# Racial Profiling Aff

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### Contention One is Inherency

#### In the status quo, the FBI has surveillance authority to commit prejudicial monitoring on the basis of race, religion, and ethnicity.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, “NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep” Lexis, accessed 7-6-15, TAP]

In addition to the procedural power given to the NCTC through its amended guidelines, the FBI has been given express surveillance procedural authority through the DIOG. 93Link to the text of the note The new rules were enacted to give agents more latitude as they search for indications of criminal and terrorist activity. 94Link to the text of the note The various FBI surveillance procedures that have been outlined include the ability to observe and collect any form of protected speech by citizens and those residing within the country's jurisdiction. 95Link to the text of the note Furthermore, the FBI has the authority to use religion as a factor when determining whether an individual or group deserves greater scrutiny and monitoring. 96Link to the text of the note Race and ethnicity may be considered as a factor in its national security assessment, as long as it is not the dominant factor for focusing on a particular person. 97Link to the text of the note Another power that has been granted is the authority to retain personal information that has been collected on an individual, even if an assessment does not suggest that an individual is engaged in any wrongdoing. 98Link to the text of the note Perhaps the most daunting new permission that has been granted to the FBI is the ability to monitor domestic individuals and citizens without there being any presupposed suspicion of terrorist or criminal activity. 99Link to the text of the note The manual prohibits "racial profiling" in the national security assessments; however, it allows an assessor to monitor [449] "religious practitioners or religious facilities," 100Link to the text of the note and to identify locations of concentrated ethnic communities. 101Link to the text of the note The FBI, in essence, has the authority to infiltrate lawful and peaceful places of worship, communities and businesses, and take race, religion and ethnicity into account when developing its threat analysis. 102Link to the text of the note The guidelines permitting the use of race, religion, or ethnicity to assess national security threats or criminal activity could result in the unconstitutional and prejudicial monitoring of individuals. 103Link to the text of the note

### Contention Two is Racism

#### **Domestic surveillance is essential to antiblackness – it crushes dissent, and maintains racial hierarchies justified by racist notions of criminality**

**Cyril ’15** Cyril, Malkia A.- Malkia Amala Cyril is founder and executive director of the Center for Media Justice (CMJ) and co-founder of the Media Action Grassroots Network, a national network of 175 organizations working to ensure media access, rights, and representation for marginalized communities. April 15 2015 “Black America’s State of Surveillance” <http://www.progressive.org/news/2015/03/188074/black-americas-state-surveillance>. July 7, 2015

Today, media reporting on government surveillance is laser-focused on the revelations by Edward Snowden that millions of Americans were being spied on by the NSA. Yet my mother’s visit from the FBI reminds me that, from the slave pass system to laws that deputized white civilians as enforcers of Jim Crow, black people and other people of color have lived for centuries with surveillance practices aimed at maintaining a racial hierarchy. It’s time for journalists to tell a new story that does not start the clock when privileged classes learn they are targets of surveillance. We need to understand that data has historically been overused to repress dissidence, monitor perceived criminality, and perpetually maintain an impoverished underclass. In an era of big data, the Internet has increased the speed and secrecy of data collection. Thanks to new surveillance technologies, law enforcement agencies are now able to collect massive amounts of indiscriminate data. Yet legal protections and policies have not caught up to this technological advance. Concerned advocates see mass surveillance as the problem and protecting privacy as the goal. Targeted surveillance is an obvious answer—it may be discriminatory, but it helps protect the privacy perceived as an earned privilege of the inherently innocent. The trouble is, targeted surveillance frequently includes the indiscriminate collection of the private data of people targeted by race but not involved in any crime. For targeted communities, there is little to no expectation of privacy from government or corporate surveillance. Instead, we are watched, either as criminals or as consumers. We do not expect policies to protect us. Instead, we’ve birthed a complex and coded culture—from jazz to spoken dialects—in order to navigate a world in which spying, from AT&T and Walmart to public benefits programs and beat cops on the block, is as much a part of our built environment as the streets covered in our blood.

#### America uses programs to surveil the black community in order to keep them oppressed in the current system.

Cyril 15 (Malkia Amala Cyril, 15, Founder and executive director of the Center for Media Justice and co-founder of the Media Action Grassroots Network, April 2015, “Black America’s State of Surveillance”, The Progressive, <http://www.progressive.org/news/2015/03/188074/black-americas-state-surveillance#sthash.aMyFDruE.dpuf>)

Ten years ago, on Martin Luther King Jr.’s birthday, my mother, a former Black Panther, died from complications of sickle cell anemia. Weeks before she died, the FBI came knocking at our door, demanding that my mother testify in a secret trial proceeding against other former Panthers or face arrest. My mother, unable to walk, refused. The detectives told my mother as they left that they would be watching her. They didn’t get to do that. My mother died just two weeks later. My mother was not the only black person to come under the watchful eye of American law enforcement for perceived and actual dissidence. Nor is dissidence always a requirement for being subject to spying. Files obtained during a break-in at an FBI office in 1971 revealed that African Americans, J. Edger Hoover’s largest target group, didn’t have to be perceived as dissident to warrant surveillance. They just had to be black. As I write this, the same philosophy is driving the increasing adoption and use of surveillance technologies by local law enforcement agencies across the United States. Today, media reporting on government surveillance is laser-focused on the revelations by Edward Snowden that millions of Americans were being spied on by the NSA. Yet my mother’s visit from the FBI reminds me that, from the slave pass system to laws that deputized white civilians as enforcers of Jim Crow, black people and other people of color have lived for centuries with surveillance practices aimed at maintaining a racial hierarchy. It’s time for journalists to tell a new story that does not start the clock when privileged classes learn they are targets of surveillance. We need to understand that data has historically been overused to repress dissidence, monitor perceived criminality, and perpetually maintain an impoverished underclass. In an era of big data, the Internet has increased the speed and secrecy of data collection. Thanks to new surveillance technologies, law enforcement agencies are now able to collect massive amounts of indiscriminate data. Yet legal protections and policies have not caught up to this technological advance. Concerned advocates see mass surveillance as the problem and protecting privacy as the goal. Targeted surveillance is an obvious answer—it may be discriminatory, but it helps protect the privacy perceived as an earned privilege of the inherently innocent. The trouble is, targeted surveillance frequently includes the indiscriminate collection of the private data of people targeted by race but not involved in any crime. For targeted communities, there is little to no expectation of privacy from government or corporate surveillance. Instead, we are watched, either as criminals or as consumers. We do not expect policies to protect us. Instead, we’ve birthed a complex and coded culture—from jazz to spoken dialects—in order to navigate a world in which spying, from AT&T and Walmart to public benefits programs and beat cops on the block, is as much a part of our built environment as the streets covered in our blood. In a recent address, New York City Police Commissioner Bill Bratton made it clear: “2015 will be one of the most significant years in the history of this organization. It will be the year of technology, in which we literally will give to every member of this department technology that would’ve been unheard of even a few years ago.” Predictive policing, also known as “Total Information Awareness,” is described as using advanced technological tools and data analysis to “preempt” crime. It utilizes trends, patterns, sequences, and affinities found in data to make determinations about when and where crimes will occur. This model is deceptive, however, because it presumes data inputs to be neutral. They aren’t. In a racially discriminatory criminal justice system, surveillance technologies reproduce injustice. Instead of reducing discrimination, predictive policing is a face of what author Michelle Alexander calls the “New Jim Crow”—a de facto system of separate and unequal application of laws, police practices, conviction rates, sentencing terms, and conditions of confinement that operate more as a system of social control by racial hierarchy than as crime prevention or punishment. In New York City, the predictive policing approach in use is “Broken Windows.” This approach to policing places an undue focus on quality of life crimes—like selling loose cigarettes, the kind of offense for which Eric Garner was choked to death. Without oversight, accountability, transparency, or rights, predictive policing is just high-tech racial profiling—indiscriminate data collection that drives discriminatory policing practices. As local law enforcement agencies increasingly adopt surveillance technologies, they use them in three primary ways: to listen in on specific conversations on and offline; to observe daily movements of individuals and groups; and to observe data trends. Police departments like Bratton’s aim to use sophisticated technologies to do all three. They will use technologies like license plate readers, which the Electronic Frontier Foundation found to be disproportionately used in communities of color and communities in the process of being gentrified. They will use facial recognition, biometric scanning software, which the FBI has now rolled out as a national system, to be adopted by local police departments for any criminal justice purpose. They intend to use body and dashboard cameras, which have been touted as an effective step toward accountability based on the results of one study, yet storage and archiving procedures, among many other issues, remain unclear. They will use Stingray cellphone interceptors. According to the ACLU, Stingray technology is an invasive cellphone surveillance device that mimics cellphone towers and sends out signals to trick cellphones in the area into transmitting their locations and identifying information. When used to track a suspect’s cellphone, they also gather information about the phones of countless bystanders who happen to be nearby. The same is true of domestic drones, which are in increasing use by U.S. law enforcement to conduct routine aerial surveillance. While drones are currently unarmed, drone manufacturers are considering arming these remote-controlled aircraft with weapons like rubber bullets, tasers, and tear gas. They will use fusion centers. Originally designed to increase interagency collaboration for the purposes of counterterrorism, these have instead become the local arm of the intelligence community. According to Electronic Frontier Foundation, there are currently seventy-eight on record. They are the clearinghouse for increasingly used “suspicious activity reports”—described as “official documentation of observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity.” These reports and other collected data are often stored in massive databases like e-Verify and Prism. As anybody who’s ever dealt with gang databases knows, it’s almost impossible to get off a federal or state database, even when the data collected is incorrect or no longer true. Predictive policing doesn’t just lead to racial and religious profiling—it relies on it. Just as stop and frisk legitimized an initial, unwarranted contact between police and people of color, almost 90 percent of whom turn out to be innocent of any crime, suspicious activities reporting and the dragnet approach of fusion centers target communities of color. One review of such reports collected in Los Angeles shows approximately 75 percent were of people of color. This is the future of policing in America, and it should terrify you as much as it terrifies me. Unfortunately, it probably doesn’t, because my life is at far greater risk than the lives of white Americans, especially those reporting on the issue in the media or advocating in the halls of power. One of the most terrifying aspects of high-tech surveillance is the invisibility of those it disproportionately impacts. The NSA and FBI have engaged local law enforcement agencies and electronic surveillance technologies to spy on Muslims living in the United States. According to FBI training materials uncovered by Wired in 2011, the bureau taught agents to treat “mainstream” Muslims as supporters of terrorism, to view charitable donations by Muslims as “a funding mechanism for combat,” and to view Islam itself as a “Death Star” that must be destroyed if terrorism is to be contained. From New York City to Chicago and beyond, local law enforcement agencies have expanded unlawful and covert racial and religious profiling against Muslims not suspected of any crime. There is no national security reason to profile all Muslims. At the same time, almost 450,000 migrants are in detention facilities throughout the United States, including survivors of torture, asylum seekers, families with small children, and the elderly. Undocumented migrant communities enjoy few legal protections, and are therefore subject to brutal policing practices, including illegal surveillance practices. According to the Sentencing Project, of the more than 2 million people incarcerated in the United States, more than 60 percent are racial and ethnic minorities. But by far, the widest net is cast over black communities. Black people alone represent 40 percent of those incarcerated. More black men are incarcerated than were held in slavery in 1850, on the eve of the Civil War. Lest some misinterpret that statistic as evidence of greater criminality, a 2012 study confirms that black defendants are at least 30 percent more likely to be imprisoned than whites for the same crime. This is not a broken system, it is a system working perfectly as intended, to the detriment of all. The NSA could not have spied on millions of cellphones if it were not already spying on black people, Muslims, and migrants. As surveillance technologies are increasingly adopted and integrated by law enforcement agencies today, racial disparities are being made invisible by a media environment that has failed to tell the story of surveillance in the context of structural racism.

#### Our impacts outweigh on probability and magnitude – their threat calculation is biased towards white male elites who ignore structural violence, to continue destroying marginalized populations.

