# ASU CR Cards Round 3 CEDA

## 1NC

### 1

#### A. Interpretation – the aff has to reduce the authority granted by Congress under the AUMF to the President for targeted killings

#### Restrictions are prohibitions --- topical affs must change what actions are allowed. Enforcing status quo authority is not enough.

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Authority is granted permission

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

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

#### B. Violation

#### Ex-post review only determines whether particular targeted killings exceeded authority the government already had---that doesn’t affect the legality of targeted killings at all

Steve Vladeck 13, professor of law and the associate dean for scholarship at American University Washington College of Law, 2/5/13, “What’s Really Wrong With the Targeted Killing White Paper,” <http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/>

Many of us wondered, at the time, just where this came from–since it’s hard to imagine what due process could be without at least some judicial oversight. On this point, the white paper again isn’t very helpful. The sum total of its analysis is Section II.C, on page 10, which provides that: [U]nder the circumstances described in this paper, there exists no appropriate judicial forum to evaluate these constitutional considerations. It is well established that “[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention,” because such matters “frequently turn on standards that defy the judicial application,” or “involve the exercise of a discretion demonstrably committed to the executive or legislature.” Were a court to intervene here, it might be required inappropriately to issue an ex ante command to the President and officials responsible for operations with respect to their specific tactical judgment to mount a potential lethal operation against a senior operational leader of al-Qa’ida or its associated forces. And judicial enforcement of such orders would require the Court to supervise inherently predictive judgments by the President and his national security advisors as to when and how to use force against a member of an enemy force against which Congress has authorized the use of force. There are two enormous problems with this reasoning: First, many of us who argue for at least some judicial review in this context specifically don’t argue for ex ante review for the precise reasons the white paper suggests. Instead, we argue for ex post review–in the form of damages actions after the fact, in which liability would only attach if the government both (1) exceeded its authority; and (2) did so in a way that violated clearly established law. Whatever else might be said about such damages suits, they simply don’t raise the interference concerns articulated in the white paper, and so one would have expected some distinct explanation for why that kind of judicial review shouldn’t be available in this context. All the white paper offers, though, is its more general allusion to the political question doctrine. Which brings me to… Second, and in any event, the suggestion that lawsuits arising out of targeted killing operations against U.S. citizens raise a nonjusticiable political question is almost laughable–and is the one part of this white paper that really does hearken back to the good ole’ days of the Bush Administration (I’m less sold on any analogy based upon the rest of the paper). Even before last Term’s Zivotofsky decision, in which the Supreme Court went out of its way to remind everyone (especially the D.C. Circuit) of just how limited the political question doctrine really should be, it should’ve followed that uses of military force against U.S. citizens neither “turn on standards that defy the judicial application,” nor “involve the exercise of a discretion demonstrably committed to the executive or legislature.” Indeed, in the context of the Guantánamo habeas litigation, courts routinely inquire into the very questions that might well arise in such a damages suit, e.g., whether there is sufficient evidence to support the government’s conclusion that the target is/was a senior operational leader of al Qaeda or one of its affiliates… Don’t get me wrong: Any suit challenging a targeted killing operation, even a post hoc damages action, is likely to run into a number of distinct procedural concerns, including the difficulty of arguing for a Bivens remedy; the extent to which the state secrets privilege might preclude the litigation; etc. But those are the arguments that the white paper should’ve been making–and not a wholly unnuanced invocation of the political question doctrine in a context in which it clearly does not–and should not–apply. V. A Modest Proposal This all leads me to what I’ve increasingly come to believe is the only real solution here: If folks are really concerned about this issue, especially on the Hill, then Congress should create a cause of action–with nominal damages–for individuals who have been the targets of such operations (or, more honestly, their heirs). The cause of action could be for $1 in damages; it could expressly abrogate the state secrets privilege and replace it with a procedure for the government to offer at least some of its evidence ex parte and in camera; and it could abrogate qualified immunity so that, in every case, the court makes law concerning how the government applies its criteria in a manner consistent with the Due Process Clause of the Fifth Amendment. This wouldn’t in any way resolve the legality of targeted killings, but it would clear the way for courts to do what courts do–ensure that, when the government really is depriving an individual of their liberty (if not their life), it does so in a manner that comports with the Constitution–as the courts, and not just the Executive Branch, interpret it. It’s not a perfect solution, to be sure, but if ever there was a field in which the perfect is the enemy of the good, this is it.

#### C. Reasons to Prefer

#### 1. Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference. Judicial review is a mechanism of enforcement, not restriction.

#### 2. Limits---there are an infinite number of small hoops they could require the president to jump through---overstretches our research burden

#### D. Topicality is a voter for fairness and education.

### 2

#### The Executive branch of the United States should describe and defend the process used for targeted killing, report performance data surrounding strikes, publish targeting criteria, publish the costs associated with targeted killing and transfer any remaining targeted killing authority within the CIA to the JSOC.

#### The CP solves and ensures accountability.

McNeal, Associate Professor of Law, Pepperdine University, ‘13

[Gregory, “3/5/13, “Targeted Killing and Accountability,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1819583, RSR]

