D-Calif., have also objected to the shift to the Pentagon, arguing that the CIA has more experience flying drones. U.S. officials say Pentagon chiefs defending their drone program in closed congressional session last week pointed out that **the same cadre of Air Force pilots fly both the CIA and the Pentagon drones.**

#### Zone restrictions empirically don’t work

ACLU 14 United States’ Compliance with the International Covenant on Civil and Political Rights American Civil Liberties Union Update to the Shadow Report to the Fourth Periodic Report of the United States 110 th Session of the Human Rights Committee, Geneva, 14 February

Indeed, the public record continues to cast serious doubt over the extent to which the United States has actually adopted the restrictions announced in its May 2013 policy guidance. While the policy guidance re portedly confined the United States’ use of lethal force outside of areas of active hostilities to “senior operational leader[s] of a terrorist organization,” news reports indicate that the United States has since “expanded the scope” of individuals who ma y be targeted. 6

#### Transparency doesn’t solve secret interpretation

Rumold 13 (Mark, staff attorney at the Electronic Frontier Foundation, “A New Year, a New FISA Amendments Act Reauthorization, But the Same Old Secret Law,” January 10, 2013 <https://www.eff.org/deeplinks/2013/01/new-year-new-fisa-amendments-act-reauthorization-same-old-secret-law>)

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# Block

#### Solves the aff—the executive’s claim to dual authority is the problem—renouncing it solves—

Blank ‘12

Laurie, Director, International Humanitarian Law Clinic, Emory University School of Law, “Presidential Foreign Policy: An Opportunity for International Law Education,” Case Western Reserve Journal of International Law Volume 45 Fall 2012

The Obama Administration has seemed outwardly to take a **wholly opposite tack,** especially in the past few years. At the beginning of his first term, President Obama regularly referred—at least in broad strokes—to international principles when announcing efforts to close the Guantanamo Bay detention center or to eliminate all coercive forms of interrogation, for example.15 The exponential increase in the use of drone strikes, however, produced the most notable and comprehensive engagement with international law of President Obama’s first term. Beginning with then-Legal Advisor Koh’s speech in March 2010 and culminating in a series of speeches by senior Obama Administration officials throughout 2011 and 2012, the President appeared to offer extensive explanation of the international legal principles governing the use of drone strikes against al-Qaeda operatives in various locations around the globe. At first, the Administration announced that the **U**nited **S**tates was using targeted strikes because it “is engaged in an armed conflict or [is acting] in legitimate self-defense.”16 Subsequent addresses by Department of Defense General Counsel Jeh Johnson,17 Attorney General Eric Holder,18 and senior counterterrorism advisor John O. Brennan19 continued this same theme of a combination of law of war and jus ad bellum paradigms to justify and explain the parameters for the use of targeted strikes. On first glance, these speeches seem to accomplish precisely the same purpose and effect as the 1991 speech by President Bush noted above: clear statements of international law and reasons for US action. However, the United States’ insistence on referring to both legal paradigms as justification for individual attacks and the broader program of targeted strikes **raises significant concerns for the use of international law** and the protection of individuals by **blurring the lines between the key parameters of the two paradigms**.20 In reality, therefore, **the series of speeches ultimately undermined the educational possibilities in the service of a specific policy goal.** Notwithstanding political pressures and the broader needs of policy, it is possible to conceive of an effective educational role for the President and his surrogates in the executive branch with regard to international law. Indeed, in the current environment in which the United States is engaged in extensive, wide-ranging, and challenging military operations against diverse foes, this educational role has **significant potential** in the arena of the law of armed conflict. President George W. Bush’s approach suggested a disregard for law and morality in the conduct of military operations—a message that was loudly and clearly communicated to the public, whether by word or by deed. President Obama’s approach suggests a much greater comfort level with international law and willingness to reference and rely on international legal principles for policy purposes, but evinces an **unfortunate manipulation of the law** that can have problematic effects over time. In an ideal world, the President can communicate three effective messages with regard to international law, **particularly** the **law of armed conflict**, to the public through a much more focused and proactive view of the President as an educator in this area.

#### Counterplan is a prerequisite – key to effective legislative and judicial oversight

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Equally important, the relationship between internal and external separation of powers is reciprocal: Internal and external checks reinforce and operate in conjunction with one another. Congress needs information to conduct meaningful oversight of the Executive Branch. 94 Internal agency experts and watchdogs are important sources of that information, whether in the guise of [\*445] formal reports, studies, and testimony or informal conversations and leaks. 95 Procedural constraints within agencies can serve a similar function, alerting Congress to agency activities. 96 Internal mechanisms also reinforce congressional mandates by creating bodies of personnel within the Executive Branch who are committed to enforcing the governing statutory regime that sets out the parameters of their authority and regulatory responsibilities - and on whose expertise the functioning of these regulatory regimes often depends. 97 Courts equally depend on information and evidence compiled by agency personnel to review agency actions, and they have invoked this dependence to justify the requirement that agencies disclose underlying information and offer detailed explanations of their decisions. 98 Moreover, despite courts regularly intoning that "it [is] not the function of the court to probe the mental processes of Secretaries in reaching [their] conclusions," 99 judicial review of agency actions often appears to turn on judges' perceptions of the role politics played in decisionmaking by agency officials. 100 Evidence that decisions were made over the objections of career staff and agency professionals often triggers more rigorous review. 101 A particularly striking [\*446] suggestion of how internal checks can effect judicial review came in the recent Boumediene litigation. Just a few months after refusing to grant certiorari in order to allow the Combatant Status Review Tribunal process to proceed, the Court reversed course and granted review, apparently influenced by the concerns of military lawyers about how the tribunals were functioning. 102

### A2 Perm

#### Congress will use the plan to blame Obama and steal credit

Williams 2K DOUGLAS R. Associate Professor of Law, Saint Louis University School of Law. Saint Louis University Public Law Review, 19 St. Louis U. Pub. L. Rev. 75

There are number of reasons to question this logic. First, it is precisely on issues "of particular local interest" that legislators are unlikely to delegate, preferring instead to push for the favored position in order to gain credit. 127 Delegation is most likely the product of intense conflict among constituencies - a circumstance in which a delegation allows legislators to blame agencies for adverse constituent effects, while at the same time claiming credit for delivering the goods to benefited constituencies.

#### Executive initiation and external silence is key – the executive ties the power into a constitutional claim, critical to solving any “legal precedent” good solvency deficits

Bellia 2 [Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, 19 Const. Commentary 87, Spring, Lexis]

The combination of congressional silence and judicial inaction has the practical effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, the implied presidential power given effect by virtue of congressional silence and judicial inaction can solidify into a broader claim. When the Executive exercises an "initiating" or "concurrent" power, it will tie that power to a textual provision or to a claim about the structure of the Constitution. Congress's silence as a practical matter tends to validate the executive rationale, and the Executive Branch may then claim a power not only to exercise the disputed authority in the face of congressional silence, but also to exercise the disputed authority in the face of congressional opposition.

### 2NC A2 Precedent

#### Legal norms fail and are not unique to congress – the WPR proves. Executive compliance with international norms SETS A LEGAL PRECEDENT

Twomey 13, Trinity College Dublin, (Laura, Setting a Global Precedent: President Obama's Codification of Drone Warfare, Cambridge Journal of International and Comparative Law, 14 March 2013, http://www.cjicl.org.uk/index.php/cjicl-blog/setting-a-global-precedent-president-obamas-codification-of-drone-warfare, da 7-31-13) PC

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology. On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns. Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology. It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

#### Nations respond to behavior and usage -- not legal standards

Roberts 13 (Kristin, When the Whole World Has Drones, National Journal, 21 March 2013, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, da 8-1-13) PC

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses.

#### Restraint on constitutional grounds captures the precedent—comparative ev

Atkinson ‘13 – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch **limits its own** conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be unprompted by judicial command or legislative action, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

### 2NC Politics NB

#### Counterplan doesn’t link to politics – external checks inherently take an adversarial form, but internal checks gain executive credibility and face less resistance – that’s Metzger

#### Executive action avoids politics

Sovacool 9 Dr. Benjamin K. Sovacool 2009 is a Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization., Kelly E. Sovacool is a Senior Research Associate at the Lee Kuan Yew School of Public Policy at the National University of SingaporeArticle: Preventing National Electricity-Water Crisis Areas in the United States, Columbia Journal of Environmental Law 2009 34 Colum. J. Envtl. L. 333,

¶ Executive Orders also save time in a second sense. The President does not have to expend scarce political capital trying to persuade Congress to adopt his or her proposal. Executive Orders thus save ¶ ¶ presidential attention for other topics. Executive Orders bypass congressional debate and opposition, along with all of the horsetrading and compromise such legislative activity entails.¶ ¶ 292¶ ¶ Speediness of implementation can be especially important when challenges require rapid and decisive action. After the September ¶ ¶ 11, 2001 attacks on the Pentagon and World Trade Center, for ¶ ¶ instance, the Bush Administration almost immediately passed ¶ ¶ Executive Orders forcing airlines to reinforce cockpit doors and ¶ ¶ freezing the U.S. based assets of individuals and organizations ¶ ¶ involved with terrorist groups.¶ ¶ 293¶ ¶ These actions took Congress ¶ ¶ nearly four months to debate and subsequently endorse with ¶ ¶ legislation. Executive Orders therefore enable presidents to ¶ ¶ rapidly change law without having to wait for congressional action ¶ ¶ or agency regulatory rulemaking.