Verchick 96 [Robert, Assistant Professor, University of Missouri -- Kansas City School of Law. J.D., Harvard Law School, 1989, “IN A GREENER VOICE: FEMINIST THEORY AND ENVIRONMENTAL JUSTICE” 19 Harv. Women's L.J. 23]

Because risk assessment is based on statistical measures of risk, policymakers view it as an accurate and objective tool in establishing environmental standards. n275 The scientific process used to assess risk purports to focus single-mindedly on only one feature of a potential injury: the objective probability of its occurrence. n276 Risk assessors, who consider most value judgments irrelevant in determining statistical risk, seek to banish them at every stage. n277 As a result, the language of risk assessment -- and of related environmental safety standards -- often carry an air of irrebuttable precision and certainty. The EPA, for example, defines the standard acceptable level of risk under Superfund as "10<-6>" -- that is, the probability that one person in a million would develop cancer due to exposure to site contamination. n278 [\*76] Feminism challenges this model of scientific risk assessment on at least three levels. First, feminism questions the assumption that scientific inquiry is value-neutral, that is, free of societal bias or prejudice. n279 Indeed, as many have pointed out, one's perspective unavoidably influences the practice of science. n280 Western science may be infused with its own ideology, perpetuating, in the view of the ecofeminists, cycles of discrimination, domination, and exploitation. n281 Second, even if scientific inquiry by itself were value-neutral, environmental regulation based on such inquiry would still contain subjective elements. Environmental regulation, like any other product of democracy, inevitably reflects elements of subjectivity, compromise, and self-interest. The technocratic language of regulation serves only **to "mask, not eliminate, political and social considerations**." n282 We have already seen how the subjective decision to prefer white men as subjects for epidemiological study can skew risk assessments against the interests of women and people of color. The focus of many assessments on the risk of cancer deaths, but not, say, the risks of birth defects or miscarriages, is yet another example of how a policymaker's subjective decision of what to look for can influence what is ultimately seen. n283 Once risk data are collected and placed in a statistical form, the ultimate translation of that information into rules and standards of conduct once again reflects value judgments. A safety threshold of one in a million or a preference for "best conventional technology" does not spring from the periodic table, but rather evolves from the application [\*77] of human experience and judgment to scientific information. Whose experience? Whose judgment? Which information? These are the questions that feminism prompts, and they will be discussed shortly. Finally, feminists would argue that **questions involving the risk of death and disease should not even aspire to value neutrality**. Such decisions -- which affect not only today's generations, but those of the future -- should be made with all related political and moral considerations plainly on the table. n284 In addition, **policymakers should look to all perspectives**, **especially those of society's most vulnerable members**, to develop as complete a picture of the moral issues as possible. Debates about scientific risk assessment and public values often appear as a tug of war between the "technicians," who would apply only value-neutral criteria to set regulatory standards, and the "public," who demand that psychological perceptions and contextual factors also be considered. n285 Environmental justice advocates, strongly concerned with the practical experiences of threatened communities, argue convincingly for the latter position. n286 A feminist critique of the issue, however, suggests that the debate is much richer and more complicated than a bipolar view allows. For feminists, the notion of value neutrality simply does not exist. The debate between technicians and the public, according to feminists, is not merely a contest between science and feelings, but a broader discussion about the sets of methods, values, and attitudes to which each group subscribes. Furthermore, feminists might argue, the parties to this discussion divide into more than two categories. Because one's world view is premised on many things, including personal experience, one might expect that subgroups within either category might differ in significant ways from other subgroups. Therefore, feminists would anticipate a broad spectrum of views concerning scientific risk assessment and public values. Intuitively, this makes sense. Certainly scientists disagree among themselves about the hazards of nuclear waste, ozone depletion, and global warming. n287 Many critics have argued that scientists, despite their allegiance [\*78] to rational method, are nonetheless influenced by personal and political views. n288 Similarly, members of the public are a widely divergent group. One would not be surprised to see politicians, land developers, and blue-collar workers disagreeing about environmental standards for essentially non-scientific reasons. Politicians and bureaucrats are two sets of the non-scientific community that affect environmental standards in fundamental ways. Their adherence to vocal, though not always broadly representative, constituencies may lead them to disfavor less advantaged socioeconomic groups when addressing environmental concerns. n289 In order to understand a diversity of risk perception and to see how attitudes and social status affect the risk assessment process, we must return to the feminist inquiry that explores the relationship between attitudes and identity. 1. The Diversity of Risk Perception A recent national survey, conducted by James Flynn, Paul Slovic, and C.K. Mertz, measured the risk perceptions of a group of 1512 people that included numbers of men, women, whites, and non-whites proportional to their ratios in society. n290 Respondents answered questions about the health risks of twenty-five environmental, technological, and "life-style" hazards, including such hazards as ozone depletion, chemical waste, and cigarette smoking. n291 The researchers asked them to rate each hazard as posing "almost no health risk," a "slight health risk," a "moderate health risk," or a "high health risk." The researchers then analyzed [\*79] the responses to determine whether the randomly selected groups of white men, white women, non-white men, and non-white women differed in any way. The researchers found that perceptions of risk generally differed on the lines of gender and race. Women, for instance, perceived greater risk from most hazards than did men. n292 Furthermore, non-whites as a group perceived greater risk from most hazards than did whites. n293 Yet the most striking results appeared when the researchers considered differences in gender and race together. They found that "white males tended to differ from everyone else in their attitudes and perceptions -- on average, they perceived risks as much smaller and much more acceptable than did other people." n294 Indeed, **without exception**, the pool of white men perceived each of the twenty-five hazards as less risky than did non-white men, white women, or non-white women. n295 Wary that other factors associated with gender or race could be influencing their findings, the researchers later conducted several multiple regression analyses to correct for differences in income, education, political orientation, the presence of children in the home, and age, among others. Yet even after all corrections, "gender, race, and 'white male' [status] remained highly significant predictors" of perceptions of risk. n296 2. Explaining the Diversity From a feminist perspective, these findings are important because they suggest that risk assessors, politicians, and bureaucrats -- the large majority of whom are white men n297 -- may be acting on attitudes about security and risk that women and people of color do not widely share. If this is so, white men, as the "measurers of all things," have crafted a system of environmental protection that is biased toward their subjective understandings of the world. n298 [\*80] Flynn, Slovic, and Mertz speculate that white men's perceptions of risk may differ from those of others because in many ways women and people of color are "more vulnerable, because they benefit less from many of [society's] technologies and institutions, and because they have less power and control." n299 Although Flynn, Slovic, and Mertz are careful to acknowledge that they have not yet tested this hypothesis empirically, their explanation appears consistent with the life experiences of less empowered groups and comports with previous understandings about the roles of control and risk perception. n300 Women and people of color, for instance, are more vulnerable to environmental threat in several ways. Such groups are sometimes more biologically vulnerable than are white men. n301 People of color are more likely to live near hazardous waste sites, to breathe dirty air in urban communities, and to be otherwise exposed to environmental harm. n302 Women, because of their traditional role as primary caretakers, are more likely to be aware of the vulnerabilities of their children. n303 It makes sense that such vulnerabilities would give rise to increased fear about risk. It is also very likely that women and people of color believe they benefit less from the technical institutions that create toxic byproducts. n304 Further, people may be more likely to discount risk if they feel somehow compensated for the activity. n305 For this reason, Americans worry relatively little about driving automobiles, an activity with enormous advantages in our large country but one that claims tens of thousands of lives per year. The researchers' final hypothesis -- that differences in perception can be explained by the lack of "power and control" exercised by women and people of color -- suggests the importance that such factors as voluntariness and control over risk play in shaping perceptions. [\*81] Risk perception research frequently emphasizes the significance of voluntariness in evaluating risk. Thus, a person may view water-skiing as less risky than breathing polluted air because the former is accepted voluntarily. n306 Voluntary risks are viewed as more acceptable in part because they are products of autonomous choice. n307 A risk accepted voluntarily is also one from which a person is more likely to derive an individual benefit and one over which a person is more likely to retain some kind of control. n308 Some studies have found that people prefer voluntary risks to involuntary risks by a factor of 1000 to 1. n309 Although environmental risks are generally viewed as involuntary risks to a certain degree, choice plays a role in assuming risks. White men are still more likely to exercise some degree of choice in assuming environmental risks than other groups. Communities of color face greater difficulty in avoiding the placement of hazardous facilities in their neighborhoods and are more likely to live in areas with polluted air and lead contamination. n310 Families of color wishing to buy their way out of such polluted neighborhoods often find their mobility limited by housing discrimination, redlining by banks, and residential segregation. n311 The workplace similarly presents workers exposed to toxic hazards (a disproportionate number of whom are minorities) n312 with impossible choices between health and work, or between sterilization and demotion. n313 Just as marginalized groups have less choice in determining the degree of risk they will assume, they may feel less control over the risks they face. "Whether or not the risk is assumed voluntarily, people have greater [\*82] fear of activities with risks that appear to be outside their individual control." n314 For this reason, people often fear flying in an airplane more than driving a car, even though flying is statistically safer. n315 If white men are more complacent about public risks, it is perhaps because they are more likely to have their hands on the steering wheel when such risks are imposed. White men still control the major political and business institutions in this country. n316 They also dominate the sciences n317 and make up the vast majority of management staff at environmental agencies. n318 Women and people of color see this disparity and often lament their back-seat role in shaping environmental policy. n319 Thus, many people of color in the environmental justice movement believe that environmental laws work to their disadvantage by design. n320 [\*83] The toxic rivers of Mississippi's "Cancer Alley," n321 the extensive poisoning of rural Indian land, n322 and the mismanaged cleanup of the weapons manufacturing site in Hanford, Washington n323 only promote the feeling that environmental policy in the United States sacrifices the weak for the benefit of the strong. In addition, the catastrophic potential that groups other than white men associate with a risk may explain the perception gap between those groups and white males. Studies of risk perception show that, in general, individuals harbor particularly great fears of catastrophe. n324 For this reason, earthquakes, terrorist bombings, and other disasters in which high concentrations of people are killed or injured prove particularly disturbing to the lay public. Local environmental threats involving toxic dumps, aging smelters, or poisoned wells also produce high concentrations of localized harm that can appear catastrophic to those involved. n325 Some commentators contend that **the catastrophic potential of a risk should influence risk assessment in only minimal ways**. n326 Considering public fear of catastrophes, they argue, **will irrationally lead policymakers** to battle more dramatic but **statistically less threatening** hazards, while accepting more harmful but more mundane hazards. n327 [\*84] At least two reasons explain why the catastrophic potential of environmental hazards **must be given weight in risk assessment**. First, concentrated and localized environmental hazards do not simply harm individuals, they erode family ties and community relationships. An onslaught of miscarriages or birth defects in a neighborhood, for instance, will create community-wide stress that will debilitate the neighborhood in emotional, sociological, and economic ways. n328 **To ignore this communal harm is to underestimate severely the true risk involved**. n329 Second, because concentrated and localized environmental hazards tend to be unevenly distributed on the basis of race and income level, any resulting mass injury to a threatened population takes on profound moral character. For this reason, Native Americans often characterize the military's poisoning of Indian land as genocide. n330 [\*85] 3. Understanding Through Diversity Flynn, Slovic, and Mertz challenge the traditional, static view of statistical risk with a richer, more vibrant image involving relationships of power, status, and trust. n331 "In short, **'riskiness' means more** to people **than 'expected number of fatalities**.'" n332 These findings affirm the feminist claim that public **policy must consider both logic and local experience in addressing a problem.** n333 Current attempts to "re-educate" fearful communities with only risk assessments and scientific seminars are, therefore, destined to fail. n334 By the same token, even **dual approaches that combine science and experience will fall short if the appeal to experience does not track local priorities and values**. Cynthia Hamilton illustrates these points in her inspiring account of how a South Central Los Angeles community group, consisting mainly of working-class women, battled a proposed solid waste incinerator. n335 At one point, the state sent out consultants and environmental experts to put the community's fears into perspective. The consultants first appealed to the community's practical, experience-based side, by explaining how the new incinerator would bring needed employment to the area and by offering $ 2 million in community development. n336 But the community group found the promise of "real development" unrealistic and the cash gift insulting. n337 When experts then turned to quantifying the risks "scientifically" their attempts backfired again. Hamilton reports that "expert assurance that health risks associated with dioxin exposure were less than those associated with 'eating peanut butter' unleashed a flurry of dissent. All of the women, young and old, working-class and professional, had made peanut butter sandwiches for years." n338 The sandwich analogy, even assuming its statistical validity, could not convince the women because it did not consider other valid risk factors (voluntariness, dread, and so on) and because it did not appear plausible in the group members' experience. In the end, Hamilton explains that the superficial explanations and sarcastic responses of the male "experts" left the women even more united and convinced that "working-class women's [\*86] concerns cannot be dismissed." n339 Thus even the "science" of risk assessment, if it is to serve effectively, must include the voices of those typically excluded from its practice.