A. DEFEND THE PROCESS Perhaps the most obvious way to add accountability to the targeted-killing process is for someone in government to describe the process the way this Article has, and from there, defend the process. The task of describing the government’s policies in detail should not fall to anonymous sources, confidential interviews, and selective leaks. The government’s failure to defend policies is not a phenomenon that is unique to post-9/11 targeted killings. In fact, James Baker once noted: In my experience, the United States does a better job at incorporating intelligence into its targeting decisions than it does in using intelligence to explain those decisions after the fact. This in part reflects the inherent difficulty in articulating a basis for targets derived from ongoing intelligence sources and methods. Moreover, it is hard to pause during ongoing operations to work through issues of disclosure. . . . But articulation is an important part of the targeting process that must be incorporated into the decision cycle for that subset of targets raising the hardest issues . . . .559 Publicly defending the process is a natural fit for public-accountability mechanisms. It would provide information to voters and other external actors who can choose to exercise a degree of control over the process. However, a detailed public defense of the process would also bolster bureaucratic and professional accountability by demonstrating to those within government that they are involved in activities that their government is willing to publicly describe and defend (subject to the limits of necessary national security secrecy). However, the executive branch, while wanting to reveal information to defend the process, would have to balance the consideration that by revealing too much information, it could face legal accountability mechanisms that it would be unable to control.560 B. USE PERFORMANCE REPORTING TO ENCOURAGE GOOD BEHAVIOR Another transparency-related reform that could engender greater accountability would be to report performance data. Specifically, the government could report the number of strikes the CIA and the Department of Defense conducted in a given time period. As discussed above, the law of armed conflict requires that any harm resulting from a strike may not be disproportionate when compared to the anticipated military advantage. From this standard, some variables for a performance metric become clear: (1) Was there collateral damage resulting from the military action? (2) If so, was the collateral damage excessive in relation to the military advantage anticipated? The first variable lends itself to tracking and reporting, subject to the difficulties of AAR and BDA. The second variable only arises if collateral damage occurred, and two subsidiary questions flow from this variable. First, was the collateral damage expected? If it was, then the commander must have engaged in some analysis as to whether the anticipated harm was proportional to the military advantage anticipated. Second, if the collateral damage was not expected, why not? Some causes of potentially unexpected collateral harm are intelligence failures, failure to follow procedures, changes in the operational circumstances, and inadequate procedures, among others. Each of these variables can be tracked as part of an accountability and performance metric. For example, the data could include the collateral harm anticipated before a strike and the battle damage assessment after the fact. The data need not be reported on a strike-by-strike basis to be effective; aggregate data would prove quite useful. For example, in Part III, section B, I describe how CENTCOM data indicate that less than 1% of targeted-killing operations resulted in harm to civilians, whereas outside observers estimate that 8% to 47% of CIA strikes in Pakistan inflicted harm to civilians. Imagine these data were official numbers published by the Department of Defense and CIA respectively. It is safe to assume that reports showing that the CIA was eight to forty seven times more likely to inflict harm to civilians than the military would force a serious reexamination of CIA bureaucratic practices, extensive political oversight, professional embarrassment, and perhaps even judicial intervention. Moreover, the publication of such data could have the salutary effect of causing bureaucratic competition between the Department of Defense and CIA over which agency could be better at protecting civilians, a form of bureaucratic accountability mixed with professionalism. Of course, there are costs associated with such reporting. The tracking requirements would be extensive and could impose an operational burden on attacking forces; however, an administrative burden is not a sufficient reason to not reform the process, especially when innocent lives are on the line. Another cost could be the possibility that revealing this type of information, however carefully the information is vetted for public release, could aid the enemy in developing countermeasures against American operations. C. PUBLISH TARGETING CRITERIA Related to defending the process and using performance data, the U.S. government could publish the targeting criteria it follows. The criteria need not be comprehensive, but they could be sufficiently detailed as to give outside observers an idea about who the targets are and what they are alleged to have done to merit killing. As Robert Chesney has noted, “Congress could specify a statutory standard that the executive branch could then bring to bear in light of the latest intelligence, with frequent reporting to Congress as to the results of its determinations.”561 What might the published standards entail? First, Congress could clarify the meaning of “associated forces,” described in Parts I and II. In the alternative, it could do away with the associated forces criteria altogether and instead name each organization against which force is authorized.562 Such an approach would be similar to the one followed by the Office of Foreign Assets Control when it designates financial supporters of terrorism for sanctions.563 The challenge with such a reporting and designation strategy is that it does not fit neatly into the network based targeting strategy and current practices outlined in Parts I through III. If the United States is seeking to disrupt networks, then how can there be reporting that explains the network-based targeting techniques without revealing all of the links and nodes that have been identified by analysts? Furthermore, for individuals targeted at the request of an ally, the diplomatic secrecy challenges identified in Part I remain—there simply may be no way the United States can publicly reveal that it is targeting networks that are attacking allied governments. These problems are less apparent when identifying the broad networks the United States believes are directly attacking American interests; however, publication of actual names of targets will be nearly impossible (at least ex ante) under current targeting practices. As was discussed above, the U.S. government and outside observers may simply be using different benchmarks to measure success. Some observers are looking to short-term gains from a killing, but others look to the long-term consequences of the targeted-killing policy. Should all of these metrics and criteria be revealed? Hardly. However, the United States should articulate what strategic-level goals it hopes to achieve through its targeted-killing program. Those goals certainly include disrupting specified networks. Articulating those goals, and the specific networks the United States is targeting, may place it on better diplomatic footing and would engender mechanisms of domestic political accountability. D. PUBLISH DOLLAR COSTS The public administration literature instructs that a proven accountability technique is publishing the costs associated with government activity. Targeted killings may be a worthwhile case for proving that publishing the financial costs of strikes can impose a mechanism of accountability. Unlike a traditional war—where the American people understand victories like the storming of the beaches at Normandy, the expulsion of Iraqi troops from Kuwait, or even (in a non-hot-war context) the fall of the Berlin wall—this conflict against non-state actors is much harder to assess. As such, the American people may understand the targeted killing of a key al Qaeda leader like Anwar al Aulaqi, and they may be willing to pay any price to eliminate him. But what about less well known targets such as Taliban leaders? Take the example of Abdul Qayam, a Taliban commander in Afghanistan’s Zabul Province who was killed in an airstrike by a Navy strike fighter in October of 2011.564 Do the American people even know who he is, let alone approve of the money spent to kill him? The Navy reportedly spends $20,000 per hour on strikes like the one that killed Qayam, and sorties often last eight hours.565 Though the American people may be generally supportive of targeted killings,566 they are likely unaware of the financial costs associated with the killings. Publishing the aggregate cost and number of strikes would not reveal any classified information but would go a long way towards ensuring political accountability for the targeted-killing program. Such an accountability reform might also appeal to individuals across the ideological spectrum, from progressives who are opposed to strikes on moral grounds to fiscal conservatives who may oppose the strikes on the basis of financial cost. In fact, according to the 9/11 Commission Report, during the 1990’s, one of the most effective critiques of the cruise missile strikes against al Qaeda training camps was cost.567 Specifically, some officials believed that “hitting inexpensive and rudimentary training camps with costly missiles would not do much good and might even help al Qaeda if the strikes failed to kill Bin Ladin.”568

#### The CP has three net benefits:

1. Signature strikes turn

2. Rubber stamping

3. Terrorism

McNeal, Associate Professor of Law, Pepperdine University, ’13 [Gregory, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>, p. 93-94]