## Solvency

### ---2NC Zone of Active Hostilities

#### Circumvention is easy- zone of active hostility/hot battlefield is a legal fiction

Corn, 13 -- South Texas College of Law Presidential Research Professor of Law [Geoffrey, former JAG officer and chief of the law of war branch of the international law division of the US Army, Lieutenant Colonel, U.S. Army (Retired), Senate Armed Services Committee Hearing, "The law of armed conflict, the use of military force, and the 2001 Authorization for Use of Military Force," Congressional Documents and Publications, 6-16-13, l/n, accessed 8-23-13, mss]

I believe much of the momentum for asserting some arbitrary geographic limitation on the scope of operations conducted to disrupt or disable al Qaeda belligerent capabilities is the result of the commonly used term "hot battlefield." This notion of a "hot" battlefield is, in my opinion, an operational and legal fiction. Nothing in the law of armed conflict or military doctrine defines the meaning of "battlefield."Contrary to the erroneous assertions that the use of combat power is restricted to defined geographic locations such as Afghanistan (and previously Iraq), the geographic scope of armed conflict must be dictated by a totality assessment of a variety of factors, ultimately driven by the strategic end state the nation seeks to achieve. The nature and dynamics of the threat -including key vulnerabilities - is a vital factor in this analysis. These threat dynamics properly influence the assessment of enemy capabilities and vulnerabilities, which in turn drive the formulation of national strategy, which includes determining when, where, and how to leverage national power (including military power) to achieve desired operational effects. Thus, threat dynamics, and not some geographic "box", have historically driven and must continue to drive the scope of armed hostilities. The logic of this premise is validated by (in my opinion) the inability to identify an armed conflict in modern history where the scope of operations was legally restricted by a conception of a "hot" battlefield. Instead, threat dynamics coupled with policy, diplomatic considerations and, in certain armed conflicts the international law of neutrality, dictate such scope. Ultimately, battlefields become "hot" when persons, places, or things assessed as lawful military objectives pursuant to the law of armed conflict are subjected to attack.

#### Can’t solve 'active hostilities' - DoD secrets.

Goldsmith 13 (Jack, Henry L. Shattuck Professor at Harvard Law School, served as Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, “DOD’s Weak Rationale for Keeping Enemy Identities Secret,” 7/26/13, <http://www.lawfareblog.com/2013/07/dods-weak-rationale-for-keeping-enemy-identities-secret/>)

Cora Currier at Pro Publica has an important story on why DOD won’t publish the list of AUMF “associated forces” against whom we are at war. DOD’s rationale: A Pentagon spokesman told ProPublica that revealing such a list could cause “serious damage to national security.” “Because elements that might be considered ‘associated forces’ can build credibility by being listed as such by the United States, we have classified the list,” said the spokesman, Lt. Col. Jim Gregory. “We cannot afford to inflate these organizations that rely on violent extremist ideology to strengthen their ranks.” I am quoted in the article as finding this rationale “weak,” and would like here to expand my reasoning, and add a few points. First, DOD says it must keep the identities of our enemies secret so as not to “inflate” or enhance their “credibility.” I suppose the idea, viewed charitably, is that being a named enemy of the United States can spur recruitment and might enhance the group’s interest in targeting U.S. interests. Still, “inflating” the enemy is a pretty soft criterion for keeping its identity secret. After all, the premise of for including a group on an AUMF list is that the AQ-associated force is (in the Obama administration’s typical formulation) “engaged in hostilities against the United States,” and presumably the fact of being on the receiving end of U.S. or U.S-supported military operations can be known locally and a spur to recruitment regardless of USG acknowledgment.

### ---2NC Legal Uncertainty

#### The plan generates new legal uncertainty and undermines international norms

Blank, 13 **–** professor of law at Emory (Laurie, “LEARNING TO LIVE WITH (A LITTLE) UNCERTAINTY: THE OPERATIONAL ASPECTS AND CONSEQUENCES OF THE GEOGRAPHY OF CONFLICT DEBATE” <http://www.pennlawreview.com/online/161-U-Pa-L-Rev-Online-347.pdf>) **LOAC = Law of Armed Conflict**

Uncertainty about the geographic scope of armed conflict leads to a variety of analytical and implementation challenges with regard to LOAC, human rights law, jus ad bellum, and other relevant legal regimes. The simple fact that within an armed conﬂict, a party to the conﬂict can use lethal force as a ﬁrst resort, while outside an armed conﬂict, such deadly force may only be used as a last resort, is the starkest reminder of why such extensive attention has been focused on this question over the past few years. For the purpose of achieving LOAC’s central goal of “alleviating, as much as possible the calamities of war,”32 greater clarity regarding where an armed conﬂict is taking place and to where the concomitant authorities and obligations extend certainly would be a signiﬁcant contribution. The international community—military lawyers, policymakers, international law scholars— should therefore address these issues head-on in a continuing eﬀort to better understand how to apply the law most eﬀectively and eﬃciently.33 Daskal’s proposal for a rules-driven new law of war framework is therefore a welcome and important contribution to the discussion and debate. At the same time, however, these eﬀorts must stay true to the needs and goals of LOAC as a pragmatic, operationally focused body of law that is, above all, designed to work in the inherent chaos and uncertainty of armed conﬂict. As I have argued elsewhere, there are signiﬁcant risks for the future implementation and development of LOAC as a result of conﬂating norms from LOAC with norms from human rights law, or of borrowing one from the other without careful delineation, including, in particular, the rules regarding surrender and capture and the different applications and purposes of proportionality in each legal regime.34 No place is this risk more profound than in relation to the legal authority to employ force against an enemy belligerent. In the context of a speciﬁc legal framework for one particular type of conﬂict, the same concerns about blurring the lines between legal regimes remain. LOAC does not require an individualized threat assessment in the targeting of combatants, who are presumed hostile by dint of their status. Over time, however, the requirement for an individualized threat assessment in certain geographical zones in a new law of war framework for conﬂicts with transnational terrorist groups may well begin to bleed into the application of LOAC in more traditional conﬂicts. In essence, therefore, a carefully designed paradigm for one complex and diﬃcult conﬂict scenario ultimately impacts LOAC writ large, even absent any perceived need or direct motivation for such change. Interpreting LOAC to require an individualized threat assessment for all targeting decisions—even those against the regular armed forces of the enemy state in an international armed conﬂict—introduces signiﬁcant tactical and operational risk for soldiers not mandated or envisioned by the law.35 The same conﬂation problem holds true for other non-LOAC obligations that might be imported into LOAC depending on the analysis of where and how a new law of war framework were to apply. It is important to recognize, notwithstanding the focus on the operational eﬀectiveness of LOAC in this Response, that conﬂation and “borrowing” oﬀer the same challenges for the implementation of human rights law, to the extent that norms from LOAC begin to bleed into the application of human rights norms. Lastly, superimposing an artiﬁcially created framework detracts attention from—or even papers over—current challenges within LOAC, such as the identiﬁcation of enemy operatives, the nature and amount of proof required for determinations of reasonableness or unreasonableness in targeting decisions, and other perennially tricky issues.

### ---2NC CIA

#### Their ev conceded CIA strikes turn their aff –

#### That means no norms

Alston 11 (Philip, John Norton Pomeroy Professor of Law, New York University School of Law, Harvard National Security Journal, “The CIA and Targeted Killings Beyond Borders”, 2 Harv. Nat'l Sec. J. 283, Lexis Law)

The combination of high levels of secrecy, combined with poor accountability, mean that it is impossible to verify the extent to which applicable international standards are respected in practice. Because these covert forces often operate as self-described killing machines, n4 their existence and continuing rapid expansion have grave consequences for the twin regimes of international human rights law ("IHRL") and international humanitarian law ("IHL") which aim to uphold the value of human life and minimize the brutalities of warfare.

#### Circumvention

Batarargs 2/10 Lina, writer, “Government Debates Using Drone Strike To Kill U.S. Citizen Abroad” http://www.opposingviews.com/i/politics/government-debates-using-drone-strike-kill-us-citizen-abroad

Although a series of stops exist in this scenario’s execution of a drone strike, a source has said that Obama “could make an exception to his policy and authorize the CIA to strike on a onetime basis or authorize the Pentagon to act despite the possible objections of the country in question.” Hina Shamsi, irector of the American Civil Liberties Union’s National Security Project, issued a statement on the “inherent danger of a killing program based on vague and shifting legal standards.” Shamsi described the system as one in which it is “disturbingly easy for the government to operate outside the law.”