#### Domestic surveillance targets black people to maintain their domination and marginalization

Khalek ‘13

Khalek, Rania Rania Khalek is an independent journalist reporting on the underclass and marginalized. In addition to her work for Truthout, she's written for Extra, The Nation, Al Jazeera America, the Electronic Intifada and more. October 30 2013.Activists of Color Lead Charge Against Surveillance, NSA <http://www.truth-out.org/news/item/19695-activists-of-color-at-forefront-of-anti-nsa-movement>. July 8, 2015

Steven Renderos, national organizer for the Center for Media Justice, who helped put together the panel, told Truthout that examining the legacy of surveillance in communities of color could help lead to solutions. "It's critical to understand the history so we can learn how to dismantle it," Renderos said. "Those of us from marginalized communities grew up in environments very much shaped by surveillance, which has been utilized to ramp up the criminal justice system and increase deportations," Renderos said. "It's having real consequences in our communities where children are growing up without parents in the home and families are being torn apart through raids and deportations, a lot of which is facilitated through the use of surveillance. "Panelist Fahd Ahmed, legal and policy director for the South Asian-led social justice organization Desis Rising Up and Moving, argued that mass surveillance is the predictable outgrowth of programs that have targeted marginalized communities for decades. "Just by the very nature of [the United States] being a settler-colonialist and capitalist nation, race and social control are central to its project," Ahmed said. "Anytime we see any levels of policing - whether it's day-to-day policing in the streets, surveillance by the police or internet surveillance - social control, particularly of those that resist the existing system, becomes an inherent part of that system. "But, he warned, "These policies are not going to be limited to one particular community. They're going to continue to expand further and further" because "the surveillance has a purpose, which is to exert the power of the state and control the potential for dissent."Seema Sadanandan, program director for ACLU DC, acknowledged the collective resentment felt by people of color who are understandably frustrated that privacy violations are only now eliciting mass public outrage when communities of color have been under aggressive surveillance for decades. "The Snowden revelations represent a terrifying moment for white, middle-class and upper-middle-class people in this country, who on some level believe that the Bill of Rights and Constitution were protecting their everyday lives," Sadanandan said. "For people of color from communities with a history of discrimination and economic oppression that prevents one from realizing any of those rights on a day-to-day basis, it wasn't a huge surprise. "But Sadanandan argued that NSA surveillance still "has particular concerns for communities of color because of their unique relationship to the criminal justice or social control system, a billion-dollar industry with regard to, for example, border patrol or data mining as it's applied to racially profile." Sadanandan warned that NSA surveillance more than likely would strengthen that system of control.

### Contention Three is Solvency

#### The United States federal government should rule that its domestic surveillance on the basis of race, religion and ethnicity is unconstitutional.

#### Plan solves.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, “NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep” Lexis, accessed 7-6-15, TAP]

The grant of surveillance power to monitor individuals without suspicion of criminal or terrorist activity and the ability to collect personal information from various sources on the basis of race or ethnicity has resulted in the discrimination of domestic individuals who belong to a particular racial or ethnic group. This discrimination is generated through a disparate impact that the new government surveillance authority has on various ethnic and religious groups, specifically those that are Arab, South Asian, or practitioners of the Islamic religion. Through a balancing test of five factors established through Supreme Court jurisprudence, it is apparent that there is sufficient indirect evidence of the government's intent to discriminate. Because there is an established intent to discriminate, the new government surveillance authority and procedures can only be constitutionally upheld if the acts are narrowly tailored to a compelling government interest. The compelling state interest is satisfied through the goal of nationally security; however, the narrowly tailored prong fails because of the monitoring system's over-inclusiveness. Therefore, the government national security surveillance authority and procedures, via the NCTC amendments and DIOG guidelines, are in violation of the Fourteenth Amendment's Equal Protection Clause.

#### Court rulings solve -- we need to counter anti-blackness at its source, policy, in order to exact sociopolitical change

Bouie 13

Jamelle, Staff Writer at The American Prospect, 2013 (“Making (and Dismantling) Racism,” The American Prospect, March 11th, Available Online at http://prospect.org/article/making-and-dismantling-racism)

Over at The Atlantic, Ta-Nehisi Coates has been exploring the intersection of race and public policy, with a focus on white supremacy as a driving force in political decisions at all levels of government. This has led him to two conclusions: First, that anti-black racism as we understand it is a creation of explicit policy choices—the decision to exclude, marginalize, and stigmatize Africans and their descendants has as much to do with racial prejudice as does any intrinsic tribalism. And second, that it's possible to dismantle this prejudice using public policy. Here is Coates in his own words: Last night I had the luxury of sitting and talking with the brilliant historian Barbara Fields. One point she makes that very few Americans understand is that racism is a creation. You read Edmund Morgan’s work and actually see racism being inscribed in the law and the country changing as a result. If we accept that racism is a creation, then we must then accept that it can be destroyed. And if we accept that it can be destroyed, we must then accept that it can be destroyed by us and that it likely must be destroyed by methods kin to creation. Racism was created by policy. It will likely only be ultimately destroyed by policy. Over at his blog, Andrew Sullivan offers a reply: I don’t believe the law created racism any more than it can create lust or greed or envy or hatred. It can encourage or mitigate these profound aspects of human psychology – it can create racist structures as in the Jim Crow South or Greater Israel. But it can no more end these things that it can create them. A complementary strategy is finding ways for the targets of such hatred to become inured to them, to let the slurs sting less until they sting not at all. Not easy. But a more manageable goal than TNC’s utopianism. I can appreciate the point Sullivan is making, but I'm not sure it's relevant to Coates' argument. It is absolutely true that "Group loyalty is deep in our DNA," as Sullivan writes. And if you define racism as an overly aggressive form of group loyalty—basically just prejudice—then Sullivan is right to throw water on the idea that the law can "create racism any more than it can create lust or greed or envy or hatred." But Coates is making a more precise claim: That there's nothing natural about the black/white divide that has defined American history. White Europeans had contact with black Africans well before the trans-Atlantic slave trade without the emergence of an anti-black racism. It took particular choices made by particular people—in this case, plantation owners in colonial Virginia—to make black skin a stigma, to make the "one drop rule" a defining feature of American life for more than a hundred years. By enslaving African indentured servants and allowing their white counterparts a chance for upward mobility, colonial landowners began the process that would make white supremacy the ideology of America. The position of slavery generated a stigma that then justified continued enslavement—blacks are lowly, therefore we must keep them as slaves. Slavery (and later, Jim Crow) wasn't built to reflect racism as much as it was built in tandem with it. And later policy, in the late 19th and 20th centuries, further entrenched white supremacist attitudes. Block black people from owning homes, and they're forced to reside in crowded slums. Onlookers then use the reality of slums to deny homeownership to blacks, under the view that they're unfit for suburbs. In other words, create a prohibition preventing a marginalized group from engaging in socially sanctioned behavior—owning a home, getting married—and then blame them for the adverse consequences. Indeed, in arguing for gay marriage and responding to conservative critics, Sullivan has taken note of this exact dynamic. Here he is twelve years ago, in a column for The New Republic that builds on earlier ideas: Gay men—not because they're gay but because they are men in an all-male subculture—are almost certainly more sexually active with more partners than most straight men. (Straight men would be far more promiscuous, I think, if they could get away with it the way gay guys can.) Many gay men value this sexual freedom more than the stresses and strains of monogamous marriage (and I don't blame them). But this is not true of all gay men. Many actually yearn for social stability, for anchors for their relationships, for the family support and financial security that come with marriage. To deny this is surely to engage in the "soft bigotry of low expectations." They may be a minority at the moment. But with legal marriage, their numbers would surely grow. And they would function as emblems in gay culture of a sexual life linked to stability and love. [Emphasis added] What else is this but a variation on Coates' core argument, that society can create stigmas by using law to force particular kinds of behavior? Insofar as gay men were viewed as unusually promiscuous, it almost certainly had something to do with the fact that society refused to recognize their humanity and sanction their relationships. The absence of any institution to mediate love and desire encouraged behavior that led this same culture to say "these people are too degenerate to participate in this institution." If the prohibition against gay marriage helped create an anti-gay stigma, then lifting it—as we've seen over the last decade—has helped destroy it. There's no reason racism can't work the same way.

### Framing Ext

#### If impacts are calculated by multiplying probability times magnitude, then every absurd probability of an infinite impact registers as infinite – breaking down rational risk calculus

**Kessler ‘8**  [Oliver Kessler, Sociology at University of Bielefeld, “From Insecurity to Uncertainty: Risk and the Paradox of Security Politics” *Alternatives*  33 (2008), 211-232]

The problem of the second method is that it is very difficult to  "calculate" politically unacceptable losses. If the risk of terrorism is defined in traditional terms by probability and potential loss, then the focus on dramatic terror attacks leads to the marginalization of probabilities. The reason is that even the highest degree of improb- ability becomes irrelevant as the measure of loss goes to infinity.^o The mathematical calculation of the risk of terrorism thus tends to overestimate and to dramatize the danger. This has consequences beyond the actual risk assessment for the formulation and execution of "risk policies": If one factor of the risk calculation approaches infinity (e.g., if a case of nuclear terrorism is envisaged), then there is no balanced measure for antiterrorist efforts, and risk manage- ment as a rational endeavor breaks down. Under the historical con- dition of bipolarity, the "ultimate" threat with nuclear weapons could be balanced by a similar counterthreat, and new equilibria could be achieved, albeit on higher levels of nuclear overkill. Under the new condition of uncertainty, no such rational balancing is possible since knowledge about actors, their motives and capabilities, is largely absent. The second form of security policy that emerges when the deter- rence model collapses mirrors the "social probability" approach. It represents a logic of catastrophe. In contrast to risk management framed in line with logical probability theory, the logic of catastro- phe does not attempt to provide means of absorbing uncertainty. Rather, it takes uncertainty as constitutive for the logic itself; uncer- tainty is a crucial precondition for catastrophies. In particular, cata- strophes happen at once, without a warning, but with major impli- cations for the world polity. In this category, we find the impact of meteorites. Mars attacks, the tsunami in South East Asia, and 9/11. To conceive of terrorism as catastrophe has consequences for the formulation of an adequate security policy. Since catastrophes hap- pen irrespectively of human activity or inactivity, no political action could possibly prevent them. Of course, there are precautions that can be taken, but the framing of terrorist attack as a catastrophe points to spatial and temporal characteristics that are beyond "ratio- nality." Thus, political decision makers are exempted from the responsibility to provide security—as long as they at least try to pre- empt an attack. Interestingly enough, 9/11 was framed as catastro- phe in various commissions dealing with the question of who was responsible and whether it could have been prevented. This makes clear that under the condition of uncertainty, there are no objective criteria that could serve as an anchor for measur- ing dangers and assessing the quality of political responses. For ex- ample, as much as one might object to certain measures by the US administration, it is almost impossible to "measure" the success of countermeasures. Of course, there might be a subjective assessment of specific shortcomings or failures, but there is no "common" cur- rency to evaluate them. As a consequence, the framework of the security dilemma fails to capture the basic uncertainties. Pushing the door open for the security paradox, the main prob- lem of security analysis then becomes the question how to integrate dangers in risk assessments and security policies about which simply nothing is known. In the mid 1990s, a Rand study entitled "New Challenges for Defense Planning" addressed this issue arguing that "most striking is the fact that we do not even know who or what will constitute the most serious future threat, "^i In order to cope with this challenge it would be essential, another Rand researcher wrote, to break free from the "tyranny" of plausible scenario planning. The decisive step would be to create "discontinuous scenarios ... in which there is no plausible audit trail or storyline from current events"52 These nonstandard scenarios were later called "wild cards" and became important in the current US strategic discourse. They justified the transformation from a threat-based toward a capability- based defense planning strategy.53 The problem with this kind of risk assessment is, however, that even the most absurd scenarios can gain plausibility. By construct- ing a chain of potentialities, improbable events are linked and brought into the realm of the possible, if not even the probable. "Although the likelihood of the scenario dwindles with each step, the residual impression is one of plausibility. "54 This so-called Oth- ello effect has been effective in the dawn of the recent war in Iraq. The connection between Saddam Hussein and Al Qaeda that the US government tried to prove was disputed from the very begin- ning. False evidence was again and again presented and refuted, but this did not prevent the administration from presenting as the main rationale for war the improbable yet possible connection between Iraq and the terrorist network and the improbable yet possible proliferation of an improbable yet possible nuclear weapon into the hands of Bin Laden. As Donald Rumsfeld famously said: "Absence of evidence is not evidence of absence." This sentence indicates that under the condition of genuine uncer- tainty, different evidence criteria prevail than in situations where security problems can be assessed with relative certainty.