F. RECOGNIZE THE IMPRACTICAL NATURE OF EX POST JUDICIAL OVERSIGHT

The final mechanism of accountability is judicial review of wrongful targeting decisions.¶ However, based on the description of network analysis and the actual process of kill-list creation¶ provided in Part II, it is difficult to see how a court could meaningfully engage in an ex ante¶ review of targeting decisions.575 Being non-specialists in targeting criteria, judges would need to¶ 94¶ hear from executive branch experts about why a particular target was chosen, what impact¶ targeting that individual would have on the enemy in the short-run and long-run, and so on.576¶ The experts’ presentations would be nearly identical to the expert presentations currently being¶ reviewed within the executive branch, with the exception that the judge has no familiarity with¶ the issues.¶ Thus, the problems with ex ante review are numerous. First, if the process were to prove¶ itself as too burdensome, the executive branch may decide to shift from kill-list strikes—the only¶ type that could practically be reviewed ex ante—to signature strikes, potentially increasing harm¶ to civilians.577 Second, if a judge were to sign off on adding a name to a list, and the decision¶ were improper, the executive branch could shield itself from blame by noting that the target was¶ approved by a judge. Conversely, if a judge failed to approve a target, and that individual later¶ attacked the United States or its interests, the executive branch could claim that it sought to¶ target the individual, but the judiciary would not allow it—laying blame for the attack at the feet¶ of a judge with life tenure. Though judges cannot be voted out of office, they are nevertheless¶ responsive to public opinion, and few would want to be blamed for an attack. Thus, a third¶ failing presents itself: the possibility that executive branch expertise combined with politically¶ aware judges (who have no interest in being involved in targeting decisions) may make for very deferential ex ante review process—something akin to a rubber stamp.578 Finally, there is a¶ question as to whether such an ex ante review process would even be constitutional, given¶ Article III’s case or controversy requirement.579 As Steve Vladeck has noted “‘adversity’ is one¶ of the cornerstones of an Article III case or controversy, and it would be noticeably lacking in an¶ ex ante drone court set up along the lines many have proposed, with ex parte government¶ applications to a secret court for ‘warrants’ authorizing targeted killing operations.”580¶ If ex ante review is practically foreclosed, what about the prospects for ex post review? It¶ certainly seems more judicially manageable for a court to review a strike, and the details¶ associated with that strike, after it occurs. However, many of the same questions of expertise¶ will arise, particularly those related to the process the government follows for creating kill lists¶ 95¶ and determining whether a strike will successfully impact an enemy organization.581 Assuming that a court could properly conduct such a review, who should be entitled to sue the government after the fact? Should lawsuits be limited to Americans killed or wounded in strikes? If so, why should the line be drawn based on citizenship? What about persons whose property is damaged, as it was in El-Shifa Pharmaceuticals?582 What about foreign governments whose property is damaged? As these questions indicate, how the lines are drawn for ex post review of targeting¶ decisions presents a host of questions that raise serious separation of powers and diplomatic¶ concerns—the exact foreign relations interests that have prompted courts to stay out of these¶ types of decisions in the past. Those foreign relations concerns would not be remedied by even¶ the best statutory framework for governing the review. Furthermore, what is to stop judicial¶ review in other conflicts involving far more air strikes and far greater casualties? For example, a¶ potential conflict on the Korean peninsula is estimated to cause “hundreds of thousands of¶ civilian deaths.”583 Even assuming that only a small percentage of those deaths would be caused¶ by American air strikes, this nonetheless demonstrates the impracticability of ex post judicial¶ review in anything but a small category of U.S. airstrikes. Limiting the right of judicial review,¶ based merely on potential caseload, raises questions as to the propriety of the right in the first¶ place.

### 3

#### Drones solve existential terrorism – most recent and comprehensive empirical data proves.

Jordan, Professor, Department of Political Science and Public Administration at the University of Granada, ‘14

[Javier, “The Effectiveness of the Drone Campaign against Al Qaeda Central: A Case Study”, The Journal of Strategic Studies, Vol. 37, No. 1, 2014, RSR]

To say that Al Qaeda Central has repeatedly tried to strike in the United States and Europe over the past 12 years is stating the obvious. To determine patterns in its terrorist conduct requires a more detailed analysis. To that end, we have collected information on a total of 36 jihadist terrorist incidents in the United States and 100 in Western Europe during the period from 1 January 2001 until 31 December 2012. The resulting data base includes plots that were broken up, as well as failed and successful attacks. Attacks carried out on the same day against different targets have been counted as a single incident. Al Qaeda Central has taken active part in 33 of the 136 incidents referred to above, five in the United States and 28 in Western Europe. Figure 254 shows the distribution of the incidents by year. The first half of the period was the more active, with 20 incidents compared to 13 in the second half (2007–12). This latter period, particularly from July 2008 onwards, has seen a stepping up of drone strikes against Al Qaeda Central in Pakistan. However, the difference between the two halves of the time-frame is most clearly seen in the dependent variable analysed in the present article, namely, the lethality of Al Qaeda Central actions in the West. Between 2001 and 2006 it perpetrated three successful terrorist operations (9/11, the Madrid train bombings and the London bombings), causing a total of 3220 fatalities. Between 2007 and 2012, however, the 13 incidents did not result in a single successful attack or any deaths. In other words, the complexity and lethality of Al Qaeda Central’s terrorist actions on American and European soil have fallen dramatically. A broader consideration of the figures (examining all 136 incidents, not just the 33 involving Al Qaeda Central) reveals that cells linked to ‘parent organisations’ are more dangerous than those without links (independent cells and lone wolves). At first glance, the percentages shown in Table 1 appear to indicate greater efficacy of lone wolves in comparison to cells with links in terms of successfully completed actions (11 per cent and 15 per cent of successful attacks, respectively). However, Table 2 shows clearly that the most deadly attacks are closely associated with groups possessing links to bigger organisations. In the United States and Western Europe only groups with such links have succeeded in perpetrating complex and highly lethal terrorist operations. Despite the difficulties in detecting lone wolves and stopping them in time (as Table 1 shows), their lack of professionalism and lack of expert support severely limits the lethal effectiveness of their actions.55 This circumstance considerably diminishes the profile of the strategic threat posed by independent cells and lone wolves, notwithstanding the fact that some can be successful and attract media attention, as occurred in Boston and London in April and May 2013, respectively. In order to raise the threat profile, they would need to be able to cause a high number of deaths and perpetrate attacks repeatedly to trigger a permanent sense of insecurity. Lastly, in three of the 136 incidents making up the study sample (all three in the United States), one of the motivations was revenge for the drone strikes in Pakistan. In one case, the cell was linked to Al Qaeda Central (Najibulah Zazi), in another the individual (Faisal Shahzad) had received help from Tehrik-i-Taliban Pakistan (TTP) and the third involved a lone wolf (José Pimentel). However, in none of the three cases did the terrorists manage to complete their action successfully. Until now, operational constraints have made it extremely difficult for Al Qaeda Central to avenge in the United States or Western Europe the harassment suffered as a result of the drone attacks.

#### Ex-post review that allows Bivens suits over targeted killings would destroy battlefield effectiveness---undermines the chain of command and secrecy---the link is based on the possibility of suits, so substantive outcomes are irrelevant.