#### Obama can circumvent restrictions to CIA drones whenever he wants

NYT 2/10 “U.S. Debates Drone Strike on American Terrorism Suspect in Pakistan” http://www.nytimes.com/2014/02/11/world/asia/us-debates-drone-strike-on-american-terror-suspect-in-pakistan.html?hp&\_r=0

The Obama administration is debating whether to authorize a lethal strike against an American citizen living in Pakistan who some believe is actively plotting terrorist attacks, according to current and former government officials. It is the first time American officials have actively discussed killing an American citizen overseas since President Obama imposed new restrictions on drone operations last May. The officials would not confirm the identity of the suspect, or provide any information about what evidence they have amassed about the suspect’s involvement in attacks against Americans. The debate about whether to put the individual on a kill list was first reported on Monday by The Associated Press. The first time the Obama administration carried out a targeted killing operation against an American citizen was in September 2011, when a C.I.A. drone killed the radical preacher Anwar al-Awlaki in Yemen; officials said little publicly about the operation. The White House acknowledged last year that four American citizens had been killed in drone strikes during Mr. Obama’s time in office. According to the White House, only Mr. Awlaki had been intentionally targeted. During a speech last May, Mr. Obama said he intended to gradually shift drone operations from the C.I.A. to the Pentagon, partly to make them more transparent. American officials said then that drone strikes in Pakistan would continue to be launched by the C.I.A. because Pakistan refuses to allow open American military operations on its soil. However, under a classified policy issued by Mr. Obama, there is a strong preference for the Pentagon — not the C.I.A. — to carry out drone strikes against American citizens, though the policy is said to allow exceptions if necessary. American officials said that the new discussions about whether to strike the American in Pakistan had been going on since the middle of last year. The public got a glimpse of the debate last week when Representative Mike Rogers of Michigan, the chairman of the Intelligence Committee, spoke angrily about the drone restrictions imposed by Mr. Obama. “Individuals who would have been previously removed from the battlefield by U.S. counterterrorism operations for attacking or plotting to attack against U.S. interests remain free because of self-imposed red tape,” Mr. Rogers, a Republican, said during a congressional hearing. The new rules, he said, are “endangering the lives of Americans at home and our military overseas in a way that is frustrating to our allies and frustrating to those of us who engage in the oversight of our classified activities.” Still, several senior officials in both the executive branch and Congress confirmed that even though the policy establishes a baseline rule that only the Pentagon is to conduct drone strikes against American citizens, a clause makes an exception that would in theory allow the administration to use the C.I.A. to carry out a strike if circumstances justified it. “This was Brennan’s brainchild,” said a senior congressional aide, who spoke on the condition of anonymity because of the continuing policy debate over the matter, referring to John O. Brennan, the C.I.A. director. “They wanted to be able to talk about it, disclose it and provide the legal footing for it.” Details about the deliberations — including the identity of the proposed target, what he is accused of doing and the quality of any evidence against him — remain murky. It is not clear how much reluctance by the administration to approve a strike is based on whether he meets the standard — a continuing, imminent threat against Americans — and how much other factors, like the complications raised by the military preference, are playing a role. Despite Mr. Obama’s efforts to reform the rules governing the use of drones, they remain controversial. “So little has changed since last year when it comes to government secrecy over killings,” said Naureen Shah, advocacy adviser at Amnesty International U.S.A. “The public and most members of Congress are still completely in the dark about where the U.S. claims authority to strike, the legal rules and the identity of those already killed.” “The policy is still the stuff of official secrecy and speculation when it should be a matter of open debate and explicit constraints,” Ms. Shah said. Spokesmen at the Pentagon, C.I.A. and White House declined on Monday to comment on the matter. The administration’s ambivalence on this case has infuriated Mr. Rogers. “The chairman is fired up about this,” the congressional aide said. The aide also confirmed that the Defense Department was initially reluctant to place the individual on the targeting list, questioning whether he met the new standards that Mr. Obama laid out in May. But eventually the Pentagon came around, said the aide, who added that the C.I.A. had supported a lethal strike from the beginning.

## Drones

### Uniqueness/SD

#### There’s a difference between POLICY and LEGALITY – the question of legal justification for targeted killings is unique – the administration explicitly locates authority in the AUMF now, and doesn’t employ an inherent Commander-in-Chief justification

Beau D. Barnes 12, J.D., Boston University School of Law, M.A. in Law and Diplomacy, The Fletcher School of Law and Diplomacy at Tufts University, 2012, “Reauthorizing the 'War on Terror': The Legal and Policy Implications of the AUMF's Coming Obsolescence,” Military Law Review, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150874&download=yes>

Furthermore, the Vesting Clause thesis and all-powerful views of the Commander in Chief Clause have been rejected in large part by the judiciary19 and the current administration.20 Indeed, one significant reason for considering the AUMF to be an actual limit on Presidential power, and a relevant subject for legal analysis, is because that is how the Obama Administration understands the statute. State Department Legal Adviser Harold Koh, in his March 25, 2010, speech to the American Society of International Law, clarified that “as a matter of domestic law” the Obama Administration relies on the AUMF for its authority to detain and use force against terrorist organizations.21 Furthermore, Koh specifically disclaimed the previous administration’s reliance on an expansive reading of the Constitution’s Commander in Chief Clause.22 Roughly stated, the AUMF matters, at least in part, because the Obama Administration says it matters.

### ---2NC Zones – Terror

#### Geographic restrictions means that terror groups can circumvent US drone operations by border hoping – gaining immunity means that locals support them and the US cant drone them.

#### Makes terror more effective – where they are operating does not matter – search for safe havens means that a place to coordinate is all they need. Turns the case and makes terror inev. Safe havens key to global operations

CRT, 6 [Country Reports on Terrorism, annual report published by the U.S. Department of State, "Chapter 3 -- Terrorist Safe Havens," 4-28-6, www.state.gov/j/ct/rls/crt/2005/, accessed 8-19-13, mss]

Physical safe havens provide security for many senior terrorist leaders, allowing them to plan and to inspire acts of terrorism around the world. The presence of terrorist safe havens in a nation or region is not necessarily related to state sponsorship of terrorism. In most instances cited in this chapter, areas or communities serve as terrorist safe havens despite the government’s best efforts to prevent this. Denying terrorists safe haven plays a major role in undermining terrorists’ capacity to operate effectively, and thus forms a key element of U.S. counterterrorism strategy as well as the cornerstone of UN Security Council Resolution 1373 that was adopted in September 2001. UNSCR 1373 specifically targets terrorists’ ability to move across international borders and find safe haven, to solicit and move funds, and to acquire weapons; it also calls on states that do not have laws criminalizing terrorist activity and support to enact such laws.

#### Geographic limits cause terror safe havens and cedes control to I-law violators

Lewis ’12 [Michael W., Associate Professor of Law at Ohio Northern University Pettit College of Law, “Drones and the Boundaries of the Battlefield,” <http://www.tilj.org/content/journal/47/num2/Lewis293.pdf>]

The legal support for applying strict geographical limitations on the scope of ¶ IHL to all non-international armed conflicts, rather than just internal civil wars, is ¶ based upon a misapplication of the Tadic test. As explained earlier, consideration of ¶ the Tadic factors makes sense in internal conflicts and civil wars where the violence is ¶ often episodic and geographically concentrated in one area of the country.114 Broadly ¶ applying the laws of war throughout a nation during a time of rebellion is often ¶ unnecessary and likely to lead to improper deprivations of life and liberty, which has ¶ led courts to resist such sweeping applications of the laws of war.115 However, ¶ applying the Tadic factors to determine whether IHL applies to a transnational ¶ armed conflict within a given geographical area is nonsensical. ¶ The existence of an armed conflict between, for example, al-Qaeda and the ¶ United States, or between Hezbollah and Israel, should be based upon the degree of ¶ violence exchanged between those two parties, not on the level of violence that exists ¶ between al-Qaeda and the nation of Afghanistan where it resides, or between ¶ Hezbollah and Lebanon where it is based. Yet it is this latter test that is being ¶ proposed by the ACLU and commentators supporting strict geographical limitations ¶ on the scope of IHL.116 ¶ Such an application of the Tadic factors to determine whether IHL applies in a ¶ given geographical area to transnational armed conflicts confers a tremendous ¶ strategic advantage upon the very same organizations that IHL otherwise strongly ¶ disfavors. By limiting IHL to territory on which the threshold of violence for an ¶ armed conflict is currently occurring, IHL would effectively create sanctuaries for ¶ terrorist organizations in any state not currently involved in a domestic insurgency in ¶ which law enforcement is known to be ineffective. Nations such as Yemen,117 Somalia, Sudan, and the FATA-area of Pakistan, in which law enforcement actions ¶ against organizations like al-Qaeda are either ineffective or intentionally not ¶ pursued, would become safe havens if IHL were not applied there.118 Al-Qaeda ¶ members fulfilling a continuous combat function could effectively reacquire their ¶ civilian immunity by crossing an international boundary rather than being required ¶ to disavow al-Qaeda, IHL’s preferred result. ¶ This limitation on IHL’s scope in transnational armed conflicts would ¶ effectively cede the initiative in a conflict between a state actor that abides by IHL ¶ and a non-state terrorist organization, which IHL disfavors in every other way ¶ because of its conduct during an armed conflict, to the terrorist organization. ¶ Members of the disfavored terrorist organization would be able to remain in these ¶ safe areas beyond the reach of law enforcement and immune from any attack that ¶ employed the tools of armed conflict, while they continued training, recruiting, and ¶ planning their next attack. They alone would be allowed to decide the next ¶ battlefield’s location, whether it is New York, London, Madrid, Washington, D.C., ¶ Mumbai, Detroit, or Bali, and when the next confrontation would take place. IHL ¶ should not be read to privilege such a group that it actively disfavors in so many ¶ other ways. Employing neutrality law to determine IHL’s scope and the boundaries ¶ of the battlefield in transnational armed conflicts is the best way of avoiding such an ¶ anomalous interpretation of IHL.120 Significantly, neutrality law (or something very much like it) has already been ¶ employed in the conflict between the United States and al-Qaeda. After the attacks ¶ of September 11, Afghanistan was put to much the same choice as Uruguay was in ¶ 1939:121 Become an ally of the United States in the conflict with al-Qaeda and allow ¶ the use of force against al-Qaeda on Afghan territory. Maintain neutrality in the ¶ conflict between the United States and al-Qaeda by prohibiting U.S. action against ¶ al-Qaeda in Afghanistan while ensuring that al-Qaeda leaves Afghanistan and does¶ not use Afghan territory as a sanctuary. Or, become an enemy of the United States ¶ by refusing to uphold its duties as a neutral nation by allowing al-Qaeda to use ¶ Afghan territory as a sanctuary.122 Afghanistan chose the third option and the United ¶ States and its NATO allies used force against both Afghan and al-Qaeda forces in ¶ Afghanistan with broad international support.123¶ CONCLUSION¶ The AMW Manual makes it clear that drones are legitimate weapons platforms ¶ whose use is effectively governed by current IHL applicable to aerial bombardment. ¶ Like other forms of aircraft they may be lawfully used to target enemy forces, ¶ whether specifically identifiable individuals or armed formations, if they comply with ¶ IHL’s requirements of proportionality, necessity, and distinction. ¶ Because drones are only able to operate effectively in permissive environments, ¶ the most significant legal challenges facing their development and employment have ¶ been based upon where they may be employed. Attempts to apply the strict ¶ geographical restrictions that govern the scope of IHL in internal non-international ¶ armed conflicts to all non-international armed conflicts, including transnational ¶ armed conflicts, threaten to significantly limit the usefulness of drones. ¶ When IHL’s core principles are considered, it becomes clear that the ¶ application of strict geographical limitations on IHL’s scope in the context of ¶ transnational armed conflicts cannot be defended. The determination of whether the ¶ Tadic threshold for an armed conflict is met on the territory of a non-party to the ¶ conflict should have no bearing on whether IHL may be applied to the parties to the ¶ conflict. In other words, the fact that there is no local violence occurring in Yemen ¶ or Somalia should not be used to provide a sanctuary for non-state actors who are ¶ involved in an armed conflict with another state. ¶ The answer for how the boundaries of the battlefield and the scope of IHL’s ¶ application can be properly determined is found in neutrality law. This is historically ¶ how geographical limitations have been imposed upon IHL’s scope in international ¶ armed conflicts. It was applied in the aftermath of the 9/11 attacks, with at least tacit ¶ international approval, to the situation involving the United States, al-Qaeda, and ¶ Afghanistan. Its application is checked by the consent of the sovereign states ¶ involved, making an escalating spiral of violence less, rather than more, likely. And ¶ perhaps most importantly, neutrality law’s application to transnational armed ¶ conflicts does not lead to the anomalous results that are produced when strict ¶ geographical limitations are applied to transnational armed conflicts in which IHL is ¶ read to favor its otherwise most disfavored groups.