#### No war – democracy, trade, and IGOs check conflict escalation

Shermer 14 (Michael. Michael Shermer is a journalist and writer, editor for *The Skeptic*, and contributor to *Scientific American*. 10-14-2014. “Perpetual Peace”. Scientific American. <http://www.scientificamerican.com/article/perpetual-peace/>. Accessed 7-8-2015. KC)

In their 2001 book Triangulating Peace, political scientists Bruce Russett and John Oneal employed a multiple logistic regression model on data from the Correlates of War Project that recorded 2,300 militarized interstate disputes between 1816 and 2001. They assigned each country a democracy score between 1 and 10, based on the Polity Project, which measures how competitive its political process is, as well as the fairness of its elections, checks and balances of power, transparency, and so on. The researchers found that when two countries scored high on the Polity scale, disputes between them decreased by 50 percent, but when one country was either a low-scoring democracy or an autocracy, it doubled the chance of a quarrel between them. Kant also suggested that international trade (economic interdependency) and membership in international communities (transparency and accountability) reduce the likelihood of conflict. So in their model Russett and Oneal included data on the amount of trade between nations and found that countries that depended more on trade in a given year were less likely to have a militarized dispute in the subsequent year. They also counted the number of intergovernmental organizations (IGOs) that every pair of nations jointly belonged to and ran a regression analysis with democracy and trade scores. Overall, democracy, trade and membership in IGOs (the “triangle” of their title) all favor peace, and if a pair of countries are in the top 10th of the scale on all three variables, they are 81 percent less likely than an average pair of countries to have a militarized dispute in a given year. How has the democratic peace theory held up since 2001? With all the conflict around the world, it seems like peace is on the rocks. But anecdotes are not data. In a 2014 special issue of the Journal of Peace Research, Uppsala University political scientist Håvard Hegre reassessed all the evidence on “Democracy and Armed Conflict.” He stated that “the empirical finding that pairs of democratic states have a lower risk of interstate conflict than other pairs holds up, as does the conclusion that consolidated democracies have less conflict than semi-democracies.” Hegre is skeptical that economic interdependence alone can keep countries from going to war—the “Golden Arches Theory of Conflict Prevention” popularized by Thomas Friedman's observation that no two countries with McDonald's fight—unless their economies are in democratic nations. He wonders, reasonably, if there might be some other underlying factor that explains both democracy and peace but does not suggest what that might be. I propose human nature itself and our propensity to prefer the elements of democracy. Peace is a pleasant by-product.

#### World Wars doesn’t disprove no war – none of the conditions that make modern peace possible existed

Weede 4 (Erich. Erich Weede is a professor of sociology at the University of Bonn in Germany, as well as an author and journalist. Fall 2004. “The Diffusion of Prosperity and Peace by Globalization”. The Independent Review (The Independent Review, v. IX, n. 2, Fall 2004, ISSN 1086-1653, Copyright © 2004, pp. 165–186). <http://www.independent.org/pdf/tir/tir_09_2_1_weede.pdf>. Accessed 7-8-2015. KC)

Before discussing illustrations of the capitalist peace, I should consider a standard historical objection against it. Certainly, economic interdependence, including trade, between the Western powers and the central European powers before World War I was quite strong. Nevertheless, World War I occurred. What does this evidence imply about the capitalist peace in general and about “peace by trade” in particular? First, it reminds us that all macropolitical propositions—and certainly those discussed here— are probabilistic instead of deterministic statements. We should always expect exceptions. Second, “peace by trade” is not the only component of capitalist-peace theory applicable here. Another is “peace among democracies.” The democratic character of Germany and its allies before World War I is debatable. By contemporary standards, even the democratic character of the United Kingdom before World War I is not beyond suspicion because of franchise limitations. So World War I is not a clear exception to the democratic component of the capitalist peace. Third, no one should believe that trade and democracy, or the capitalist peace, suffice to explain the presence or absence of military disputes and war. At most, we can claim that “capitalist-peace theory” summarizes some known pacifying effects, but it does not summarize conflictpromoting variables and their effects (Russett 2003). As quantitative researchers documenting the pacifying effects of democracy and trade have found again and again (for example, Oneal and Russett 1997, 1999; Russett and Oneal 2001), power balances matter, too. Before World War I, the balance of power between the opposing coalitions was fairly even. There were no pacifying preponderance effects. Although one cannot claim World War I to be a case demonstrating the value of capitalist-peace theory, neither does it undermine the theory seriously. It may be argued that the different long-term effects of the settlements of World Wars I and II derive from failure or success in applying a capitalist-peace strategy to the losers of the war. After World War I, France, which determined the peace settlement more than any other nation, failed to promote a capitalist peace. Immiseration and desperation in Germany contributed to Hitler’s ascent to power and indirectly to World War II, in which France had to be saved by its allies. After World War II, the United States pursued a capitalist-peace strategy toward the vanquished and succeeded in making allies out of Germany and Japan.

## 2AC AT T

#### Domestic surveillance means surveillance of US citizens.

Unegbu, Howard University JD candidate, 2013

[Cindy, 57 How. L.J. 433, “NOTE AND COMMENT: National Security Surveillance on the Basis of Race, Ethnicity, and Religion: A Constitutional Misstep” Lexis, accessed 7-6-15, TAP]

Recently, the government has been granted a broad authority to monitor domestic individuals for purposes of national security without requiring any suspicion of criminal or terrorist activity. 73Link to the text of the note Many counterterrorism authorities have addressed monitoring procedures; 74Link to the text of the note however, two specific laws are gaining much criticism--the NCTC and [446] the FBI Domestic Investigations and Operations Guide (DIOG). These authorities are discussed and analyzed below.

#### We meet- Categorization is part of surveillance

Jenkins 12 (Richard Jenkins, Emeritus Professor of Sociology at Sheffield, Print Pg 284“Sorting out who’s who”, 2012)

In the process, surveillance, the systematic watching of people—a means to an end, one-sided, increasingly impersonal, intrusive and yet distant, routine and banal—has come to frame individual and collective identification in the modern human world. “Who’s who?” is increasingly a question that, individually, is answered, even must be answered, in terms of the formalities of passports, identity cards and social security numbers. The management of public spaces is increasingly a matter of the visual categorization of the public by invisible watchers. Travel is governed by a combination of both of these. Categorization may be on its way to achieving dominance in identification; in which case there will be, eventually, a new sociology of identity to be written.

## 2AC DA

### 2AC Util Bad

#### Utilitarianism is inherently flawed – logic of Nazism

**Peikoff, 82** [Leonard, former professor of Philosophy at New York University, *The Ominous Parallels,* pp. 119]

**“The greatest good for the greatest number”** is one of the most vicious slogans ever foisted on humanity. **This slogan has no concrete, specific meaning. There is no way to interpret it benevolently**, but a great many ways in which it can be used to justify the most vicious actions**.** What is the definition of “the good” in this slogan? None, except: whatever is good for the greatest number. **Who, in any particular issue, decides what is good for the greatest number? Why, the greatest number. If you consider this moral, you would have to approve of the following examples, which are exact applications of this slogan in practice: fifty-one percent of humanity enslaving the other forty-nine; nine hungry cannibals eating the tenth one; a lynching mob murdering a man whom they consider dangerous to the community. There were seventy million Germans in Germany and six hundred thousand Jews. The greatest number (the Germans)** supported the Nazi government which **told them that their greatest good would be served by exterminating the smaller number (the Jews)** and grabbing their property. **This was the horror achieved in practice by a vicious slogan accepted in theory. But, you might say, the majority in all these examples did not achieve any real good for itself either? No. It didn’t. Because “the good” is not determined by counting numbers and is not achieved by the sacrifice of anyone to anyone.**

#### Util limits our ability to have a clear sense of values and goals

Freyfogle, 93 [Eric T., Professor and Swanlund Chair at the University of Illinois at Urbana-Champaign, Justice and the Earth: Images for our Planetary Survival, The Free Press, 84]

According to utilitarian thinking, our environmental problem has come about because we have made mistakes in calculating the best way for us to live. We have eroded our soil, exterminated species, and polluted our streams, all because we have miscalculated the net consequences-by I overstating the good, understating the bad, or both. At a superficial level utilitarian thinking has a great deal of appeal. It tells us that we need to look closely into the consequences of our conduct and make sure that the net effects are as good as they can be. We've undoubtedly calcu¬lated poorly in the past, and a closer look could well lead to better, more sensitive decisions. To understand the value of utilitarianism, however, we need to keep aware of its rather considerable limits. One of the problems with utilitarian thinking is that it can quickly get us bogged down in very complicated calculations. In order to determine the rightness or wrongness of an action, we need first to identify its consequences. 'This undertaking, however, often requires a great deal of knowledge, far more in many instances than we have or are likely ever to possess. We uncovered this problem when looking at the externalities image that economists offer. We can throw an object into the swirling physical world of motion and energy and very soon lose all track of its indirect effects. We fill a wetland and put in a factory: who can enumerate all the consequences? When we plow the prairie and put in wheat, who knows all that will happen? Indeed, can I even know fully what the effects will be if I plant a birch in my front yard instead of a hickory? At its best, utilitarian theory would function like a large, magic computer, one with sufficient calculating power to make even the most complex calculations quickly, one with an underlying data base that includes not just the entire realm of human knowledge but vast amounts that remain unknown to us as well. We do not, of course, have a comput¬er like this, nor are we likely to develop one. And even if we did, one risk of utilitarianism would remain: this is, given its appetite for facts and figures, it could (and does) encourage us to cast off our intuitive sense of right and wrong and rely solely on long chains of facts and logic in deciding what to do. We spot a factory belching fumes skyward and must pause before we criticize. Without the magic calculator, who knows what is right or wrong? We sense trouble, but maybe our calculations are simply incomplete. We need more infor¬mation and must sit still until we get it. Part of the job of this magic computer would be to help figure out when a consequence is good and when it ,is not. Utilitarians do this now by figuring out whether a conse¬quence does or does not add to aggregate human good (whether defined in terms of happiness, the satisfaction of human preferences, or in other ways). But this calculation proves challenging, even if we accept the standard of measure. When Robert Ciampitti fills his wetland, his happiness and the happiness of those who move into his new houses will go up. But there is human unhappiness as well that comes about because of the wetland loss and the ecological damage that it brings. Because it is spread widely and thinly in time and space, this unhappiness will be hard to trace and aggregate. So we are left with the question-is the transfor¬mation from wetland to houses a good consequence or a bad one? Another important uncertainty in our calculations lies in the discount rate-the rate at which we discount future harms before we compare them with present-day gains. If we fill the wetland today, the benefits will come soon; many of the costs will be much delayed. As we noted in discussing economic images, one of the most grave problems in protect¬ing the environment is that commonly used discount rates are all sufficiently high that the future-even as little as twenty pr thirty years out-s-counts for almost nothing. In using the utilitarian's magic calculator we will want, in all likelihood, to program in a discount rate; the calculator itself cannot help us pick one. We must decide for ourselves how much we want to value future healthful planetary life and somehow incorporate that valuation into our calculations. Perhaps the most important limit of utilitarianism is that, like the economists' free market, this line of thinking is morally neutral in environmental terms. Utilitarianism seeks to give people the most of what they want. If people want to live in a healthy natural environment, it can help them achieve that. If people are made happy by soiling and consuming the Earth, the magic calculator can help at that as well. Although these limitations on utilitarianism are all important, the cost-benefit thinking inherent in utilitarian¬ism will certainly be a part of any good ethical approach to planetary health. Before using it, however, we need a clear sense of values and goals, a clear vision or image of what we want to achieve in terms of lasting land health. Once we gain a vision of sustainable life, we can use the calculator, pro-grammed as well as we can, to help work out the details, to add up as best we can the positive and negative impacts of alternative acts and help choose the best oI)e. Even the most healthful images of life on earth will supply only an outline of the good life; well aimed by a sense of planetary health, utilitarian thinking can help flesh out the needed details.