Klinger, currently a partner at Sidley Austin, ‘12

[Richard, previously the NSC's Legal Advisor (2006-07), 7/25/12, “Bivens and/as Immunity: Richard Klingler Responds on Al-Aulaqi–and I Reply,” http://www.lawfareblog.com/2012/07/bivens-andas-immunity-richard-klingler-responds-on-al-aulaqi-and-i-reply/]

Steve’s post arguing that courts should recognize Bivens actions seeking damages from military officials based on wartime operations, including the drone strikes at issue in al-Aulaqi v. Obama, seemed to omit some essential legal and policy points. The post leaves unexplained why any judge might decline to permit a Bivens action to proceed against military officials and policymakers, but a fuller account indicates that barring such Bivens actions is sensible as a matter of national security policy and the better view of the law. ¶ A Bivens action is a damages claim, directed against individual officials personally for an allegedly unconstitutional act, created by the judiciary rather than by Congress. The particular legal issue is whether a suit addressing military operations implicates “special factors” that “counsel hesitation” in recognizing such claims (injunctions and relief provided by statute or the Executive Branch are unaffected by this analysis). In arguing that the answer is ‘no,’ the post (i) bases its Bivens analysis on how the Supreme Court “has routinely relied on the existence of alternative remedial mechanisms” in limiting Bivens relief; (ii) argues that the Bivens Court “originally intended” that there be some remedy for all Constitutional wrongs in the absence of an express statutory bar to relief; (iii) invokes the policy interest in dissuading military officials from acting unlawfully, and (iv) argues that courts should ensure that a remedy exists if an officer has no defenses to liability (such as immunity). ¶ The post’s first point, which underpins the legal analysis, is simply not correct. United States v. Stanley, the Supreme Court’s most recent and important Bivens case in the military context, directly rejected that argument: “it is irrelevant to a ‘special factors’ analysis whether the laws currently on the books afford Stanley, or any other particular serviceman, an ‘adequate’ federal remedy for his injuries. The ‘special factor’ that ‘counsels hesitation’ is … the fact that congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.” Wilkie v. Robbins, too, expressly indicated that consideration of ‘special factors’ is distinct from consideration of alternative remedies and may bar a Bivens claim even where no remedy exists (and that in a Souter opinion for eight Justices). ¶ Similarly, the Bivens Court’s original intention is a poor basis for implying a damages claim in the military context. Justice Brennan in 1971 no doubt would have resisted the separation of powers principles reflected in cases that have since limited Bivens relief, especially for military matters. Instead, the relevant inquiry needs to address either first principles (did Congress intend a remedy and personal liability in this particular context? should judges imply one?) or the line of Supreme Court cases beginning with, but also authoritatively limiting, Bivens. There’s considerable support for denying a Bivens remedy under either of those analyses: for the former, support in the form of the presumptions deeply rooted in precedent and constitutional law that disfavor implied causes of action, as well as the legal and policy reasons that have traditionally shielded military officials from suit or personal liability; for the latter, Stanley, Chappell v. Wallace, Wilkie, the last thirty years of Supreme Court decisions that have all limited and declined to find a Bivens remedy, and various separation of powers cases pointing to a limited judicial role in military affairs. ¶ The post’s policy point regarding incentives that should be created for military officers to do no wrong is hardly as self-evident as the post claims. Congress has never accepted it in the decades since Stanley and has instead generally shielded military officials from personal financial liability for their service. Supreme Court and other cases from Johnson v. Eisentrager to Stanley to Ali v. Rumsfeld have elaborated the strong policy interest in not having military officials weigh the costs and prospects of litigation and thus fail to act decisively in the national interest. Many other Supreme Court cases have emphasized the potential adverse security consequences and limited judicial capabilities when military matters are litigated. The post criticizes Judge Wilkinson’s view of the adverse incentives that Bivens liability would create. That view is, however, supported by decades of Supreme Court and other precedent (and strong national security considerations) and was joined in that particular case, as in certain others, by a liberal jurist — while the post’s view is, well, popular in faculty lounges and among advocacy groups that would relish the opportunities to seek damages against military officers and policymakers. ¶ As for the post’s proposed test, it fails to account for either the Bivens case law addressed above or the separation of powers principles and litigation interests identified in the cases. It would simply require courts to determine facts and defenses, often in conditions of great legal uncertainty and following discovery, which begs the question whether Congress intended such litigation to proceed at all and fails to account for the costs of litigating military issues — to the chain of command, confidentiality, and operational effectiveness. As noted in Stanley, those harms arise whether the officer is eventually found liable or prevails. Those costs and the appropriate limits on the judicial role are recognized, too, in the separation of powers principles that run throughout national security cases – principles that jurists, even jurists sympathetic to the post’s perspective, should and will weigh as they resolve cases brought against military officials and policymakers.

#### Nuclear terrorist attack results in extinction.

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### Solvency F/L

#### Establishing new restrictions that only apply to targeted killings causes a shift to signature strikes

Jeh Johnson 13, former Pentagon General Counsel, 3/18/13, “Keynote address at the Center on National Security at Fordham Law School: A “Drone Court”: Some Pros and Cons,” <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>

Also, beware of creating the wrong set of incentives for those who must conduct these operations. A lawful military objective may include an individual, whether his name or his citizenship are known; it may also include a location (like a terrorist training camp) or an object (like a truck filled with explosives). By creating a separate legal regime with additional requirements for an objective if his name or citizenship becomes known, what disincentives do we create for an operator to know for certain the identity of those likely to be present at a terrorist training camp or behind the wheel of the truck bomb? Or, must the government refrain from an attack on what it knows to be an active and dangerous training camp if an al Qaeda terrorist who might be a U.S. citizen wanders in?

#### Signature strikes are far worse for all of their impacts---this turns the case on a grand scale

David Hastings Dunn 13, Reader in International Politics and Head of Department in the Department of Political Science and International Studies at the University of Birmingham, UK, and Stefan Wolff, Professor of International Security at the University of Birmingham in the UK, March 2013, “Drone Use in Counter-Insurgency and Counter-Terrorism: Policy or Policy Component?,” in Hitting the Target?: How New Capabilities are Shaping International Intervention, ed. Aaronson & Johnson, http://www.rusi.org/downloads/assets/Hitting\_the\_Target.pdf