## Legal

### 2NC China

#### No impact to China drones—international backlash to SCS adventurism prevents use—they don’t want to set a precedent for use in East Asia—drones are for domestic surveillance only—that’s Erickson

#### \*China’s drone development is slow—ensures U.S. lead

Moss, writer – The Diplomat, former editor for the Asia-Pacific – Jane’s Defence Weekly, 3/2/’13

(Trefor, “Here Come…China’s Drones,” http://thediplomat.com/2013/03/02/here-comes-chinas-drones/?all=true)

Dozens of Chinese UAV concepts have appeared over the years, most of which will never leave the laboratory, let alone the runway. However, the Chinese aerospace sector has clearly devoted a great deal of energy to producing a range of designs from which the PLA has been able to cherry-pick. Chinese engineers have also been able to draw on Israeli technology, having acquired Harpy UAVs from Israel Aerospace Industries in the 1990s. “They've gone in the last few years from having none in development to at least 25 different models displayed at arms shows,” says Singer. “So, it’s a very ambitious program. But again, it parallels their growth in capabilities and ambitions in many others beyond UAS, from jet fighters to missiles.” He warns against overhyping China’s UAV effort, noting that for now “we’re talking very small numbers [of Chinese UAVs] … and not yet near U.S. capabilities.” If the example of the U.S military is anything to go by, the PLA should only have operational requirements for around six to ten UAVs. It appears closer to filling some of these operational niches than others.

#### Other factors are driving Chinese drone proliferation – and give them too much of an incentive for the plan to change their plans

#### A. Territorial Disputes—Drones are the only way for China to counter Japan’s advances in the Senkaku islands –that’s their evidence

#### That outweighs their internal link—China sees the Senkaku’s as key to territorial integrity –they’re just as important as Taiwan or Tibet

Harry Kazianis 13, National Interest, former editor The Diplomat, “Senkaku/Diaoyu Islands: A “Core Interest” of China”, 13 <http://thediplomat.com/flashpoints-blog/2013/04/29/senkakudiaoyu-islands-a-core-interest-of-china/>)

China declaring the Senkaku/Diaoyu islands a [core interest](http://www.cas.fudan.edu.cn/picture/1893.pdf) is of major importance and could very well make efforts at easing tensions a greater challenge. The phrase "core interest" is usually reserved for sensitive Chinese concerns such as Taiwan, Tibet and Xinjiang. Core interests usually note areas of great importance for Beijing considered vital to national survival, and not up for negotiation.

#### B. Naval Competition—China’s using drones to counter US carriers in the region

Jeremy Hsu 13 “China's Drone Swarms Rise to Challenge US Power” <http://news.yahoo.com/chinas-drone-swarms-rise-challenge-us-power-173949154.html>)

Chinese strategists have also discussed using swarms of drones to overwhelm the U.S. Navy's carrier groups in the unlikely possibility of a shooting war. The drones could act as decoys, use electronic warfare to jam communications and radar, guide missile strikes on carriers, fire missiles at U.S. Navy ships or dive into ships like kamikaze robots. ["In particular, numerous authoritative studies indicate a strong emphasis on developing UAVs for locating, tracking and targeting U.S. aircraft carriers in support of long range anti-ship cruise and ballistic missile strikes," the Project 2049 Institute report says. All the main branches of the Chinese military field operational drone units. The new report identifies those military units along with major academic, industry and military organizations involved in building Chinese drones.

### 2NC No Impact

#### No impact to drone arms race – multiple checks – that’s Singh

* Narrow application
* Diplomatic and political costs
* State defenses
* Deterrence checks

#### More evidence—capabilities and costs

Zenko, Douglas Dillon fellow in the Center for Preventive Action – CFR, ‘13

(Micah, “U.S. Drone Strike Policies”, Council Special Report No. 65, January)

There are also few examples of armed drone sales by other countries. After the United States, Israel has the most developed and varied drone capabilities; according to the Stockholm International Peace Research Institute (SIPRI), Israel was responsible for 41 percent of drones exported between 2001 and 2011.57 While Israel has used armed drones in the Palestinian territories and is not a member of the MTCR, it has pre- dominantly sold surveillance drones that lack hard points and electrical engineering. Israel reportedly sold the Harop, a short-range attack drone, to France, Germany, Turkey, and India. Furthermore, Israel allows the United States to veto transfers of weapons with U.S.-origin technology to select states, including China.58 Other states invested in developing and selling surveillance drones have reportedly refrained from selling fully armed versions. For example, the UAE spent five years building the armed United-40 drone with an associated Namrod missile, but there have been no reported deliveries.59 A March 2011 analysis by the mar- keting research firm Lucintel projected that a “fully developed [armed drone] product will take another decade.”60 Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and cross- border adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingen- cies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

### Turns Case

#### Group 2ac 1 and two- explained by Hewitt – HUNDREDS of plots and airline bombings

#### Surveillance key to thwart attacks.

Carafano 13 James Jay Carafano is Vice President for Defense and Foreign Policy Studies at The Heritage Foundation, PRISM is Essential to U.S. Security in War Against Terrorism, Aug 6, 2013, http://www.heritage.org/research/commentary/2013/8/prism-is-essential-to-us-security-in-war-against-terrorism

"Our intelligence professionals must be able to find out who the terrorists are talking to, what they are saying, and what they're planning," said the president. "The lives of countless Americans depend on our ability to monitor these communications." He added that he would cancel his planned trip to Africa unless assured Congress would support the counterterrorism surveillance program. The president was not Barack Obama. It was George W. Bush, in 2008, pressing Congress to extend and update reforms to the Foreign Intelligence Surveillance Act (FISA). He was speaking directly to the American public, in an address broadcast live from the Oval Office. How times have changed. Back then, the President of the United States willingly led the fight for the programs he thought necessary to keep the nation safe. Now, our president sends underlings to make the case. In distancing himself from the debate over PRISM (the foreign intelligence surveillance program made famous by the world-travelling leaker Edward Snowden), President Obama followed the precedent he established in May at the National Defense University. There, he spoke disdainfully of drone strikes, the authorization to use military force against terrorists, and the detention facilities at Guantanamo Bay. All three are essential components of his counterterrorism strategy. In distancing himself from his own strategy, Obama hoped to leave the impression that he is somehow above it all. He has dealt with the Snowden case the same way. When asked while traveling in Africa if he would take a role in going after the leaker, the president replied "I shouldn't have to." The White House's above-it-all attitude sends seriously mixed messages to the American people, who are trying to figure if the government's surveillance programs are legal and appropriate. Congress has not been much better. The authority for PRISM is in FISA Section 702. Congress debated these authorities in 2007 and again when the program was reauthorized in 2008. Senate Majority Leader Harry Reid, D-Nev., surely remembers the controversy. He wrote President Bush: "There is no crisis that should lead you to cancel your trip to Africa. But whether or not you cancel your trip, Democrats stand ready to negotiate a final bill, and we remain willing to extend existing law for as short a time or as long a time as is needed to complete work on such a bill." Evidently, Reid must have felt the authorities granted under Section 702 received a full and sufficient hearing. Most current members of Congress were seated under the dome during the 2008 debates. They had every opportunity not just to read the law, but to be briefed on the program by intelligence officials before voting on the bill. For them to act shocked at the scope of the program today rings about as hollow as Obama's expressed disdain for the operations he oversees. The reality is that Congress and the administration share responsibility for these programs. If they want to change or modify them, who's stopping them? If changes are made, however, they should to be made for the right reason. Leaders must never compromise our security for political expediency. At least 60 Islamist-inspired terrorist plots have been aimed at the U.S. since the 9/11 attacks. The overwhelming majority have been thwarted thanks to timely, operational intelligence about the threats. Congress should not go back to a pre-/11 set of rules just to appeal to populist sentiment. Congress and the White House have an obligation to protect our liberties and to safeguard our security -- in equal measure. Meeting that mission is more important than winning popularity polls.