#### Utilitarianism is manipulated to justify any atrocity – it condones mass slaughter and results in nuclear conflict

Holt 95 [Jim, Commentator and writer who reports about philosophy and politics, New York Times, “Morality, Reduced To Arithmetic,”]

Can the deliberate massacre of innocent people ever be condoned? The atomic bombs dropped on Hiroshima and Nagasaki on Aug. 6 and 9, 1945, resulted in the deaths of 120,000 to 250,000 Japanese by incineration and radiation poisoning. Although a small fraction of the victims were soldiers, the great majority were noncombatants -- women, children, the aged. Among the justifications that have been put forward for President Harry Truman’s decision to use the bomb, only one is worth taking seriously -- that it saved lives. The alternative, the reasoning goes, was to launch an invasion. Truman claimed in his memoirs that this would have cost another half a million American lives. Winston Churchill put the figure at a million. Revisionist historians have cast doubt on such numbers. Wartime documents suggest that military planners expected around 50,000 American combat deaths in an invasion. Still, when Japanese casualties, military and civilian, are taken into account, the overall invasion death toll on both sides would surely have ended up surpassing that from Hiroshima and Nagasaki. Scholars will continue to argue over whether there were other, less catastrophic ways to force Tokyo to surrender. But given the fierce obstinacy of the Japanese militarists, Truman and his advisers had some grounds for believing that nothing short of a full-scale invasion or the annihilation of a big city with an apocalyptic new weapon would have succeeded. Suppose they were right. Would this prospect have justified the intentional mass killing of the people of Hiroshima and Nagasaki? In the debate over the question, participants on both sides have been playing the numbers game. Estimate the hypothetical number of lives saved by the bombings, then add up the actual lives lost. If the first number exceeds the second, then Truman did the right thing; if the reverse, it was wrong to have dropped the bombs. That is one approach to the matter -- the utilitarian approach. According to utilitarianism, a form of moral reasoning that arose in the 19th century, the goodness or evil of an action is determined solely by its consequences. If somehow you can save 10 lives by boiling a baby, go ahead and boil that baby. There is, however, an older ethical tradition, one rooted in Judeo-Christian theology, that takes a quite different view. The gist of it is expressed by St. Paul’s condemnation of those who say, “Let us do evil, that good may come.” Some actions, this tradition holds, can never be justified by their consequences; they are absolutely forbidden. It is always wrong to boil a baby even if lives are saved thereby. Applying this absolutist morality to war can be tricky. When enemy soldiers are trying to enslave or kill us, the principle of self-defense permits us to kill them (though not to slaughter them once they are taken prisoner). But what of those who back them? During World War II, propagandists made much of the “indivisibility” of modern warfare: the idea was that since the enemy nation’s entire economic and social strength was deployed behind its military forces, the whole population was a legitimate target for obliteration. “There are no civilians in Japan,” declared an intelligence officer of the Fifth Air Force shortly before the Hiroshima bombing, a time when the Japanese were popularly depicted as vermin worthy of extermination. The boundary between combatant and noncombatant can be fuzzy, but the distinction is not meaningless, as the case of small children makes clear. Yet is wartime killing of those who are not trying to harm us always tantamount to murder? When naval dockyards, munitions factories and supply lines are bombed, civilian carnage is inevitable. The absolutist moral tradition acknowledges this by a principle known as double effect: although it is always wrong to kill innocents deliberately, it is sometimes permissible to attack a military target knowing some noncombatants will die as a side effect. The doctrine of double effect might even justify bombing a hospital where Hitler is lying ill. It does not, however, apply to Hiroshima and Nagasaki. Transformed into hostages by the technology of aerial bombardment, the people of those cities were intentionally executed en masse to send a message of terror to the rulers of Japan. The practice of ordering the massacre of civilians to bring the enemy to heel scarcely began with Truman. Nor did the bomb result in casualties of a new order of magnitude. The earlier bombing of Tokyo by incendiary weapons killed some 100,000 people. What Hiroshima and Nagasaki did mark, by the unprecedented need for rationalization they presented, was the triumph of utilitarian thinking in the conduct of war. The conventional code of noncombatant immunity -- a product of several centuries of ethical progress among nations, which had been formalized by an international commission in the 1920’s in the Hague -- was swept away. A simpler axiom took its place: since war is hell, any means necessary may be used to end, in Churchill’s words, “the vast indefinite butchery.” It is a moral calculus that, for all its logical consistency, offends our deep-seated intuitions about the sanctity of life -- our conviction that a person is always to be treated as an end, never as a means. Left up to the warmakers, moreover, utilitarian calculations are susceptible to bad-faith reasoning: tinker with the numbers enough and virtually any atrocity can be excused in the national interest. In January, the world commemorated the 50th anniversary of the liberation of Auschwitz, where mass slaughter was committed as an end in itself -- the ultimate evil. The moral nature of Hiroshima is ambiguous by contrast. Yet in the postwar era, when governments do not hesitate to treat the massacre of civilians as just another strategic option, the bomb’s sinister legacy is plain: it has inured us to the idea of reducing innocents to instruments and morality to arithmetic.

### 2AC AT Circumvention

#### A fourth amendment ruling would create legal recourse for targets of racially biased surveillance. Necessary to rebuild trust in local police. Even if it doesn’t prevent circumvention, it sets a precedent to sue that effectively ends targeted surveillance.

Kendrick 2004 (Lindsay N. Kendrick, J.D. Candidate at Howard University School of Law, “Alienable Rights and Unalienable Wrongs: Fighting the "War on Terror" through the Fourth Amendment,” Howard Law Journal (47 How. L.J. 989), Spring 2004, Available Online via Lexis-Nexis)

The judiciary, the legal system, and the United States and its "War on Terror" could benefit from rejecting the proposition in Whren that racial profiling must be brought under the Fourteenth Amendment and creating a Fourth Amendment challenge that adopts the void for vagueness analysis of Morales. Adopting the line of thinking in Morales would give persons accused of crimes under the USA PATRIOT Act recourse under which to contest their arrest or prosecution, a means of redress for Fourth Amendment violations, other than just the exclusion of evidence, as well as provide guidance for the judiciary in determining the validity of the argument. It is important to note that Morales declared the statute unconstitutional without declaring whether loitering was constitutionally protected behavior. Allowing a challenge under the Fourth Amendment is not declaring a per se rule that activities like providing financial support to terrorists is constitutionally protected legal behavior, it is simply a means of protecting the constitutional rights of the accused not to be targeted arbitrarily or discriminatorily. A Fourth Amendment mode of recourse will be particularly important because there are several provisions in the USA PATRIOT Act that alter Fourth Amendment protections and serve to allow law enforcement to circumvent the traditional protections of probable cause and notice. Section 201 of the USA PATRIOT Act amended the Wiretap Act to allow any law enforcement officer or government attorney to obtain foreign intelligence information that pertains to the "War On Terror."2'44 Under the Wiretap Act, law enforcement was required to secure a court order based upon an affidavit establishing probable cause that a crime has been or is about to be committed and that the search will reveal the evidence.245 The standard has changed allowing warrants to be issued for "terrorist investigations. 2 46 Section 206 of the USA PATRIOT Act amends the Foreign Intelligence Surveillance Act (FISA) by allowing wiretap warrants to be imposed against not just specific communications provides, but against unspecified persons as well, without any geographical limitations. 247 Section 207 extends the length of time for FISA surveillance from 90 to 120 days for a wiretap, and from forty-five to ninety days for a physical search. 248 These provisions damage the system of checks and balances in the legal system by allowing for the issuance of blank warrants (running counter to the Fourth Amendment's dictate that warrants be issued with particularity), and by allowing warrants to be issued outside of the respondent party's jurisdiction, creating unnecessary difficulty for the party who wants to challenge the order in court. 2 4 9 Section 218 of the USA PATRIOT Act also amends FISA. 5 ° FISA allows wiretapping of citizens and resident aliens in the United States provided law enforcement can show probable cause that the intended target is either a "foreign power" or an "agent of a foreign power.2z5 1 Section 218 amends this by allowing wiretapping not just where foreign intelligence was the purpose of the investigation, as was required under FISA, but allows wiretapping also where foreign intelligence is a significant purpose.252 Section 218 applies to electronic surveillance and warrant for searches of property. 3 This section allows law enforcement to investigate U.S. citizens and residents even though their conduct may peripherally relate to national security. The breadth and vagueness of the Act, compounded by the lowering of Fourth Amendment protections makes it increasingly easier for law enforcement to target persons based on their race, religion, or ethnicity. To provide a check against law enforcement and to allow targets legal recourse, the creation of a Fourth Amendment challenge is crucial. The importance is also apparent when contemplating the "War on Terror" and the importance of community involvement. Racial profiling and the lack of legal redress erodes the overall legitimacy of the legal system. If citizens feel that members of the community are wrongfully targeted by the police and that there is no recourse in the courts, it may appear that the branches of government are working together-law enforcement acts according to bias and the courts condone it. Police officers that detain and arrest persons at their every whim and discretion cannot be trusted. In 1999, Janet Reno, in a speech on police misconduct argued that "[t]he perception of too many Americans is that police officers cannot be trusted" and that "[e]specially in minority communities residents believe the police have used excessive force, that law enforcement is too aggressive, that law enforcement is biased, disrespectful, and unfair."2'54 In a February 2000 Gallup Poll, sixty-four percent of Blacks said that Blacks were treated less fairly by police. 255 A December 1999 Gallup Poll reported that more than forty percent of Blacks said that when they were pulled over they believed it was because of their race." 6 When potential jurors were asked in a study by the National Law Journal and DecisionQuest whether they agreed with the statement, "Police usually tell the truth when they testify at trial," seventy percent of Whites agreed with the statement while only thirty-six percent of Blacks did. 7 These statistics show clearly that racial profiling has had a negative impact on the credibility of police as perceived by different minority communities. The statistics alone do not begin to tell the whole story. There are numerous stories of police bias and excessive force that remain vivid in the minds of minorities and that influence and taint the view that these minorities have of the police. The brutal executions of Amadou Diallo,258 Nathaniel Jones,2 59 Malice Greene,260 Prince Jones,2 6 1 Frederick Finley,2 62 the beatings of Rodney King, 63 and the rape of Abner Louima2 64 are only a handful of the recent stories, that when combined with the stories of the past brutality by the police, the National Guard, and even state officials,265 leads many to distrust the police. The disparate reaction between Whites and Blacks following the acquittal of O.J. Simpson is partly explained by the disparate views held by Whites and Blacks about the criminal justice system and law enforcement officials. 266 It is important to note that distrust of the police-causes concrete harms to society, not just theoretical harms to those who do not trust the police. Protecting the constitutional rights of the accused is central to fighting the "War on Terror. '' 267

#### Federal Agencies will comply with the Supreme Court

Spriggs 97 (James F. Spriggs, II, Associate Professor of Political Science at the University of California-Davis, “Explaining Federal Bureaucratic Compliance with Supreme Court Opinions,” Political Research Quarterly, Volume 50, September 1997, Jstor Accessed]

Federal government agencies complied with 93.2 percent of the Supreme Court's opinions and narrowly complied with 6.8 percent of opinions. Also, bureaucracies never defied nor evaded any of the Court's decisions, meaning that agencies never failed to incorporate at least some aspect of the Court's legal rules into their implementations. The agency responses that manifested narrow compliance did not flout the Court's authority but they interpreted its opinions in self-interested ways. This is an interesting and important empirical finding because it demonstrates that agencies, contrary to some speculation, are not engaging in much noncompliance. When the Court writes legal rules adverse to agency interests, government bureaucracies usually faithfully interpret and implement them.