Yet an important distinction needs to be drawn here between acting on operational intelligence that corroborates existing intelligence and confirms the presence of a specific pre-determined target and its elimination – so-called ‘targeted strikes’ (or less euphemistically, ‘targeted killings’) – and acting on an algorithmic analysis of operational intelligence alone, determining on the spot whether a development on the ground suggests terrorist activity or association and thus fulfils certain (albeit, to date, publicly not disclosed) criteria for triggering an armed response by the remote pilot of a drone – so-called ‘signature strikes’.6¶ Targeted strikes rely on corroborating pre-existing intelligence: they serve the particular purpose of eliminating specific individuals that are deemed crucial to enemy capabilities and are meant to diminish opponents’ operational, tactical and strategic capabilities, primarily by killing mid- and top-level leadership cadres. To the extent that evidence is available, it suggests that targeted strikes are highly effective in achieving these objectives, while simultaneously generating relatively little blowback, precisely because they target individual (terrorist) leaders and cause few, if any, civilian casualties. This explains, to a significant degree, why the blowback effect in Yemen – where the overwhelming majority of drone strikes have been targeted strikes – has been less pronounced than in Pakistan and Afghanistan.7¶ Signature strikes, in contrast, can still be effective in diminishing operational, tactical and strategic enemy capabilities, but they do so to a certain degree by chance and also have a much higher probability of causing civilian casualties. Using drones for signature strikes decreases the dependence on pre-existing intelligence about particular leaders and their movements and more fully utilises their potential to carry out effective surveillance and respond to the conclusions drawn from it immediately. Signature strikes have been the predominant approach to drone usage in Pakistan and Afghanistan.8 Such strikes have had the effect of decimating the rank and file of the Taliban and their associates – but they have also caused large numbers of civilian casualties and, at a minimum, weakened the respective host governments’ legitimacy and forced them to condemn publicly, and in no uncertain terms, the infringement of their states’ sovereignty by the US. In turn, this has strained already difficult relations between countries which have more common than divergent interests when it comes to regional stability and the fight against international terrorist networks. That signature strikes have a high probability of going wrong and that such failures prove extremely counterproductive is also illustrated by a widely reported case from Yemen, in which twelve civilians were killed in the proximity of a car identified as belonging to an Al-Qa’ida member.9¶ The kind of persistent and intimidating presence of a drone policy geared towards signature strikes, and the obvious risks and consequences involved in repeatedly making wrong decisions, are both counterproductive in themselves and corrosive of efforts that seek to undercut the local support enjoyed by insurgent and terrorist networks, as well as the mutual assistance that they can offer each other. Put differently, signature strikes, in contrast to targeted killings, do anything but help to disentangle the links between insurgents and terrorists.¶ Counter-insurgency as a strategy works best by providing security on the ground (deploying soldiers amongst the community that they are intended to protect) and establishing and sustaining a sufficiently effective local footprint of the state and its institutions providing public goods and services beyond just security (water, food, sanitation, healthcare, education and so forth). This strategy is often encapsulated in the formula ‘clear, hold, build’,10 and it needs to go hand-in-hand with pursuing a viable political settlement that addresses what are the, in many cases, legitimate concerns of those fighting, and supporting, an insurgency. By living among the communities they seek to secure, soldiers can win their trust, stem support for the insurgents, and understand who their enemies are, what their demands and objectives are, and how best to single out those who represent an irreconcilable threat to the community. In other words, in a context in which the objective is to protect innocent civilians, win over reconcilable insurgents and their supporters, and eliminate those who are irreconcilable, drones can deliver specific contributions to an overall counter-insurgency policy. Yet this can only happen if drones target individuals for a reason, rather than being used, and perceived, as a blanket approach against an entire community.

#### No public awareness -- Post-strike review will inevitably be secret

Vladeck THEIR AUTHOR 13 [Stephen Professor of Law and Associate Dean for Scholarship, American University Washington College of Law, Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…, Lawfare Blog, Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…, February 10]

Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists.¶ Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force.¶ Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table.¶ That’s a very long way of reiterating what I wrote in my initial response to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

#### Public will never “hear” the stories -- If they are right that drones distance us from warfare, then it is impossible to get the public interested.

Judah A. Druck – 2012, DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLOGY-DRIVEN WARFARE, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013, Cornell Law Review [Vol. 98:209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf

But perhaps we can examine the apathetic treatment of President Obama’s actions in Libya in a different light, one that focuses on the changing nature and conception of warfare itself. Contrary to larger scale conflicts like the Vietnam War, where public (and political) outrage set the stage for Congress’s assertion of war-making power through the WPR,17 the recent U.S. intervention did not involve a draft, nor a change in domestic industry (requiring, for example, civil- ians to ration food), and, perhaps most importantly, did not result in any American casualties.18 Consequently, most analyses of the Libyan campaign focused on its monetary costs and other economic harms to American taxpayers.19 This type of input seems too nebulous to cause any major controversy, especially when contrasted with the concurrent costs associated with the wars in Iraq and Afghanistan.20 In a sense, less is at stake when drones, not human lives, are on the front lines, limiting the potential motivation of a legislator, judge, or antiwar activist to check presidential action.21 As a result, the level of nonexecutive involvement in foreign military affairs has decreased. The implications are unsettling: by ameliorating many of the concerns often associated with large-scale wars, technology-driven warfare has effectively removed the public’s social and political limitations that previously discouraged a President from using potentially illegal military force. As President Obama’s conduct illustrates, removing these barriers has opened the door to an unfettered use of unilateral executive action in the face of domestic law.22 Consequently, as war becomes more and more attenuated from the American psyche, a President’s power to use unilateral force without repercussions will likely continue to grow. Should the public care that the WPR no longer seems to present a barrier to presidential action? Or, put another way, if the WPR stands for the proposition that the President should not use force unilaterally,23 does that purpose remain relevant given the increased use of technology in modern warfare? This Note answers that question in the affirmative by illustrating the issues created by a toothless WPR in the face of modern advances in military technology and tactics. While the limited nature of technology-driven warfare might ostensibly remove the traditional costs associated with war, many of the concerns held by those who drafted the WPR nevertheless remain.

### Targeted Killing

#### Obama will circumvent any court action that suppresses the state secrets doctrine

Epps 13 (Feb 16, “Why a Secret Court Won't Solve the Drone-Strike Problem,” The Atlantic, Garrett, <http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/>)

Finally, some scholars have suggested that the Congress create a new "cause of action"--a right to sue in an ordinary federal court on a claim that the government improperly unleashed drones on a deceased relative. The survivors of the late Anwar al-Awlaki tried such a suit, and the Obama administration has so far insisted that it concerns "political questions," not fitted for judicial proceedings. Congress could pass a statute specifically granting a right to sue in a federal district court.¶ Without careful design, that would actually not make things any better. The survivors will file their complaint; the administration will claim state secrets and refuse to provide information. A court might reject the secrets claim and order the government to produce discovery. The administration would probably refuse to comply. The court's recourse would be to order judgment for the plaintiffs. The dead person's family would get some money, but we'd be no closer to accountability for the drone-strike decision.