#### Empirically prevented US attacks.

Savage 13 Charlie, NYT, N.S.A. Chief Says Surveillance Has Stopped Dozens of Plots, June 18 2013, http://www.nytimes.com/2013/06/19/us/politics/nsa-chief-says-surveillance-has-stopped-dozens-of-plots.html

WASHINGTON — Top national security officials on Tuesday promoted two newly declassified examples of what they portrayed as “potential terrorist events” disrupted by government surveillance. The cases were made public as Congress and the Obama administration stepped up a campaign to explain and defend programs unveiled by recent leaks from a former intelligence contractor.

One case involved a group of men in San Diego convicted of sending money to an extremist group in Somalia. The other was presented as a nascent plan to bomb the New York Stock Exchange, although its participants were not charged with any such plot. Both were described by Sean Joyce, deputy director of the Federal Bureau of Investigation, at a rare public oversight hearing by the House Intelligence Committee.

At the same hearing, Gen. Keith B. Alexander, the head of the National Security Agency, said that American surveillance had helped prevent “potential terrorist events over 50 times since 9/11,” including at least 10 “homeland-based threats.” But he said that a vast majority of the others must remain secret.

#### Nuclear taboo now means interstate conflict won’t go nuclear – only nuclear terror breaks the taboo

Bin ‘9 (5-22-09 About the Authors Prof. Li Bin is a leading Chinese expert on arms control and is currently the director of Arms Control Program at the Institute of International Studies, Tsinghua University. He received his Bachelor and Master Degrees in Physics from Peking University before joining China Academy of Engineering Physics (CAEP) to pursue a doctorate in the technical aspects of arms control. He served as a part-time assistant on arms control for the Committee of Science, Technology and Industry for National Defense (COSTIND).Upon graduation Dr. Li entered the Institute of Applied Physics and Computational Mathematics (IAPCM) as a research fellow and joined the COSTIND technical group supporting Chinese negotiation team on Comprehensive Test Ban Treaty (CTBT). He attended the final round of CTBT negotiations as a technical advisor to the Chinese negotiating team. Nie Hongyi is an officer in the People’s Liberation Army with an MA from China’s National Defense University and a Ph.D. in International Studies from Tsinghua University, which he completed in 2009 under Prof. Li Bin. )

The nuclear taboo is a kind of international norm and this type of norm is supported by the promotion of the norm through international social exchange. But at present the increased threat of nuclear terrorism has lowered people’s confidence that nuclear weapons will not be used. China and the United States have a broad common interest in combating nuclear terrorism. Using technical and institutional measures to break the foundation of nuclear terrorism and lessen the possibility of a nuclear terrorist attack can not only weaken the danger of nuclear terrorism itself but also strengthen people’s confidence in the nuclear taboo**,** and in this way preserve an international environment beneficial to both China and the United States. In this way even if there is crisis in China-U.S. relations caused by conflict, the nuclear taboo can also help both countries reduce suspicions about the nuclear weapons problem, avoid miscalculation and thereby reduce thedanger of a nuclear war.

#### Turns legal regimes –they will expand and everything will become self defense – 9/11 proves we will reconflate and justify everything with self defense

#### Another terrorist attack would usher in a police state which would take away all rights

Ignatieff ‘4 (Michael, Director of the Carr Center at the Kennedy School of Gov. @ Harvard, May 9, Edmonton Journal, “How the war on terror can be won--or lost”)

It has taken nearly three years, but the 9/11 commission and the Supreme Court hearings on enemy combatants have given Americans our first serious public discussion about how to balance civil liberties and national security in a war on terror. Even so, we have not begun to ask the really hard questions. The hardest one is: Could we actually lose the war on terror? Consider the consequences of a second major attack on the mainland United States -- the detonation of a radiological or dirty bomb, perhaps, or a low-yield nuclear device or a chemical strike in a subway. Any of these events could cause death, devastation and panic on a scale that would make 9/11 seem like a pale prelude. After such an attack, a pall of mourning, anger and fear would hang over our public life for a generation. An attack of this sort is already in the realm of possibility. The recipes for making ultimate weapons are on the Internet, and the materiel required is available for the right price. A democracy can allow its leaders one fatal mistake -- and that's what 9/11 looks like to many observers -- but Americans will not forgive a second one. Once the zones of devastation were cordoned off and the bodies buried, we might find ourselves living in a national-security state on continuous alert, with sealed borders, constant identity checks and permanent detention camps for dissidents and aliens. Our constitutional rights might disappear from our courts, while torture might reappear in our interrogation cells. The worst of it is that government would not have to impose tyranny on a cowed populace. We would demand it for our own protection. And if the institutions of our democracy were unable to protect us from our enemies, we might go even farther, taking the law into our own hands. That is what defeat in a war on terror looks like. We would survive, but we would no longer recognize ourselves. We would endure, but we would lose our identity as free peoples.

#### causes authoritarianism and lashout

Etzioni, Professor Sociology George Washington, ‘7 (Amitai, “Security First: For a Muscular, Moral Foreign Policy” p 219-220)

A few academics have questioned the weight that I and others attach to a nuclear attack, by terrorists or by rogue states. They see no "existential" threat to the United States from such attacks; bin Laden, they say, may make life "unpleasant," but will not finish the United States off the way Hitler tried to finish off Britain,IK not even cause a regime change, and surely not win the global war of ideas.'9 Some even conclude that terrorists should nor be treated differently from garden variety criminals and that providing security should be turned over to the police and the courts, (There terrorists would have the same rights of all U.S. persons, including the right to face their accuser and see all documents relevant to their case.) Can one count the ways to disagree? Herman Kahn. the "Dr. Strange-love" of the think tanks, argued in his book On Thernxonuclear War that we should "think" the "unthinkable." What he meant was that Americans naively shied away from considering nuclear war an option. He set out to break this taboo, to make nuclear attacks acceptable. His main reason was that even if one hundred million Americans died, America would survive and regenerate. I argued with him, face to face and in print, that the America rising from the ashes of the nation as we have known it—and rise again it well might—would be a radically different nation, a garrison state. Security would trump all other considerations; civil rights and economic efficiencies would have been cast aside. There thus would have been a real regime change; a change in American culture, morality, and polity. It would also be a nation ready to strike out at true and imagined enemies with little forethought or deliberation. In short, such an attack would have horrible consequences not merely for America but for most if not all other states. The same holds true if the terrorists took out most of New York, Washington, or even "merely" Chicago. America would survive the same way someone whose eyes have been gouged out and ears severed and leg amputated would continue to exist. But it would be a nation at least as vengeful as Germany was after World War I, and one that would look to strong-armed leaders to take the helm. It would not be the same America. It would continue to exist but would have a radically different existence.

#### Reforms solves surveillance credibility

Weigel, 3-25-’14 (David, “Turning Off the Vacuum Cleaner” Slate, www.slate.com/articles/news\_and\_politics/politics/2014/03/nsa\_bulk\_metadata\_collection\_rand\_paul\_ron\_wyden\_support\_obama\_s\_plan\_to.html

If it was a “turning point,” as Snowden suggested, it was one that the administration and its critics both needed. The congressional and civic outcry against the NSA started and basically ended with the revelations of domestic snooping. That wasn’t where the Snowden revelations ended. Day after week after month, newspapers were using the Snowden documents to detail American spying in foreign countries. This was costing the American tech industry billions of dollars, maybe as much as $180 billion. Rogers and Ruppersberger, and the administration, wanted to restore American credibility. Domestic surveillance reform was the only attainable idea, even if it barely addressed most of Snowden’s leaks. The reform, said Ruppersberger, would “set an example,” while “at least a year’s” worth of Snowden revelations continued to trickle out. The world outside would see that America was doing something about surveillance, and their own governments weren’t. Hey, it could work. “The French, just recently, passed a measure so that you don’t even need a court order to get personal data stored on their systems in France,” said Rogers. “Espionage is a French word, after all.” That line got a couple of laughs, but Rogers meant it. “We should get over the shock and awe of all of this and have an honest dialogue about what is exactly happening,” he said. “Europeans spy on the United States of America, sorry, every single day.” Multiple times, when reporters asked Rogers why Congress wasn’t reforming any of the programs that worried foreigners, the congressman accused the press of overhyping stories and possibly being suckered by bad intelligence. Snowden, who Rogers only referred to as “the former NSA contractor,” had created “confusion on legal programs he had no understanding of,” and then fallen into Russia’s grip. “There’s a lot of intelligence officials today who have to go back and, [with] every new revelation, knowing he’s under the influence of Russian intelligence, scrutinize it 10 times more than they did,” said Rogers. “A lot of people take it as gospel. I assure you, it’s not.” “I would love to have Russia’s Snowden come over here and give us all the data he found,” said Ruppersberger. These were the congressmen who were now backing the end of bulk metadata collection. The civil libertarians could accept that, because they knew what to go after next. Paul, who had just returned from a well-received and widely-covered anti-spying speech in Berkeley, Calif., openly derided the arguments he expected to hear next. “They will say, we have these privacy controls that da-da-da-da,” said Paul, replacing the intelligence community’s jargon with nonsense syllables. “We’re going to do da-da-da-da. But the records are not protected by the Fourth Amendment. This is still a big question. I think it will still have to be decided by the Supreme Court.” But that sets up a sort of détente. The civil libertarian campaign would continue. The campaigners would give their blessing to incremental reform. The skeptics would go along with the reform, because they know how quickly the conversation can shift.