#### Courts decisions ensure agency compliance especially in the context of privacy- prefer studies without systemic case selection

Matthew E. K. Hall 11, an assistant professor of Political Science and Law at Saint Louis University, earned his Ph.D. in political science, with distinction, from Yale University. His work has appeared in American Politics Review, the Journal of Empirical Legal Studies, and the Journal of Law and Policy, The Nature of Supreme Court Power, Cambridge University Press, 2011, p 160-163, <https://books.google.com/books?id=bLDmbwUTm0wC&dq=%22bureaucratic+compliance%22+AND+%22Supreme+Court%22&source=gbs_navlinks_s> ||RS

The Supreme Court as a Mechanism for Social Change My assessment of the Supreme Court’s power to initiate social change runs counter to the conclusions of most empirical studies on this topic. My findings directly contradict assertions that “litigation is ineffectual” (Scheingold 1974, 130), that “U.S. courts can almost never be effective producers of significant social reform” (Rosenberg 2008, 422), that “the Court is quite constrained in its ability to secure social change” (Baum 2003), and that “the Court is almost powerless to affect the course of national policy” (Dahl 1957, 293). In direct contrast to these claims, I find that the Court possesses remarkable power to alter the behavior of state and private actors in a wide range of policy issues. In those situations in which its rulings can be directly implemented by lower-court judges, the Court commands impressive powers even when fac- ing “serious resistance” (Rosenberg 2008, 420) “[w]ithout the support of real power holders” (Scheingold 1974, 130). Some scholars insist that when the Court has the support of these “real power holders ... litigation is unnecessary” (Scheingold 1974, 130); my find- ings also contradict this claim. In those cases in which the Court could not implement its rulings through lower courts, it was only the combination of Court action with public support that induced change. Although public pres- sure may have eventually initiated reform without Court action, it is highly unlikely that this change would have occurred as quickly as it did without intervention from the Court in issue areas such as reapportionment, public aid to religious schools, and minority set-aside programs. In some situations, the Court is able to achieve what even broad national majorities could not accomplish through other political institutions. Of course, the Court is not always successful at initiating change, nor would any reasonable student of the American political system expect it to be. Any statement about the Court’s power is relative to the expectations of the reader; those who previously understood Court rulings to be universally implemented may be struck by the relative weakness of the Court in my study. Nonetheless, when compared to the prevailing view of the Court’s power in the judicial poli- tics literature, my study depicts the Court as a remarkably powerful institution, capable of enhancing or inhibiting political reform, enshrining or dismantling social inequalities, and expanding or suppressing individual rights. More importantly, my study highlights an important distinction between those Court rulings that can be directly implemented by lower courts and those that cannot. This distinction, though simple and intuitive, explains vastly different behavior outcomes in different types of Court rulings. It also suggests why other empirical studies of judicial power may have been led astray; without systematic case selection procedures to ensure avoiding selec- tion bias, other studies of judicial power may have tended to place too much emphasis on unpopular lateral issues. Although some scholars have hinted at particular elements of the distinction between vertical and lateral issues, none have fully explored the concept or suggested the significance of its many repercussions.5 Accordingly, I must respectfully disagree with Rosenberg’s assertion that “courts act as ‘fly-paper’ for social reformers who succumb to the ‘lure of liti- gation’” (2008, 427). Instead, I find that social reformers have achieved great success by turning to the courts in their quest for privacy rights, free speech rights, states’ rights, religious freedom, and the rights of criminal defendants. Admittedly, social reformers should think carefully about the relative advan- tages and disadvantages of a litigation strategy, compared to a legislative or electoral strategy for reform. My findings suggest that reformers should con- sider whether the institutional situation and public opinion surrounding their cause would make it likely for any favorable court ruling to be implemented. If the reform sought could be directly implemented by lower courts or if the reformers face no strong opposition from the public, the courts may offer a highly effective route to social change. If, however, reformers hope for a change that cannot be implemented by lower courts and that faces strong opposition, a litigation strategy may indeed be unwise. Finally, it should be emphasized that the Court is not especially equipped to advance a conservative or liberal political agenda.6 The Court’s unique power to nullify legal sanctions will sometimes aid liberal movements, by protecting abortionists or flag burners. Other times, this power will be used to promote conservative causes, by shielding states from federal law suits and gun owners from federal prosecution. Nor does the Court’s tendency to enact popular rulings advance one ideology over another: Whereas the reappor- tionment and public aid to religious schools rulings probably helped liberal causes, the affirmative action and minimum wage rulings likely promoted a conservative agenda.

### 2AC AT Politics

#### Court decisions shield presidents’ political capital

Altmann 07(Jennifer Greenstein Altmann - assistant editor at the Princeton Weekly Bulletin, “Pillars or politicos? Whittington examines high court justices”, http://www.princeton .edu/main/news/archive/S18/17/72G06/?section=featured, June 18, 2007)

In his new book, "Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court and Constitutional Leadership in U.S. History," Whittington argues that in recent years the court has become the key player in an important political tussle: Who has the final say in constitutional matters? Whittington asserts that the court has become the final arbiter, but that status did not result from a power grab by the court.Its power, remarkably, has come from politicians, who have pushed onto the court the responsibility for making final rulings on constitutional matters because, paradoxically, it benefits the politicians. "Presidents are mostly deferential to the court," said Whittington. "They have pushed constitutional issues into the courts for resolution and encouraged others to do the same. That has led to an acceptance of the court's role in these issues." It seems counterintuitive that politicians would want to defer to the court on some of the most high-stakes decisions in government, but Whittington has found that they do so because the court often rules in the ways that presidents want — and provides politicians with the political cover they need. In 1995, the Clinton administration faced a proposal from the Senate to regulate pornography on the Internet. The president thought the bill was unconstitutional, but he didn't want to risk appearing lenient on such a hot-button issue right before he was up for re-election, Whittington said. Clinton signed the legislation with the hope that the Supreme Court would strike it down as unconstitutional, which it later did.

#### NSA ruling thumps the DA—ruled on privacy grounds.

CSM 5/8/15. (Christian Science Monitor. Court ruling against NSA practice could reverberate far beyond phone spying. May 8, 2015. <http://www.csmonitor.com/World/Passcode/2015/0508/Court-ruling-against-NSA-practice-could-reverberate-far-beyond-phone-spying-video>. MMG)

The federal court ruling Thursday that found it illegal for National Security Agency to collect massive amounts of information on Americans' phone calls could impact more than just the spy agency's practices. The Second Circuit Court of Appeals decision in the American Civil Liberties Union v. Clapper case could affect other government surveillance programs, impede the government's ability to execute warrants to access data stored on overseas servers, and even change how electronic data is treated in future court rulings, according to legal experts. “There are privacy implications that go beyond this NSA program,” says Elizabeth Goitein, the codirector of the liberty and national security program at New York University’s Brennan Center for Justice. The federal case centered on the Patriot Act's Section 215, which the government has used as a justification for the NSA's practice of collecting phone metadata. That program was revealed by ex-NSA contractor Edward Snowden and, since then, supporters of the surveillance practice have pointed to Section 215 as its legal justification. Section 215 does allow for the collection of “relevant” data for an authorized investigation. In the federal case, attorneys for the US argued that any data – even data that had no relationship to any investigation – was relevant, because the mass of data might be relevant to future investigations. Circuit Judge Gerard Lynch disagreed. "Relevance does not exist in the abstract; something is ‘relevant’ or not in relation to a particular subject," wrote Judge Lynch. The ruling comes as Congress is considering whether to reauthorize the parts of the Patriot Act, including Section 215, because they are set to expire on June 1. The court decision will certainly put new pressure on lawmakers who support the surveillance program, and give more fuel to those who oppose it and seek to reform the NSA's bulk collection programs.

#### Healthcare ruling mirrors the plan and thumps the DA.

AP 6/25/15. Mark Sherman for Associated Press. Supreme Court upholds nationwide health care law subsidies. June 25, 2015. <http://cbs4local.com/news/features/national-headlines/stories/Supreme-Court-upholds-nationwide-health-care-law-subsidies-154411.shtml#.VbA-TvlViko>. MMG)

WASHINGTON (AP) — The Supreme Court on Thursday upheld the nationwide tax subsidies underpinning President Barack Obama's health care overhaul, rejecting a major challenge to the landmark law in a ruling that preserves health insurance for millions of Americans. The justices said in a 6-3 ruling that the subsidies that 8.7 million people currently receive to make insurance affordable do not depend on where they live, as opponents contended. The outcome was the second major victory for Obama in politically charged Supreme Court tests of his most significant domestic achievement. And it came the same day the court gave him an unexpected victory by preserving a key tool the administration uses to fight housing bias. Obama greeted news of the decision by declaring the health care law "is here to stay." He said the law is no longer about politics, but the benefits millions of people are receiving. Declining to concede, House Speaker John Boehner of Ohio said Republicans, who have voted more than 50 times to undo the law, will "continue our efforts to repeal the law and replace it with patient-centered solutions that meet the needs of seniors, small business owners, and middle-class families." At the court, Chief Justice John Roberts again voted with his liberal colleagues in support of the law. Roberts also was the key vote to uphold it in 2012. Justice Anthony Kennedy, a dissenter in 2012, was part of the majority on Thursday. "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them," Roberts declared in the majority opinion. Limiting the subsidies only to individuals in states with their own exchanges could well push insurance markets in the other states "into a death spiral," Roberts wrote. Justice Antonin Scalia, in a dissent he summarized from the bench, strongly disagreed. "We should start calling this law SCOTUScare," he said, using an acronym for the Supreme Court and suggesting his colleagues' ownership by virtue of their twice stepping in to save the law from what he considered worthy challenges. His comment drew a smile from Roberts, his seatmate and the object of Scala's ire. Scalia said that Roberts' 2012 decision that upheld the law and his opinion on Thursday "will publish forever the discouraging truth that the Supreme Court of the United States favors some laws over others, and is prepared to do whatever it takes to uphold and assist its favorites." Justices Samuel Alito and Clarence Thomas joined the dissent, as they did in 2012. Nationally, 10.2 million people have signed up for health insurance under the Obama health overhaul. That includes the 8.7 million people who are receiving an average subsidy of $272 a month to help pay their insurance premiums. Of those receiving subsidies, 6.4 million were at risk of losing that aid because they live in states that did not set up their own health insurance exchanges. The health insurance industry breathed a big sigh of relief, and a national organization representing state regulators from both political parties said the court's decision will mean stable markets for consumers. "This decision allows (state officials) to move forward with a level of confidence that their markets will not see significant disruption due to a paradigm shift," said Ben Nelson, CEO of the National Association of Insurance Commissioners and a former Democratic senator from Nebraska. Shares of publicly traded hospital operators including HCA Holdings Inc. and Tenet Healthcare Corp. soared after the ruling relieved those companies of the prospect of having to deal with an influx of uninsured people. Investors had worried that many patients would drop their coverage if they no longer had tax credits to help pay. The challenge devised by die-hard opponents of the law relied on four words — "established by the state" — in the more than 900-page law. The law's opponents argued that the vast majority of people who now get help paying for their insurance premiums are ineligible for their federal tax credits. That is because roughly three dozen states opted against creating their own health insurance marketplaces, or exchanges, and instead rely on the federal healthcare.gov to help people find coverage if they don't get insurance through their jobs or the government. In the challengers' view, the phrase "established by the state" demonstrated that subsidies were to be available only to people in states that set up their own exchanges. The administration, congressional Democrats and 22 states responded that it would make no sense to construct the law the way its opponents suggested. The idea behind the law's structure was to decrease the number of uninsured. The law prevents insurers from denying coverage because of "pre-existing" health conditions. It requires almost everyone to be insured and provides financial help to consumers who otherwise would spend too much of their paycheck on their premiums. The point of the last piece, the subsidies, is to keep enough people in the pool of insured to avoid triggering a disastrous decline in enrollment, a growing proportion of less healthy people and premium increases by insurers. Several portions of the law indicate that consumers can claim tax credits no matter where they live. No member of Congress said that subsidies would be limited, and several states said in a separate brief to the court that they had no inkling they had to set up their own exchange for their residents to get tax credits. The 2012 case took place in the midst of Obama's re-election campaign, when Obama touted the largest expansion of the social safety net since the advent of Medicare nearly a half-century earlier. But at the time, the benefits of the Affordable Care Act were mostly in the future. Many of its provisions had yet to take effect. In 2015, the landscape has changed, although the partisan and ideological divisions remain for a law that passed Congress in 2010 with no Republican votes. The case is King v. Burwell, 14-114.

### 2AC AT Terror

#### View the link to the Terror DA through a skeptical lens – any “success stories” were rigged by the FBI.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, “COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa” Lexis, accessed 7-12-15, TAP]

Many argue that tactics like recruiting informants through immigration law and surveilling mosques are necessary to prevent terrorist attacks, and that national security must be the nation's top priority, whatever the cost. These arguments fail to recognize that when informants lack a specific target and direction, the gathered intelligence does not necessarily enhance the nation's security. Instead, the FBI - with little concern for the actual gravity of the original threat posed by the suspect - creates an elaborate terrorism plot for the surveillance targets to participate in. 100Link to the text of the note After 9/11, many individuals who showed no signs of violence or extremism prior to involvement with informants and government-created plots have been prosecuted under terrorism charges. 101Link to the text of the note Until the informants provided the means, these individuals did not have the finances or the proper connections to conceive and carry out these terrorism plans. Although orchestrating these plots makes the FBI's preventative stance appear successful in the public eye, it diverts law enforcement resources from focusing on real targets.