#### JUDGE DOUBLE BIND -- Multiple court cases are forcing transparency now – either the SQ solves the aff, OR the judges will never rule for the public; so the plan can’t produce public transparency

Wexler 13 Lesley Wexler Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests” May 8 http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2262412 , p. 29-30

When the executive branch began deploying drones to engage in targeted killings, the public knew virtually nothing about these activities or how or whether they fit within the IHL framework. In the early stages of the war on terror, both the public and Congress accepted the executive branch’s behavior with few questions. But as the number of strikes and fatalities began to mount, calls for transparency and accountability grew louder. The American people wanted assurances that the executive branch was acting consistent with the Constitution and to a lesser extent consistent with IHL.¶ Journalists and civil rights groups used litigation as part of a larger strategy to force transparency and accountability. Some lawsuits seek a ruling that targeted killings outside of Afghanistan are not part of an armed conflict, while others attempt to force the government to relinquish documents under FOIA. Others threaten to authorize courts to deny listings or provide damages. The evocation of courts in these various ways plays an important role in encouraging greater accountability and transparency. With each FOIA request or damage suit filed, concerned parties can keep public and congressional attention focused on targeted killings. With each denial, they can push back against the lack of transparency and accountability, forcing the executive branch to recalibrate its response. Given the historically limited role of U.S. courts in the interpretation and application of IHL norms, this ongoing role of the courts is a modest but important one. As shown here, the executive branch has in fact become more responsive. This approach of speeches, leaks, and information about oversight and reforms does mark a step forward. But ultimately, while advocates are using courts to highlight questions about the proper application of IHL, judges themselves seem reluctant to directly apply IHL norms in this area and the future prospect for such rulings seem quite dim.166

### Impact Framing

#### Their legal advocacy solvency REQUIRES that we evaluate all consequences and counterplans – the CP is in

Margulies 9 AFF author, Peter, Professor of Law, Roger Williams University School of Law “The Detainees' Dilemma: The Virtues and Vices of Advocacy Strategies in the War on Terror” Buffalo Law Review 57 Buffalo L. Rev. 347 April, lexis

1. Lawyers and the Endogenous Consequences of Mobilization. The lawyer embarking on mobilization must consider all of the potential consequences, both intended and unintended. To facilitate such deliberation, the advocate should analyze ex ante how a lawyer's move aligns incentives for adversaries. When externalities like boomerang effects, exit, and backlash are foreseeable, the crossover advocate must tailor her decisions accordingly. For example, the advocate pressing for the closure of Guantanamo should have a Plan B if the government seeks to place more suspected terrorists in the custody of foreign governments that are less accessible to United States justice and public opinion. The crossover advocate must also appreciate that her efforts at mobilization may crystallize opposition, as occurred with the HIV exclusion and the government's interdiction policy in reaction to the Haitian refugee concerning Guantanamo litigation in the early 1990s. While the advocate does not bear sole responsibility for such adverse developments, she cannot afford to view the government's responses as exogenous to her strategic decisions. n267

## 2NC

### CP

#### Shifting TK authority from the CIA to the DoD solves blowback, leads to accountability and preserves flex.

Zenko, Douglas Dillon Fellow at CFR, ‘13

[Micah, “Transferring CIA Drone Strikes to the Pentagon”, Policy Innovation Memorandum No. 31, April 2013, RSR]

In 2004, the 9/11 Commission recommended that the "lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department" to avoid the "creation of redundant, overlapping capabilities and authorities in such sensitive work." The recommendation was never seriously considered because the CIA wanted to retain its covert action authorities and, more important, it was generally believed such operations would remain a rarity. (At the time, there had been only one nonbattlefield targeted killing.) Nearly a decade later, there is increasing bipartisan consensus that consolidating lead executive authority for drone strikes would pave the way for broader strategic reforms, including declassifying the relevant legal memoranda, explicitly stating which international legal principles apply, and providing information to the public on existing procedures that prevent harm to civilians. During his February 2013 nomination hearing, CIA director John O. Brennan welcomed the transfer of targeted killings to the DOD: "The CIA should not be doing traditional military activities and operations." The main objection to consolidating lead executive authority in DOD is that it would eliminate the possibility of deniability for U.S. covert operations. However, any diplomatic or public relations advantages from deniability that once existed are minimal or even nonexistent given the widely reported targeted killings in Pakistan and Yemen. For instance, because CIA drone strikes cannot be acknowledged, the United States has effectively ceded its strategic communications efforts to the Pakistani army and intelligence service, nongovernmental organizations, and the Taliban. Moreover, Pakistani and Yemeni militaries have often taken advantage of this communications vacuum by shifting the blame of civilian casualties caused by their own airstrikes (or others, like those reportedly conducted by Saudi Arabia in Yemen) to the U.S. government. This perpetuates and exacerbates animosity in civilian populations toward the United States. If the United States acknowledged its drone strikes and collateral damage—only possible under DOD Title 10 authorities—then it would not be held responsible for airstrikes conducted by other countries. The CIA should, however, retain the ability it has had since 9/11 to conduct lethal covert actions in extremely rare circumstances, such as against immediate threats to the U.S. homeland or diplomatic outposts. Each would require a separate presidential finding, and should be fully and currently informed to the intelligence committees. Of the roughly 420 nonbattlefield targeted killings that the United States has conducted, very few would have met this criteria. The president should direct that U.S. drone strikes be conducted as DOD Title 10 operations. That decision would enhance U.S. national security in the following ways: Improve the transparency and legitimacy of targeted killings, including what methods are used to prevent civilian harm. Focus the finite resources of the CIA on its original core missions of intelligence collection, analysis, and early warning. (There is no reason for the CIA to maintain a redundant fleet of armed drones, or to conduct military operations that are inherently better suited to JSOC, the premier specialized military organization. As "traditional military activities" under U.S. law, these belong under Title 10 operations.) Place all drone strikes under a single international legal framework, which would be clearly delineated for military operations and can therefore be articulated publicly. Unify congressional oversight of specific operations under the armed services committee, which would end the current situation whereby there is confusion over who has oversight responsibility. Allow U.S. government officials to counter myths and misinformation about targeted killings at home and abroad by acknowledging responsibility for its own strikes. Increase pressure on other states to be more transparent in their own conduct of military and paramilitary operations in nonbattlefield settings by establishing the precedent that the Obama administration claims can have a normative influence on how others use drones.

#### Their own authors concede –

#### a.) The Benjamin evidence says Transparency is the key obstacle in the SQ

Madea Benjamin, founder of CODEPINK in 2013 Medea Benjamin is cofounder of CODEPINK and the human rights organization Global Exchange. She is the author of Drone Warfare: Killing by Remote Control. “Drone Victims Come Out of the Shadows” Nov 5 http://fpif.org/drone-victims-come-shadows/?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+FPIF+%28Foreign+Policy+In+Focus+%28All+News%29%29

Emmerson said states have the obligation to capture terrorist suspects, when feasible, and should only use force as a last resort. He blasted the U.S. lack of transparency, calling it the single greatest obstacle to an evaluation of the civilian impact of drone strikes. He said states must be transparent about the acquisition and use of drones, the legal basis and criteria for targeting, and their impact. “National security does not justify keeping secret the statistical and methodological data about the use of drones,” he claimed.