#### Turns lashout from a terrorist attack – reform is a bigger internal link – wiretapping is bigger and is a disincentive for attacks growing LARGER in size- for terrorism to reach the nuclear level, there has to be intense forms of coordination that can only be mitigated through wiretapping

### A2 Obama Out for Plan

#### 1AC Preble is nice try – but its talking about AUMF – no card Obama wants to restrict drones, don’t believe – ask Awlaki

### A2 NO PC

#### Obama does have PC – hawkings evidence says he is trying to find the sweet spot

#### Prez loses PC if he doesn’t appear to be in control Infighting between the two branches – Congress won’t negotiate – this is true because they are both national security issues – if Obama is perceived as weak on drone policy, Congress is less likely to follow him

#### PC key, it’ll be a fight

CNN, 3-25-’14 (Tom Cohen, “Obama, Congress working on changes to NSA” <http://www.cnn.com/2014/03/25/politics/white-house-nsa/>)

President Barack Obama and congressional leaders described similar proposals Tuesday for ending the National Security Agency's sweeping collection of bulk telephone records. Obama told reporters in The Netherlands that his intelligence team gave him a "workable" option for NSA reform that he said would "eliminate " concerns about how the government keeps the records known as metadata. At a news conference in Washington, the leaders of the House Intelligence Committee said they worked out their own bipartisan compromise on a similar proposal intended to alleviate what they characterized as unfounded fears of excessive government surveillance. The nearly simultaneous remarks demonstrated progress toward Obama's call in January for NSA changes in the aftermath of last year's classified leaks by former agency contractor Edward Snowden that revealed the magnitude of surveillance programs created in response to the September 11, 2001, terrorist attacks. Congressional battle coming However, the issue touches on deep political and ideological fissures between Republicans and Democrats, promising an extended battle in Congress over the necessary legislation -- especially in an election year. A senior administration official told CNN that the White House plan, first reported by The New York Times, would ensure "the government no longer collects or holds" the telephone metadata -- records that include the numbers and time of calls, but no content such as the actual conversation. According to the official, the proposal "still ensures that the government has access to the information it needs" for national security purposes. The official declined to specify where the bulk phone metadata would ultimately be stored. Now it is collected by the NSA under broad legal authority to keep it for five years. It was not immediately clear how the White House proposal differed from the compromise announced by Reps. Mike Rogers of Michigan and Dutch Ruppersberger of Maryland -- the top Republican and Democrat on the House Intelligence Committee. Their plan would end the automatic NSA collection of phone metadata, with telecommunications companies keeping such records for at least 18 months -- as they do now.

#### NSA fights will take every day – aff floor time prevents passage

Associated Press, 3-27-’14 (Eileen Sullivan, “Turning to Congress, Obama seeks a speedy end to NSA's bulk collection of phone records” Star Tribune, http://www.startribune.com/politics/national/252642851.html)

President Barack Obama asked Congress on Thursday to end quickly the government's bulk collection of Americans' phone records, which could be a big ask for lawmakers who don't often move quickly without a looming deadline. Responding to public outrage over the National Security Agency program, the Obama administration came up with a new program that it says would address privacy concerns and preserve the government's ability to fight terrorism. Under the proposal, Congress has three months to draft and pass a measure to end the bulk collection program. The Obama administration has asked the court to reauthorize that collection for another three months, while lawmakers consider an alternative. Under the current system, the government gets court approval every three months to collect all call records from certain phone companies daily. The real looming deadline for action is June 1, 2015. That's when the section of a law that has been used to authorize the program is set to expire. The Obama administration could continue to seek court approval to collect the phone records five more times before the law expires. Obama could have ended the bulk collection program now, said Sen. Patrick Leahy, D-Vt., chairman of the Judiciary Committee and a proponent of changing NSA surveillance programs. The administration said it sought reauthorization for another 90 days to maintain its counterterrorism capabilities until a new program was in place. Congress has been debating what to do about this once-classified program since last June, when former NSA systems analyst Edward Snowden revealed details about the massive surveillance operation. Dozens of bills have been introduced, and the issue has caused divisions even within political parties. Finding consensus on how to change the program could take most, if not all, of the 430 days that Congress actually has. During that time period, many members of Congress are up for re-election, and the primary campaign for the next presidential race will be underway. Until now, many thought Congress would most likely let the phone records collection program expire next year. "I think that the administration was under the gun to come up with something that might satisfy those who want to see the end of the program, such that they could avoid that result in 2015," said Kevin Bankston of the New America Foundation, a nonpartisan think tank. Under the president's plan, the government would have to get a court order and ask phone companies to search their records for specific numbers that are believed to be associated with terrorists. Phone companies would not hold onto the records for any longer than they're already required to under federal regulation, which is 18 months. "I believe this approach will best ensure that we have the information we need to meet our intelligence needs while enhancing public confidence in the manner in which the information is collected and held," Obama said in a statement Thursday. Obama has said that he never thought the program was unconstitutional or ripe for abuse, but he was forced to respond to perceived privacy concerns. Key lawmakers said they like some of Obama's proposal, but want more. "I am glad that the president has come around and that there is now virtually universal agreement that the dragnet collection of Americans' phone records must end," Leahy said. "The president's proposal is promising, but true reform must be comprehensive." Leahy's own proposal, which has bipartisan support, would go further than the president's plan and would prevent this administration and future ones from this type of bulk collection of other business records, such as financial statements. A proposal from the leaders of the House Intelligence Committee, which also has bipartisan support, has more similarities to Obama's plan in that it would call for the government to query phone companies directly. "They're coming closer to our position here," said Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. However, Roger's plan would not require prior court approval of searches. Court approval is part of the current program and would be part of Obama's plan. The phone companies — a key part of many of the legislative proposals — have been mostly silent on potential reforms to the phone records collection program. On Thursday, Verizon said it supported elements of the Obama plan, but noted it's still early in the process.

#### But that link is still unique – only uncontroversial legislation being considered now because no one wants to push buttons ahead of the midterms

Klimas, 3-26-’14 (Jacqueline, “Democrats duck Obamacare questions, focus election-year agenda on middle class” Washington Times, http://www.washingtontimes.com/news/2014/mar/26/democrats-duck-obamacare-questions-focus-election-/)

Senate Democrats released their election year agenda Wednesday, hoping to turn attention away from the embattled health care law and toward their plans for the middle class — but they were still unable to dodge questions about the latest Obamacare delay. Their legislative wish list includes education and child-care subsidies, manufacturing incentives and tax increases to pay for new spending. The agenda mirrors priorities President Obama laid out in his State of the Union address earlier this year. Lawmakers said they will first tackle raising the minimum wage, then move on to bills designed to boost women’s pay. Yet despite trying to shift focus to their newest agenda that promotes “a fair shot for everyone,” Democratic leaders still had to answer questions about problems with the president’s health care law, especially a delay of the March 31 enrollment deadline announced Tuesday night. “Our priorities reflect the priorities of the middle class. We believe in fairness and opportunity for all,” Majority Leader Harry Reid, Nevada Democrat, told reporters. “Republicans are stuck in the past, fighting the same old battles they continually fight. They’re complaining about Obamacare.” Sen. John Cornyn, Texas Republican, said Democrats’ agenda has little chance of passing, but is designed to appeal to their political base. “To put it in a word, they’ve given up,” he said on the Senate floor. “They’ve given up legislating and are going to spend the next several months holding a series of show votes, which are in essence those designed to highlight poll-tested messages.” Regardless of what happens in the Democratic-controlled Senate, Republicans hold the House and Speaker John A. Boehner said Wednesday that he and his troops will continue to focus on jobs. He called on the Senate to pass some of the dozens of bills the House has already sent over to cut government regulations or aid small businesses. Both sides are jockeying ahead of November’s elections, with Democrats playing defense against headwinds that favor Republicans. Sen. Chuck Schumer, New York Democrat, insisted that the help for the middle class, not problems with the Affordable Care Act, will dominate voters’ minds in the mid-term elections later this year and will help Democrats keep the Senate. “This agenda is what the American people want to hear, and you all just want to ask about Obamacare,” he said. For his part, Mr. Reid dismissed Democrats’ loss in a Florida special congressional election earlier this month. “That race was not lost because of Obamacare. That was a district that was very, very white and quite old. It’s a district that had been Republican for 60 years,” he said. Mr. Reid did say there will be some bipartisan bills on the floor this year, including a plan to extend federal unemployment benefits. Other potential legislation would include improving energy efficiency, restructuring sentencing laws and boosting manufacturing.