#### Racial, ethnic, and religious profiling fails – entrapment produces fabricated information.

Stabile, University of California Berkeley School of Law JD, 2014

[Emily, 102 Calif. L. Rev. 235, “COMMENT: Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa” Lexis, accessed 7-12-15, TAP]

Since the FBI's post-9/11 establishment of a preventative stance toward terrorism has increased the need for intelligence, the agency has turned to the increased use of immigration law to recruit additional confidential informants. Using the threat of immigration consequences - particularly deportation - to produce terrorism intelligence presents novel problems for both the intelligence gathering process and the informants. Informants recruited in this manner who also lack established ties to foreign terrorist organizations have an enormous incentive to fabricate information to fulfill their end of the agreement and avoid deportation. Recruiting informants via immigration law also affords less protection than recruiting them by offering monetary rewards or reductions in sentencing. Furthermore, the FBI's recruitment tactics encourage ethnic and religious profiling, alienating Muslim and Middle Eastern communities. Although Congress created the S-6 visa classification specifically to induce cooperation from informants in terrorism investigations, the visa is rarely used due to its stringent eligibility requirements for informants. In order for law enforcement to successfully use the S-6 visa program and to encourage the trust of and cooperation from informants, legislative overhaul is needed. An S-6 visa program that emphasizes pre-existing ties to terrorist organizations, increases the availability of S-6 visas, and lowers the barriers to the visas' use will produce counterterrorism intelligence that is more reliable and actionable and provide greater protection for civil liberties and to informants themselves.

#### Al-Quada is actively expanding into India through Huji. Terror attacks through the county are actively being attempted.

Daily Star 7/3

'Huji Plans, 7-3-2015, "'Huji plans Qaeda merger'," Daily Star, http://www.thedailystar.net/backpage/huji-plans-qaeda-merger-106585

Harkat-ul-Jihad-al-Islami, Bangladesh (Huji-B) leaders were preparing to build their organisational capability to join al-Qaeda in Indian Subcontinent (AQIS). They wanted to go on a bombing spree after Eid to let everyone know that they exist. Rapid Action Battalion made the claim after arresting 12 alleged Huji leaders and activists. Arrestee Maulana Mainul Islam Mahim's job was to coordinate with AQIS and organise the Huji leaders and activists to join al-Qaeda. Arrestee Mufti Zafar Amin Salman was acting as an adviser for the whole operation, Rab officials said. Rab also said the arrestees were trying to label themselves as “Dawate Tabliq” and “313 Badrer Sainik”. Their plan was to join AQIS after the two organisations had spread across Bangladesh. “They [arrested militants] had a plan to carry out bomb attacks across the country after Eid to send a message to the inactive members of militant outfits about their existence,” said Mufti Mahmud Khan, Rab's Legal and Media wing director, at a press briefing at its headquarters in the capital yesterday. He said their plan was to get as much media coverage as possible through the bomb attacks and recruit more operatives. Rab officials said the militants had so far recruited 50 operatives and of them, 20 were supposed to have training at a madrasa in Bogra. The Rab's claim about the arrestees' attempt to set up a link with AQIS could not be verified. Journalists had not been allowed to ask the arrestees questions when they were paraded before the media yesterday. After becoming stronger by recruiting more operatives, they had a plan to work under AQIS, Rab claimed. Al-Qaeda leader Ayman al-Zawahiri in last September had announced an Indian subcontinent branch of al-Qaeda for Bangladesh, India, Pakistan and Myanmar. Earlier, in a video posted on Jihadist Forum on May 2, AQIS claimed the responsibility for the murder of writer-blogger Avijit Roy. In the video, AQIS leader Asim Umar said his organisation carried out the attack on Avijit and “other blasphemers" in Bangladesh and Pakistan. Rab officials, however, said they so far did not find any link between the arrestees and the murders and the AQIS claim. They said they would interrogate them further in remand about the murders and the claim. Mufti Mahmud Khan told reporters that Maulana Mayeen Uddin alias Abul Jandal, a death-row in mate and a top Huji leader, had been communicating with the arrestees from jail. The arrestees had been planning a Trishal-style ambush on a prison van to snatch away Mayeen from custody, he said. In February last year, militants attacked a prison van in Trishal of Mymensingh and liberated three condemned JMB leaders from police custody. A policeman was killed in the attack. Two of the escapees are still at large while the other one was killed in a shootout. Huji had wanted to free Mayeen by attacking and cutting the grills of Kashimpur Jail, Rab claimed, adding that realising it was very risky, they planned for an ambush. On information that Huji men were gathering in the capital from across the country, several teams of Rab-4 detained them at Sadarghat, Airport Railway Station and Mirpur during the last two days. The other arrestees were: Mohammad Saidul Islam alias Sayeed Tamim, Mosharraf Hossain, Abdur Rahman Bapary, Al Amin Ibrahim, Mozahidul Islam Nakib, Ashraful Islam alias Abul Hashem, Robiul Islam, Habib Ullah, Shohidul Islam, and Altaf Hossain. Rab during its drive in a Mirpur house also seized bomb-making materials and manuals, and books on jihad.

#### Non unique -- Terror attacks have been sharply on the rise.

Lee 6/10

Matthew Lee, 6-10-2015, Matthew Less is State Department correspondent at Associated Press"US: 35 percent spike in global terror attacks in 2014," NorthJersey, http://www.northjersey.com/news/us-35-percent-spike-in-global-terror-attacks-in-2014-1.1359476

Extremists in Iraq, Afghanistan and Nigeria unleashed a savage rise in violence between 2013 and 2014, according to new statistics released by the State Department. Attacks largely at the hands of the Islamic State and Boko Haram raised the number of terror acts by more than a third, nearly doubled the number of deaths and almost tripled the number of kidnappings. The figures contained in the department's annual global terrorism report say that nearly 33,000 people were killed in almost 13,500 terrorist attacks around the world in 2014. That's up from just over 18,000 deaths in nearly 10,000 attacks in 2013, it said. Twenty-four Americans were killed by extremists in 2014, the report said. Abductions soared from 3,137 in 2013 to 9,428 in 2014, the report said. The report attributes the rise in attacks to increased terror activity in Iraq, Afghanistan and Nigeria and the sharp spike in deaths to a growth in exceptionally lethal attacks in those countries and elsewhere. There were 20 attacks that killed more than 100 people each in 2014, compared to just two in 2013, according to the figures that were compiled for the State Department by the National Consortium for the Study of Terrorism and Responses to Terrorism at the University of Maryland. Among the 20 mass casualty attacks in 2014 were the December attack by the Pakistani Taliban on a school in Peshawar, Pakistan that killed at least 150 people and the June attack by Islamic State militants on a prison in Mosul, Iraq, in which 670 Shiite prisoners died. At the end of 2014, the prison attack was the deadliest terrorist operation in the world since Sept. 11, 2001, according to the report. The State Department's counterterrorism coordinator said the numbers don't reflect improvements by the U.S. and its partners in stamping out terrorism financing, improving information sharing, impeding foreign fighters and forming a coalition to fight the Islamic State. "We have made progress," Ambassador Tina Kaidanow said. Terror attacks took place in 95 countries in 2014, but were concentrated in the Mideast, South Asia and West Africa. Iraq, Pakistan, Afghanistan, India and Nigeria accounted for more than 60 percent of the attacks and, if Syria is included, roughly 80 percent of the fatalities, the report found. The rise in kidnappings is mainly attributable to sharp increases in mass abductions by terrorist groups in Syria, notably the Islamic State and the al-Qaida-linked al-Nusra Front. In Nigeria, Boko Haram was responsible for most, if not all, of the nearly 1,300 abductions in Nigeria in 2014, including several hundred girls from a school in Chibok. By contrast, fewer than 100 terror-related kidnappings were reported in Nigeria in 2013, according to the report.

#### Non unique – The US is losing the war on terror, Us intervention has created more terrorist activity

Jebreal ‘14

Rula Jebreal, 11-26-2014, Rula Jebreal is a Palestinian-Italian foreign policy analyst, journalist, novelist and screenwriter. She was a commentator for MSNBC."Rula Jebreal: Why America is losing the war on terror — and the Islam debate is so flawed," No Publication, http://www.salon.com/2014/11/26/rula\_jebreal\_why\_america\_is\_losing\_the\_war\_on\_terror\_and\_the\_islam\_debate\_is\_so\_flawed/

America is losing the longest war in its history. An enemy that had comprised a couple of hundred desperate men hiding in caves in eastern Afghanistan when the “war on terror” got underway following the 9/11 attacks is incarnated today as 20,000 fighting men in the Islamic State movement. And far from hiding in caves, ISIS has brazenly raised its black flag over vast swaths of territory in Syria and Iraq – countries that, in 2001, had been two of the most secular societies in the Middle East. Thus the fruits of the trillions of dollars and thousands of American lives – and hundreds of thousands of unnamed innocent civilians in the Middle East and Asia – devoured by the war on terror, which the Obama administration now says could rage for another 30 years. Given its costs, consequences and failures, the war on terror has provoked remarkably little sensible public debate in the U.S. The country that congratulated itself for having killed Osama bin Laden has not asked itself why that fact seems to have mattered so little to the trajectory of the conflict. And politicians and pundits have been largely indifferent to the devastating consequences of U.S. intervention in Afghanistan, Iraq and Libya. Only when jihadists began disseminating macabre, but well-produced videos of the brutal decapitation of American captives did U.S. attention turn, once again, to Iraq and Syria. Desultory military strikes followed, but little explanation to the American people about what has gone wrong — except, perhaps, among TV info-tainers such as Bill Maher, who insist that the problem lies within Islam itself. It may be comforting to see the ISIS phenomenon as determined by theology rather than the result of mass regional and American incompetence. It’s conventional wisdom among the Arab world’s secular democrats to view ISIS as a byproduct of the U.S. invasion of Iraq. We wrecked a country, destroying its institutions and security forces, creating a vacuum that drew in jihadists from across the globe. Al-Qaida had not operated in Iraq before the invasion; it moved in after the invasion, setting up shop in the Sunni communities antagonized by the U.S.-led occupation. Similarly, ISIS has exploited the alienation of the Sunni population from the sectarian Shiite-led government of Prime Minister Nuri al-Maliki to gain control of much of northern and western Iraq.

#### Mass surveillance is fundamentally ineffective at preventing terrorism – three reasons

Schneier 15 (Bruce. Bruce Schneier is a renowned security and cryptology technologist, a fellow at the Berkman Center for Internet and Society at Harvard Law School, a program fellow at the New America Foundation's Open Technology Institute, a board member of the Electronic Frontier Foundation, an Advisory Board Member of the Electronic Privacy Information Center, and the Chief Technology Officer at Resilient Systems, Inc. He has testified before Congress and is the author of *Data and Goliath*. 3-24-2015. “Why Mass Surveillance Can’t, Won’t And Never Has Stopped A Terrorist”. The Daily Digg. http://digg.com/2015/why-mass-surveillance-cant-wont-and-never-has-stopped-a-terrorist. Accessed 7-9-2015. KC)