#### b.) The CP publishes the exact information that the aff is trying to agitate about

Naiman AFF SOLVENCY AUTHOR 13 Robert Naiman is Policy Director at Just Foreign Policy. Mr. Naiman edits the Just Foreign Policy daily news summary and writes on U.S. foreign policy at Huffington Post. Naiman has worked as a policy analyst and researcher at the Center for Economic and Policy Research and Public Citizen's Global Trade Watch. He has masters degrees in economics and mathematics from the University of Illinois and has studied and worked in the Middle East. “WikiLeaks and the Drone Strike Transparency Bill” http://www.huffingtonpost.com/robert-naiman/wikileaks-and-the-drone-s\_b\_4282595.html

The Senate Intelligence Committee recently took an important step by passing an intelligence authorization which would require for the first time -- if it became law -- that the administration publicly report on civilian casualties from U.S. drone strikes. Sarah Knuckey, Director of the Project on Extrajudicial Executions at New York University School of Law and a Special Advisor to the UN Special Rapporteur on extrajudicial executions, calls this provision "an important step toward improving transparency," and notes that "Various U.N. officials, foreign governments, a broad range of civil society, and many others, including former U.S. Department of State Legal Advisor Harold Koh ... have called for the publication of such basic information." This provision could be offered as an amendment in the Senate to the National Defense Authorization Act. It could be offered in the House as an amendment on the intelligence authorization, or as a freestanding bill. But it's not likely to become law unless there's some public agitation for it (you can participate in the public agitation here.) Forcing the administration to publish information is crucial, because in the court of poorly informed public opinion, the administration has gotten away with two key claims that the record of independent reporting strongly indicates are not true: 1) U.S. drone strikes are "narrowly targeted" on "top-level terrorist leaders," and 2) civilian casualties have been "extremely rare." Poll data shows that majority public support of the drone strike policy is significantly based on belief in these two false claims; if the public knew that either of these claims were not true, public support for the policy would fall below 50%. By keeping key information secret, the administration has been able to avoid having its two key claims in defense of the policy refuted in media that reach the broad public. You might think that if a key reason that it's been difficult to do anything politically in the U.S. about the drone strike policy has been the apparent public support for the policy among people who do not know that the strikes have not been "narrowly targeted" on "top-level terrorist leaders" and who do not know that civilian casualties have not been extremely rare, then if there were a proposed transparency reform that could force the administration to disclose information that would likely contribute greatly to knowledge among the general public that these two key claims are not true, it should be a no-brainer that critics of the policy should vigorously support this reform. Sadly, it is not, apparently, a no-brainer, because there are people who claim that transparency reforms are meaningless. And while it is tempting to try to ignore such people, they have a disproportionate impact to their numbers because most people don't have the life experience that would enable them to easily judge between the competing claims "transparency reforms are important" and "transparency reforms are meaningless." Our starting point is that many Americans, compared to Europeans, are politically disengaged, alienated from political engagement most of the time. So when you put out a call for people to engage Congress, you have a group of people who get it right away and take action, and a another group of people who think, "Engage Congress? Not that again," and treat it as a huge personal sacrifice to engage Congress, like you asked them to volunteer for a root canal. These people are looking for any excuse to not take action. So if someone pops up and says, "transparency reforms are meaningless," these people have an excuse not to take action. "Oh, this proposed reform is controversial, not everyone agrees, so I don't have to do anything."

#### c.) Executive transparency solves their “visible platform” argument – from their author

Wexler 13 Lesley Wexler Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests” May 8 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262412>, p. 22

Of course, reforms need not occur through the judicial branch. Scholars and advocates have made a variety of other suggested reforms to occur within the executive branch. On the ac-countability front, Neal Katyal has proposed the executive branch host its own “national security court.”116 On the transparency front, Gregory McNeal has identified several reforms including: a more substantial defense of the existing process it uses to identify targets and evaluate strikes; performance reporting to provide a sense of whether it believes collateral damage has occurred; and publication of targeting criteria.117 Notably, even administration supporters suggest that more re-forms are necessary to legitimize targeted killings conducted via drone strikes.118

#### Only the CP solves the turn---moving too fast to restrict targeted killing’s ineffective---starting with the CP’s legal transparency’s more effective

Afsheen John Radsan 12, Professor, William Mitchell College of Law, Assistant General Counsel at the Central Intelligence Agency from 2002 to 2004; and Richard Murphy, the AT&T Professor of Law, Texas Tech University School of Law, 2012, “The Evolution of Law and Policy for CIA Targeted Killing,” Journal of National Security Law & Policy, Vol. 5, p. 439-463

A thorough review of the arguments against the CIA drone campaign, however, shows that most critics invoke laws that do not bind American officials or laws that are vague. In a zone of ambiguity, one expects those responsible for protecting the United States to interpret their authority broadly. The President and his advisers – notably Harold Koh, the Dean of Yale Law School, currently the State Department Legal Adviser and a human rights specialist of the first order – have argued and concluded that CIA drone strikes are legal.3 The rules of armed conflict and the laws of interstate force permit the United States reasonably to assert the right to use the CIA to fire missiles from unmanned drones to kill “fighting” members of al Qaeda and the Taliban located in countries that are unable (or perhaps unwilling) to control the threat these armed groups pose. ¶ Although critics of the CIA drone program do not demonstrate that its strikes are clearly illegal, some raise important points on how the law, drifting into policy, should constrain drone strikes. As noted, the CIA drone campaign and any similar campaigns pose acute dangers of mistakes and abuses. The law, in response to this type of problem, seeks to ensure accuracy, fairness, and accountability by insisting on regular, responsible procedures. Yet the laws of war, generally speaking, merely require reasonable precautions before striking.4 A simple rule-of-reason seems inadequate for targeted killing that, by its terms, demands “intelligence-driven use of force.”5¶ To facilitate the evolution of a “due process” of targeted killing, in two earlier pieces, we have attempted to tease controls from the U.S. Constitution and from international humanitarian law’s insistence on reasonable precautions.6 Whether for us or for other commentators, creating fine-grained constraints will not be straightforward. If the constraints are to evolve at all, they are likely to come from a long dialogue among many interested parties. The United States could add to this conversation by publicly adopting standards for its use of drones that ensure accuracy and accountability. The CIA, accordingly, could acknowledge a general role in the drone program without mentioning the names of any participating countries. By giving up a thin veil of secrecy, the CIA would benefit from more informed public scrutiny and might receive more support from some American citizens and allies. But that increased transparency could carry costs, including offending those concerned about the level of collateral damage. Residents of foreign countries closest to the locations of CIA strikes are likely to be the most sensitive. Take Pakistan as one possible example. ¶ We do not expect opponents of CIA drones to give up their rhetorical weapon claiming illegality. Their rhetoric, however, tends to obscure how the law should evolve to result in good policy. The relevant substantive law governing resort to deadly force by states is and necessarily will remain vague. In contrast, the specific procedures for CIA targeted killing cry out for scrutiny and improvement. At the level of specificity that matters to actual drone operators, good law blurs into good policy. At this level, all of the President’s national security team, lawyers and non-lawyers alike, are welcome to advise him on drones.