#### That generates momentum – all fights over current bills was priced in months ago

Catalini, 3-13-’14 (Michael, “Bipartisan Bills in the Senate? Sure. But Partisanship Lingers, Too” National Journal, www.nationaljournal.com/daily/bipartisan-bills-in-the-senate-sure-but-partisanship-lingers-too-20140313

A common truism about the upper chamber is that senators can pass legislation as quickly as they want to, when they want to. Senators seemed to prove it again before leaving for a weeklong recess, having passed or struck deals on four bills plus a set of sanctions against Russia. With bipartisan votes, the Senate this week passed: a bill aimed at preventing sexual assaults in the military; a reauthorization of child-care block grants; and a House-passed measure aimed at preventing a spike in flood-insurance premiums. Senators also reached a deal to extend long-term unemployment-insurance benefits after multiple false starts this year. "We're ending on a good note," said Republican Sen. Roger Wicker of Mississippi. But wait, there's more. When senators return, they will also take up—and likely pass—legislation that would provide a $1 billion loan guarantee to Ukraine along with sanctions—including asset freezes and visa revocations—against certain Russian officials. The spate of bipartisan bills comes after weeks of behind-the-scenes wrangling, especially over the unemployment-insurance benefits, which lawmakers expect will come up for a vote when they return from the break. That deal, which crucially won the backing of five Republicans, would extend benefits for five months and includes retroactive payments until Dec. 28, when the program expired. Democratic Sen. Jack Reed of Rhode Island, who led efforts to find a compromise with Republican Sen. Dean Heller of Nevada, said the deal was reached because senators—despite disagreements—approached the negotiation with "seriousness and thoughtfulness." Senators on both sides of the aisle call the recent productivity a good sign for the prospects of working together. Republican Sen. Rob Portman of Ohio, whose pending energy-efficiency bill stalled last year, said he now expects the bill to come to the floor again during the next work period.

### 2NC Uniqueness

#### Rogers retirement earlier today creates momentum for passage

The Hill, 3-28-’14 (“Coveted spy gavel is up for grabs in House” http://itk.thehill.com/blogs/hillicon-valley/technology/202020-rogers-exit-could-ease-nsa-reforms)

Rep. Mike Rogers’s (R-Mich.) surprise retirement has put up for grabs a powerful job overseeing the country’s spy agencies. Rogers has led the House Intelligence Committee since Republicans won the House majority in 2011, but on Friday said he will leave Congress at the end of the year to begin a career in talk radio. The top slot on the secretive panel brings prestige and power, as its leaders are among the few members of Congress who are routinely briefed on classified information. With Republicans expected to hold the House majority in the midterm elections, Rogers's retirement likely means there will be a new GOP chairman come January. Rep. Mac Thornberry (R-Texas) is the most senior member of the panel and next in line for the slot, but he confirmed on Friday that he will pass on the job to seek the House Armed Services Committee gavel once Chairman Buck McKeon (R-Calif.) retires at the end of the year. “While chairing the House Intelligence Committee is an important job, my focus for the future is strictly on the House Armed Services Committee, where I hope to follow Buck McKeon as Chairman,” he said in a statement to The Hill. Rep. Jeff Miller (R-Fla.), who would be next in line after Thornberry — is emerging as the early favorite to replace Rogers, but other Republicans could throw their names into the mix in the coming days. Another contender for the gavel is Rep. Devin Nunes (R-Calif.), a seven-term congressman who has served on the committee since 2011. Nunes told The Hill that he plans to seek the top spot on the committee after Rogers retires at the end of the year. "This is something that came as a surprise to everybody so suddenly," Nunes said. "My plan always was after the chairman was finished that I would go for it. It just came a little sooner than what we thought." Intelligence Committee leaders are appointed by the Speaker, so seniority could play a major role in the selection. The panel, formally known as the House Permanent Select Committee on Intelligence, oversees intelligence activities of 17 different elements of the U.S. government. The chairmanship sometimes comes with controversy, and the chairman is often the target of criticism from opponents of federal spy agencies like the National Security Agency (NSA). Defense sources have said that Miller would be the front-runner for the chairmanship, should he choose to seek it. A person close to Miller, who currently chairs the House Veterans Affairs Committee, said he is “definitely interested” in the post. Rep. Pete King (R-N.Y.), the former chairman of the House Homeland Security Committee, could also be a contender for the chairmanship, although he has less seniority on the panel than Thornberry or Miller. King told The Hill on Friday he would be interested in taking over the gavel next year. “This is entirely a decision for the Speaker, and it’s certainly early on, but it would be an honor to be considered,” King said. “Intelligence, homeland security, that’s where I focus all of my time.” King said he was taken by surprise at the news that Rogers was retiring. “I had no idea at all,” he said. Rogers’s announcement comes at a critical time in the fight over changes to the NSA. One analyst said his retirement could give him a freer hand to push proposals sought by President Obama. “I do think Mr. Rogers found himself defending programs that became increasing unpopular,” said Marc Rotenberg, executive director of the Electronic Privacy Information Center. “I also sense, looking at the shift in public opinion and the shift in the White House and the shift in Congress, that his view was increasingly in the minority, and I think it will have implications for necessary reforms of the [Foreign Intelligence Surveillance Act] and the NSA programs.” Both Rogers and the White House have urged the NSA to end its mass collection of records about people's phone calls. But Rogers has resisted one of Obama’s central proposals, which would require that the NSA or any other government agency obtain a court order before being able to search the phone records, except in specific emergency cases. That requirement would make it too difficult for analysts to connect the dots between terrorists quickly, he has said, and “would give terrorists greater protections than those given to us citizens in criminal investigations every day in this country.” Rogers and Intelligence Committee ranking member Dutch Ruppersberger (D-Md.) have introduced legislation, which Miller and King both co-sponsored, to end the government’s collection of records about people’s phone calls, days before the White House formally unveiled its proposal. The twin plans set up a fight in Congress in coming months.

#### Will pass – both sides agree on the need for reform

CBS News, 3-27-’14 (“Obama administration wants Congress to reform NSA” http://www.cbsnews.com/news/obama-administration-wants-congress-to-reform-nsa/)

Additionally, Mr. Obama said the proposal calls for judicial oversight into each individual query into the database of metadata. "Overall, I am confident that it allows us to do what is necessary in order to deal with the dangers from the terrorist attack, but does so in a way that addresses some of the concerns that people had raised," he said. "And I'm looking forward to working with Congress to make sure that we go ahead and pass the enabling legislation quickly, so that we can get on with the business of effective law enforcement." The current program, justified under Section 215 of the Patriot Act, comes up for reauthorization by the Foreign Intelligence Surveillance Court on March 28. Given that reform legislation will not be in place by then, Mr. Obama has directed the Justice Department to seek from the FISC a 90-day reauthorization of the existing program. On Tuesday, the Republican and Democratic leaders of the House Intelligence Committee unveiled a bill that closely aligns with Mr. Obama's proposal. They expressed optimism that Congress and the White House would be able to coalesce behind a single plan.

### Link – Losers Lose

#### Link alone turns case – causes infighting between the Congress and the president that limit the pereption that the President has effective war powers

#### Extend that’s Kriner- all their plan popular link turns are solved by the link

#### NOT A SINGLE INDICT OF LOSERS LOSE

#### The plan is a separate war powers issue–it’s immediate and forces a trade-off

O’Neil-prof law Fordham-7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of –Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Obama fights the plan – strongly supports war powers

Rana 11 (Aziz – Assistant Professor of Law, Cornell Law School, “TEN QUESTIONS: RESPONSES TO THE TEN QUESTIONS”, 2011, 37 Wm. Mitchell L. Rev. 5099, lexis)

Thus, for many legal critics of executive power, the election of Barack Obama as President appeared to herald a new approach to security concerns and even the possibility of a fundamental break from Bush-era policies. These hopes were immediately stoked by Obama's decision before taking office to close the Guantanamo Bay prison. n4 Over two years later, however, not only does Guantanamo remain open, but through a recent executive order Obama has formalized a system of indefinite detention for those held there and also has stated that new military commission trials will begin for Guantanamo detainees. n5 More important, in ways small and large, the new administration remains committed to core elements of the previous constitutional vision of national security. Just as their predecessors, Obama officials continue to defend expansive executive detention and war powers and to promote the centrality of state secrecy to national security.

#### The plan drains political capital and derails agenda

**Shane, Ohio State law school chair 2011**

(Peter, “ARTICLE: The Obama Administration and the Prospects for a Democratic Presidency in a Post-9/11 World”, 56 N.Y.L. Sch. L. Rev. 27, lexis, ldg)

The second is politics. With the country still grappling with the effects of a devastating recession, as well as the need for pressing action on healthcare, climate change, and immigration, the President might well want to avoid the appearance of diluting his focus. Moreover, since the Johnson administration, Republicans have consistently--and with some success--cowed the Democrats by portraying them as soft on national security issues. The partisan pushback against any Obama administration effort to reinvigorate the rule of law in the national security context is likely to be vicious, threatening to erode whatever modicum of goodwill might otherwise be available to accomplish seemingly more concrete and immediate objectives. This, of course, is not hypothetical. We can see it in Republican efforts to derail the closing of Guantanamo and in proposals to prohibit the trial of foreign terrorists in civilian courts n108--a practice that Republicans seemed happier to live with under George W. Bush. n109

#### Plan’s a perceived as a loss-saps capital

**Loomis, Georgetown government professor, 2007**

(Andrew, “Leveraging legitimacy in the crafting of U.S. foreign policy”, 3-2, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>, ldg)

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### Having to defend authority derails the agenda

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy

**Posner and Vermeule, 8 -** \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, “Constitutional Showdowns” 156 U. Pa. L. Rev. 991, lexis)

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

### A2 U OWHELM

#### PC key, it’ll be a fight

CNN, 3-25-’14 (Tom Cohen, “Obama, Congress working on changes to NSA” <http://www.cnn.com/2014/03/25/politics/white-house-nsa/>)

President Barack Obama and congressional leaders described similar proposals Tuesday for ending the National Security Agency's sweeping collection of bulk telephone records. Obama told reporters in The Netherlands that his intelligence team gave him a "workable" option for NSA reform that he said would "eliminate " concerns about how the government keeps the records known as metadata. At a news conference in Washington, the leaders of the House Intelligence Committee said they worked out their own bipartisan compromise on a similar proposal intended to alleviate what they characterized as unfounded fears of excessive government surveillance. The nearly simultaneous remarks demonstrated progress toward Obama's call in January for NSA changes in the aftermath of last year's classified leaks by former agency contractor Edward Snowden that revealed the magnitude of surveillance programs created in response to the September 11, 2001, terrorist attacks. Congressional battle coming However, the issue touches on deep political and ideological fissures between Republicans and Democrats, promising an extended battle in Congress over the necessary legislation -- especially in an election year. A senior administration official told CNN that the White House plan, first reported by The New York Times, would ensure "the government no longer collects or holds" the telephone metadata -- records that include the numbers and time of calls, but no content such as the actual conversation. According to the official, the proposal "still ensures that the government has access to the information it needs" for national security purposes. The official declined to specify where the bulk phone metadata would ultimately be stored. Now it is collected by the NSA under broad legal authority to keep it for five years. It was not immediately clear how the White House proposal differed from the compromise announced by Reps. Mike Rogers of Michigan and Dutch Ruppersberger of Maryland -- the top Republican and Democrat on the House Intelligence Committee. Their plan would end the automatic NSA collection of phone metadata, with telecommunications companies keeping such records for at least 18 months -- as they do now.