Data mining is offered as the technique that will enable us to connect those dots. But while corporations are successfully mining our personal data in order to target advertising, detect financial fraud, and perform other tasks, three critical issues make data mining an inappropriate tool for finding terrorists. The first, and most important, issue is error rates. For advertising, data mining can be successful even with a large error rate, but finding terrorists requires a much higher degree of accuracy than data-mining systems can possibly provide. Data mining works best when you’re searching for a well-defined profile, when there are a reasonable number of events per year, and when the cost of false alarms is low. Detecting credit card fraud is one of data mining’s security success stories: all credit card companies mine their transaction databases for spending patterns that indicate a stolen card. There are over a billion active credit cards in circulation in the United States, and nearly 8% of those are fraudulently used each year. Many credit card thefts share a pattern — purchases in locations not normally frequented by the cardholder, and purchases of travel, luxury goods, and easily fenced items — and in many cases data-mining systems can minimize the losses by preventing fraudulent transactions. The only cost of a false alarm is a phone call to the cardholder asking her to verify a couple of her purchases. Similarly, the IRS uses data mining to identify tax evaders, the police use it to predict crime hot spots, and banks use it to predict loan defaults. These applications have had mixed success, based on the data and the application, but they’re all within the scope of what data mining can accomplish. Terrorist plots are different, mostly because whereas fraud is common, terrorist attacks are very rare. This means that even highly accurate terrorism prediction systems will be so flooded with false alarms that they will be useless. The reason lies in the mathematics of detection. All detection systems have errors, and system designers can tune them to minimize either false positives or false negatives. In a terrorist-detection system, a false positive occurs when the system mistakenly identifies something harmless as a threat. A false negative occurs when the system misses an actual attack. Depending on how you “tune” your detection system, you can increase the number of false positives to assure you are less likely to miss an attack, or you can reduce the number of false positives at the expense of missing attacks. Because terrorist attacks are so rare, false positives completely overwhelm the system, no matter how well you tune. And I mean completely: millions of people will be falsely accused for every real terrorist plot the system finds, if it ever finds any. We might be able to deal with all of the innocents being flagged by the system if the cost of false positives were minor. Think about the full-body scanners at airports. Those alert all the time when scanning people. But a TSA officer can easily check for a false alarm with a simple pat-down. This doesn’t work for a more general data-based terrorism-detection system. Each alert requires a lengthy investigation to determine whether it’s real or not. That takes time and money, and prevents intelligence officers from doing other productive work. Or, more pithily, when you’re watching everything, you’re not seeing anything. The US intelligence community also likens finding a terrorist plot to looking for a needle in a haystack. And, as former NSA director General Keith Alexander said, “you need the haystack to find the needle.” That statement perfectly illustrates the problem with mass surveillance and bulk collection. When you’re looking for the needle, the last thing you want to do is pile lots more hay on it. More specifically, there is no scientific rationale for believing that adding irrelevant data about innocent people makes it easier to find a terrorist attack, and lots of evidence that it does not. You might be adding slightly more signal, but you’re also adding much more noise. And despite the NSA’s “collect it all” mentality, its own documents bear this out. The military intelligence community even talks about the problem of “drinking from a fire hose”: having so much irrelevant data that it’s impossible to find the important bits. We saw this problem with the NSA’s eavesdropping program: the false positives overwhelmed the system. In the years after 9/11, the NSA passed to the FBI thousands of tips per month; every one of them turned out to be a false alarm. The cost was enormous, and ended up frustrating the FBI agents who were obligated to investigate all the tips. We also saw this with the Suspicious Activity Reports —or SAR — database: tens of thousands of reports, and no actual results. And all the telephone metadata the NSA collected led to just one success: the conviction of a taxi driver who sent $8,500 to a Somali group that posed no direct threat to the US — and that was probably trumped up so the NSA would have better talking points in front of Congress. The second problem with using data-mining techniques to try to uncover terrorist plots is that each attack is unique. Who would have guessed that two pressure-cooker bombs would be delivered to the Boston Marathon finish line in backpacks by a Boston college kid and his older brother? Each rare individual who carries out a terrorist attack will have a disproportionate impact on the criteria used to decide who’s a likely terrorist, leading to ineffective detection strategies. The third problem is that the people the NSA is trying to find are wily, and they’re trying to avoid detection. In the world of personalized marketing, the typical surveillance subject isn’t trying to hide his activities. That is not true in a police or national security context. An adversarial relationship makes the problem much harder, and means that most commercial big data analysis tools just don’t work. A commercial tool can simply ignore people trying to hide and assume benign behavior on the part of everyone else. Government data-mining techniques can’t do that, because those are the very people they’re looking for. Adversaries vary in the sophistication of their ability to avoid surveillance. Most criminals and terrorists — and political dissidents, sad to say — are pretty unsavvy and make lots of mistakes. But that’s no justification for data mining; targeted surveillance could potentially identify them just as well. The question is whether mass surveillance performs sufficiently better than targeted surveillance to justify its extremely high costs. Several analyses of all the NSA’s efforts indicate that it does not. The three problems listed above cannot be fixed. Data mining is simply the wrong tool for this job, which means that all the mass surveillance required to feed it cannot be justified. When he was NSA director, General Keith Alexander argued that ubiquitous surveillance would have enabled the NSA to prevent 9/11. That seems unlikely. He wasn’t able to prevent the Boston Marathon bombings in 2013, even though one of the bombers was on the terrorist watch list and both had sloppy social media trails — and this was after a dozen post-9/11 years of honing techniques. The NSA collected data on the Tsarnaevs before the bombing, but hadn’t realized that it was more important than the data they collected on millions of other people.

### 2AC AT Presidential Powers/SOP

#### Judicial independence checks corrupt government, maintains civil rights, and maintains constitutional law

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JUDICIAL INDEPENDENCE AND RULE OF LAW Judicial independence principle is vital in the consolidation of the rule of law in international law. This can be examined in some ways. First, the judges free of any political or apolitical pressure would employ legal principles and obligation in dealing with disputes, away from any undue external factors’ leveraging. This attitude strengthens the public respect to the courts and persuades citizens and governance to often refer to the courts to settle their disputes credibly and fairly1. The possibility of fairly settlement of disputes is a vital element in economic and political stability. Economic and political actors shall have faith in an independent and neutral arbitrator to deal with their disputes. This way, rules and regulations are respected. The judges would illuminate the ambiguities in the process of investigation with the examination and clarification of the existing rules and regulations. The judges who use the existing rules, judicial process and unbiased application of the rule to support their decisions regarding any dispute grant a predictable feature to their decisions. Predictability enables the economic and political actors to set their behavior accordingly and this way, they would noticeably help their community’s political stability and economic welloff2. Secondly, the existence of independent courts is necessary to support the individual freedom and right. Individual right might be respected by the constitutions or other rules of the governments, it is however necessary for an independent and unbiased authority to deal with the individual complaints and verdict the realization of their rights. The effective way of doing this issue by the judges is bound to ensure that there is no threat including dismissal, downgrading or even lowering monthly wages or benefits facing them3. Thirdly, the existence of independent courts is the inevitable means to obligate the government to follow the rules and regulations in force within their own territory. In a law-abiding society, the government can be held responsible by the court. Therefore, judicial independence – a division of the powers, plays a significant role in the maintenance of individual rights and freedom. The presence of independent powers would obviously provide the setting for disputes. Some disputes can be settled using political arrangements and strategies. However, it doesn’t seem logical to settle all disputes through political methods (Torbert, 2014). Considering what has been mentioned so far, we can’t help drawing this conclusion that the principle of judicial independence is of top significance in establishment and consolidation of the rule of law principle. It is the judicial independence which ultimately puts the rule of law at first and its absence means the lack of priority for the rule of law in due society. It is clear that the absence of rule of law in a society would put the law under question. As Aristotle states: where there is no rule of law, there is no constitution4.

#### Separation of powers should have already triggered the link – judicial independence inevitable

Ragsdale ’15 (Bruce Ragsdale, served as director of the Federal Judicial History Office at the Federal Judicial Center and as associate historian of the U.S. House of Representatives, “Judicial Independence and the Federal Courts”, fjc.gov, [http://www.fjc.gov/public/pdf.nsf/lookup/JudicialIndependence.pdf/$file/JudicialIndependence.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/JudicialIndependence.pdf/%24file/JudicialIndependence.pdf), Published in 2006, Accessed on July 13 2015, CMT)

A central principle of the United States system of government holds that judges should be able to reach decisions free from political pressure. The framers of the Constitution shared a commitment to judicial independence, and they organized the new government to ensure that federal judges would have a proper measure of independence from the executive and legislative branches. The Constitution guaranteed that judges would serve “during good behavior” and would be protected from any reduction in their salaries, thus preventing removal by a President who opposed their judicial philosophy and congressional retaliation against unpopular decisions. These twin foundations of judicial independence were well established in the British judicial system of the eighteenth century and had been enacted by many of the new state constitutions following independence from Great Britain. But the constitutional outline for the judiciary also ensured that the court system would always be subject to the political process and thus to popular expectations. The Constitution’s provision for “such inferior courts as the Congress may from time to time ordain and establish,” granted the legislative branch the most powerful voice in deciding the structure and jurisdiction of the nation’s court system. The appointment of judges by the President, with the advice and consent of the Senate, further ensured that important aspects of the judiciary would be part of the political process. The inherent tension between provisions for judicial independence and the Judicial Independence and the Federal Judiciary ~ Federal Judicial Center 2 elected branches’ authority to define the court system has led to recurring debates on judicial tenure and the federal courts’ jurisdiction. Throughout United States history, unpopular court decisions and the general authority of the federal judiciary have prompted calls to limit judges’ terms of office, to define more narrowly the jurisdiction of the federal courts, or to limit judicial review—the courts’ authority to determine the constitutionality of laws. Underlying the debates on judicial independence have been basic questions about the proper balance of Congress’s authority to define the court system and the need to protect a judge’s ability to reach decisions independent of political pressure. The debates have also addressed the extent to which the judiciary should be independent of popular opinion in a system of government where all power is based on the consent of the governed. Other debates have raised the need for safeguards for judicial independence in addition to those provided by the Constitution.

#### Judicial independence key to democracy and economic growth

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In the past two decades, donor governments increasingly embrace judicial independence as an important component of advancing democracy. We develop and test an argument that links foreign aid to judicial independence through the mechanism of incumbent-led democracy promotion. Because judicial independence improves the investment environment necessary for sustained economic growth, both donors and recipient governments generally have an interest in using aid resources to improve judicial independence. Thus foreign aid should increase judicial independence. During election periods, however, when judicial independence can influence the distribution of power in the recipient country, incumbents are more likely to find aid investments in an independent judiciary politically costly. Therefore, during election periods in recipient countries, donor and recipient interests are less likely to align and the relationship between aid and judicial independence should weaken. We employ an instrumental variable model to test this argument with a global sample of aid-eligible countries. The literature on the effects of foreign aid has received considerable attention among academics and policy-makers. While some evidence exists that links aggregate foreign aid flows to democratic progress (Goldsmith, 2001; Dunning, 2004; Wright, 2009; Heckelman, 2010; Bermeo, 2011), other work suggests that aid is similar to a resource curse, where “windfall” income in the form of foreign aid hinders development by supporting the survival of nonrepresentative institutions (Moss, Pettersson and van de Walle, 2006; Djankov, Montalvo and Reynal-Querol, 2008; Morrison, 2009; Bueno de Mesquita and Smith, 2009).1 Foreign aid is heterogeneous, however,2 which has prompted scholars to disagregate aid into distinct sectors and delivery mechanisms to investigate external influence on democratic change. This work demonstrates that donors are selective when allocating foreign aid across different sectors and types (Dietrich, 2013, Forthcoming) and that they carefully choose among different strategies to shape democratic change (Dietrich and Wright, 2015). Even within the individual category of democracy and governance aid, which has served as focal point for students of external promotion (Carothers, 2007; Bush, 2015), donors link aid with different outcomes and deliver the assistance using different mechanisms. For instance, donors can promote democracy via bottom-up pressure, by financing civil society groups and opposition (Finkel et al., 2008). They can also pursue incumbent-led democracy promotion tactics whereby donor governments collaborate with the incumbent government in efforts to strengthen the capacity of state institutions.3 Dietrich and Wright (2015) show that incumbent-led democracy promotion is the most common strategy among donors across time.4 This particular strategy dovetails with donor efforts to promote development as it focuses on the build-up of indigenous state capacity. Funding of civil society and opposition, on the other hand, is more infrequent. It can work against development objectives in the short-term if the bottom-up pressure causes political instability.5 In this paper, we develop and test an argument that links foreign aid to judicial independence through the mechanism of incumbent-led democracy promotion. Over time, donor governments have increasingly embraced judicial independence as an important pillar for advancing democracy. Some have even argued that the establishment of the “rule of law”, including judicial independence, is necessary before democratic deepening can occur (Carothers, 2007). Donor governments typically promote judicial independence in two ways: they can require recipient governments to engage in judicial reform through conditions attached to economic aid. Alternatively, they can directly invest in judicial reform by designing specific aid projects that guide the recipient public sector in their implementation. In both cases, donors rely on cooperation by local authorities in recipient countries. Among students of economic development, judicial independence is thought of as a sine qua non for the enforcement of property rights and contracts (Haggard and Tiede, 2011) as well as for lowering transaction costs associated with captial investment (Williamson, 1985). Over time evidence has accumulated documenting a systematic positive link between judicial independence and economic growth (Feld and Voigt, 2003; Henisz, 2000). From this growth perspective, it is easy to see how incumbents in recipient countries can benefit from institutionalizing judical review. And although donors and incumbent governments may disagree over the motives that drive the promotion of judicial independence –whether they originate in theories of democratic change or economic growth – we posit that donor and incubment goals largely align in favor of judicial independence. We expect this alignment between donors and incumbents to hold across democracies and autocracies6 but we expect it to weaken during election times, when independent courts can directly influence election outcomes.7 The conditional nature of our argument suggests that foreign aid should increase judicial independence unless judicial review becomes politically costly. As costs of judicial independence increase, which we argue occurs when incumbents stand for re-election, we expect incumbents to withdraw their support from externally funded judicial reform activities, or increase control over the judiciary branch to maintain their position of power. This incentive should sharpen when elections are more closely contested. This study contributes to our understanding of democracy promotion in two ways. First, it presents a new framework that accounts for heterogeneity among donor governments’ democracy promotion stratgies and electoral dynamics in aid-receving countries. Second, it establishes that judicial independence is not only an important area through which donors can influence the democratic process abroad. It also posits that the electoral cycle shapes incumbent governments’ incentives to use aid resources to implement judicial review. The results directly reinforce a line of work that focuses on the testing of the various causal mechanisms through which donors promote democracy abroad.