#### The Brown evidence does not make a predictive claim – merely says Obama “could do it” – he has called for reform – the status quo is not sufficient which means it’s try or die for the reform bill

#### The morrisey evidence is about OBAMA’s plan, which is not the disad and won’t happen legislatively – that’s the 1NC uniqueness

#### Sanchez says legal

### A2 CIA Trigger

#### The fight is deescalating and Obama isn’t involved

Cooper, 3-13-’14 (Ryan, theweek.com/article/index/257939/its-time-for-obama-to-take-a-side-in-the-battle-between-the-cia-and-the-senate)

However, to cite Marcy Wheeler again, the CIA's legal and tactical positions are looking quite good. There is little that the Intelligence Committee can do to attack the CIA directly, and the Department of Justice is notorious for running interference for other executive branch agencies. Moreover, the Senate moves very slowly, and Republicans might well take back the chamber in the upcoming midterm elections. That would put CIA lapdog (and torture jokester) Richard Burr into the committee chair, who has already attacked Feinstein for airing this dispute. But on the other hand, the CIA's political position is not great, even in the corroded political climate we have today. Feinstein is a Very Serious Person in good standing, and an accusation from her carries a hundred times more weight in official Washington than one from, say, Bernie Sanders. And this controversy cuts right through the comfortable hypocrisies that typically muffle discussions of executive branch abuse, since this time a portion of Washington itself is the victim. Quite frankly I suspect that President Obama will try to sweep this under the rug, or pretend that his hands are tied, out of fear of alienating the CIA. But realistically there are a lot of levers available to a committed president who wants to influence executive branch agencies.

#### Obama not involved in the fight

Kouri, 3-15-’14 (Kim, “Obama claims he’s neutral in the Senate v. CIA battle” The Examiner, www.examiner.com/article/obama-claims-he-s-neutral-the-senate-v-cia-battle)

While the Democrats in the U.S. Senate, under the leadership of Sen. Dianne Feinstein, D-Calif., continue their battle of words with the Central Intelligence Agency, led by Obama minion CIA Director John Brennan, the Boston Herald reported on Saturday that President Barack Obama is telling the nation -- and the world -- he will remain neutral. Sen. Feinstein, who chairs the Intelligence Committee and is considered a "hawk" by many on the left, has openly accused the CIA of surreptitiously -- and criminally -- monitoring the computers of the members of her committee which contain material regarding the alleged torture by CIA agents during their interrogation of suspected terrorists. According to media reports, Obama said that getting involved in the fray was "not something that is an appropriate role for me and the White House to wade into at this point." But President Obama, who is no stranger to hypocrisy, according to former intelligence officer and police detective Stephen McLarty, is definitely involved. During his administration he encouraged his Attorney General, Eric Holder, to investigate and prosecute CIA interrogators or contractors who allegedly tortured captured terror suspects with "cruel and unusual" techniques such as waterboarding, sleep deprivation and blasting loud Rock music, as reported in an Examiner report. "Obama came galloping into the White House on his white horse seeking anyone who could prosecute or persecute for the work they did in thwarting terrorist attacks, especially by al-Qaeda, and also locating and killing Islamist icon Osama bin Laden," said McLarty. The Democrats have always been eager to pursue criminal cases against CIA interrogators, according to a 2012 Examiner news story. The Examiner reported: Senate Democrats... indicated their desire to investigate CIA agents who used aggressive techniques to question captured terrorists during the Bush years following the limited release of a 6,000-page investigative report. At the same time that Democratic Party lawmakers are defending the Obama administration's alleged cover-up of the shocking Benghazi consulate terrorist attack and downplaying the corruption in the Fast & Furious debacle, Senate Democrats are itching to again investigate interrogators from the Central Intelligence Agency.

### Intrinsic

#### It’s theoretically illegitimate and a voter for fairness, ground and education –

#### 1.) Infinitely regressive: the US can “do the plan and do ‘x’ or ‘y’ to prevent the disad.” DAs are key to neg ground and fairness, ensuring the aff doesn’t automatically win every debate.

#### 2.) Creates a moving target shifting out of disads

#### 3.) Moots neg ground – most disads can be resolved through US action – there’s no limit

### Ukraine Thumper

#### 2.

#### 3. Only uncontroversial items – this doesn’t take out floor time OR losers lose

NYT, 3-27-’14 (“Congress Approves $1 Billion in Aid for Ukraine” http://www.nytimes.com/2014/03/28/world/europe/senate-approves-1-billion-in-aid-for-ukraine.html)

The House and Senate voted overwhelmingly on Thursday to approve a billion-dollar aid package for Ukraine, two days after Senate Democrats relented to Republican demands that they drop a provision backed by the White House that would have authorized an overhaul of the International Monetary Fund. The bills, which were nearly identical, passed by 399 to 19 in the House and by 98 to 2 in the Senate. President Obama has said he will sign the legislation, which includes new sanctions against Russians and Ukrainians who provided support to Russia to annex the Crimea region of Ukraine. “This bill is a first step toward supporting the Ukrainians and our Central and Eastern European partners, and imposing truly significant costs on Moscow,” the House majority leader, Eric Cantor, said in a floor speech as his chamber considered its bill. Senator Robert Menendez of New Jersey, the chairman of the Senate Foreign Relations Committee, said after the vote that a path had been cleared to get the bill to the president before the end of the week. To match the two bills, the Senate will pass a House bill to authorize the broadcast of Western news programs into Ukraine and the region, and the House will then take up the Senate bill and pass it. In addition to providing aid money to Ukraine, the bills would formalize sanctions authorized recently by Mr. Obama and expand the list of individuals and entities targeted for sanctions. Unlike the president’s executive order last week, the Senate’s sanctions are mandatory and do not grant Mr. Obama latitude to choose which penalties to apply. The bill also makes mandatory the application of sanctions on any Russian official found to have engaged in corruption in Ukraine, a broader category than any applied by the administration. The Senate measure would give the administration more flexibility to apply economic sanctions to any Russian official engaged in corrupt activity and anyone who assists such activities. Earlier on Thursday, the I.M.F. announced a preliminary agreement to provide Ukraine up to $18 billion in loans over two years. In all, with additional funds provided by the United States and the European Union, Ukraine stands to receive up to $27 billion to help it avoid default and to carry it through emergency presidential elections in May. The combined aid would replace a $15 billion aid package that Russia had promised to Ukraine and then rescinded after its pro-Russian president, Viktor F. Yanukovych, was ousted in February. House Republicans had objected to the I.M.F. language because, they said, it would diminish the United States’ power at the fund while elevating the roles of emerging economic powers – including Russia. Among the countries that control the I.M.F., the United States is the only one that has not approved the structural changes to the fund, which would move billions of dollars out of its emergency account and into its general account. That would increase the amount of money that developing countries including Ukraine could borrow. Mr. Obama himself negotiated those changes, and European allies conferring with him on Ukraine have been pressing for American action. The Obama administration, which had previously tried and failed to attach the monetary fund language to a trillion-dollar spending measure, said the changes were vital to a Ukraine aid package, but House Republicans balked. Mr. Obama is traveling in Europe this week, meeting with Western leaders to devise a comprehensive response to Russia’s actions in Crimea and to reassure Eastern European allies nervous about Russia’s advance. The administration said on Wednesday that Mr. Obama had decided to modestly increase military deployments in Eastern Europe and encourage NATO allies to upgrade their military capabilities. “The United States and our allies will continue to support the government of Ukraine as they chart a democratic course,” Mr. Obama said in a speech in Brussels on Wednesday. “Together, we are going to provide a significant package of assistance that can help stabilize the Ukrainian economy and meet the basic needs of the people. “Make no mistake,” he continued. “Neither the United States nor Europe has any interest in controlling Ukraine. We have sent no troops there. What we want is for the Ukrainian people to make their own decisions, just like other free people around the world.”

### Fiat Solve

#### 1.) The least amount of fiat is best for debate. The aff can already fiat that the plan gets passed. Letting them fiat that there’s no opposition to the plan is too much.

#### 2.) They can fiat the outcome, not the process. Fiat is not a magic wand; granting us some reaction from Congress is key to check aff side bias and maintain fairness.