### Targeted Killing

#### Their Wexler evidence concludes the SQ solves – in fact, it’s the threat of a new congressional action on damage suits that has provoked executive action

Wexler 13 Lesley Wexler Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests” May 8 http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2262412 , p. 1

Abstract: This chapter reviews the role U.S. courts play in regulating the use of drones for targeted killings. Wexler suggests that the American judiciary serve an important function in the debate over the executive branch’s decisions regarding International Humanitarian Law, even if individual judges decline to speak on the merits of cases questioning the legality of drone strikes. The author describes how advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. The author also notes the way in which litigants may use courts to publicize and pursue Freedom of Information requests and thus enhance transparency. Additionally, the author discusses the possibility of Congressional legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Wexler suggests even the threat of such a judicial role may influence executive branch behavior. While many are skeptical of the American judiciary’s importance in implementing International Humanitarian Law, this chapter concludes that invocation of the courts helped push the executive branch towards greater transparency and compliance. The author details the executive branch’s speeches on targeted killings, leaked legal reasoning, and efforts to institutionalize its targeted kill-ing practices as a response to pressure generated by the courts and other actors. Wexler argues that even though courts may not ultimately speak to the legal issues, the executive branch’s recognition that it operates in the shadow of possible drone courts and damages suit may enhance international humanitarian law compliance and create more significant internal oversight and review.

### Solvency

#### The past 5 years prove that circumvention is guaranteed.

Cohen, Fellow at the Century Foundation, 12

(Michael, 3-28-12, “Power Grab,” http://www.foreignpolicy.com/articles/2012/03/28/power\_grab?page=full)

This month marks the one-year anniversary of the onset of U.S. military engagement in **the Libyan civil war**. While the verdict is still out on the long-term effects of the conflict for U.S. interests in the region, it's closer to home where one can point to the war**'s** greater **lasting impact** -- namely **in further increasing the power of the executive branch to wage war without congressional authorization. But don't expect to hear much about that issue** on the campaign trail this election year. Rather **the erosion of congressional oversight of the executive branch's war-making responsibilities has been something of a** bipartisan endeavor **-- and one that is** unlikely to end any time soon**.¶** It might seem like a bit of ancient history now, but **one of the more creative arguments to come out of the U.S. military intervention in Libya was t**he **Obama** administration**'s** **assertion** **that the war did not actually represent "hostilities."** Indeed, according to the president's argument to Congress, U.S. operations in Libya "do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops" -- thus making them something less than war. On the surface this appears patently absurd. The United States was flying planes over Libyan air space and dropping bombs. Missiles were being fired from off-shore. An American military officer (Adm. James Stavridis) commanded the NATO effort. There were reports of forward air controllers on the ground spotting targets for U.S. bombers. In all, NATO planes flew more than 26,000 sorties in Libya, nearly 10,000 of which were strike missions. By what possible definition is this not considered "hostilities"?¶ As it turns out **the ambiguity over whether the war represented "hostilities" is one codified in U.S. law** -- namely **the** War Powers Resolution (**WPR**). Under the provisions of the WPR the President was required to notify Congress within 48 hours of the beginning of U.S. military involvement. He then had 60 days to receive authorization from Congress and if he failed to do he would have 30 days to end the fighting. (Of course, if U.S. military actions do not rise to the level of "hostilities," then the president does not have to go through this rigmarole and receive congressional approval.)¶ Now on the surface, **such an elastic view of what the word hostilities means is** hardly unusual**. Indeed, it is rather** par for the course **in discussions of the W**ar **P**owers **R**esolution. In 1975, the Ford administration claimed that "hostilities" only refers to a scenario in which U.S. forces are "actively engaged in exchanges of fire with opposing units." Similar efforts at defining down hostilities were attempted by the Carter, Reagan, and Clinton administrations when they sought to use military force. Still, these generally were in reference to peacekeeping missions like in Lebanon and Bosnia -- not offensive operations like those waged in Libya.¶ In a political vacuum, **Obama's stance on "hostilities" in Libya might represent the traditional push and pull of executive-legislative branch disagreements about presidential war-fighting prerogatives**.¶ But of course, on this issue we are far from being in a political vacuum. **Obama's broadening of executive power comes with the backdrop of** the George W. **Bush** administration**'s** **efforts** to expand the president's ability to wage war. Indeed, **the position taken by** the **Obama** administration **bears uncomfortable similarities to the one taken by** John **Yoo when he served at the Justice Department and argued** -- in the wake of 9/11 -- **that the Constitution granted the president practically unquestioned executive power to wage war**. Yet, **even Bush sought congressional approval for military actions in Afghanistan and Iraq; Obama didn't bother to do the same for Libya.** In addition, **Obama** also **overruled the opinion of his own** Office of Legal Counsel (**OLC) on the question of whether the president must abide by the War Powers Resolution in regard to the Libyan intervention.** The OLC said he did; the White House assembled legal opinions that said he didn't -- and the latter view won out. As Bruce Ackerman, a law professor at Yale University, noted at the time, "Mr. **Obama's** **decision** **to** **disregard** that office's opinion [**the OLC**] **and embrace the White House counsel's view is** undermining a key legal check **on arbitrary presidential power."¶** **So at a time when** the door has been opened rather wide on unaccountable war-waging **by the executive branch** -- **with minimal legislative checks and balances** -- the Obama administration has opened it even further. What is perhaps most surprising is that **it is being promulgated by a president who pledged as a candidate to put an end to such practices.¶** As Ackerman said to me, Obama came into office with a golden opportunity to reestablish some modicum of restraint over the actions of the executive branch in the pursuit of national security. Ironically, in a Boston Globe questionnaire in December 2007, Obama specifically rejected the argument that he used, in part, to justify going around Congress on Libya. "The President," wrote candidate Obama, "does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation ... History has shown us time and again, however, that military action is most successful when it is authorized and supported by the Legislative branch."¶ While **Obama** has hardly gone as far down the road on expanding executive power as Bush did, it is also true that he "**consolidated many of the principles of executive power that were first described in the Bush administration**," says Ackerman. In effect, "Obama has done nothing to stop the return of another John Yoo." Indeed, with his actions on Libya, Obama has done more than consolidate Bush **administration** positions -- he has expanded them**.¶** These are negative developments, but it gets worse. In the president's initial letter to Congress, the airstrikes in Libya, "will be limited in their nature, duration, and scope. Their purpose is to support an international coalition as it takes all necessary measures to enforce the terms of U.N. Security Council Resolution 1973." The U.N. resolution specifically did not call for regime change and yet in July 2011, Secretary of Defense Leon Panetta made clear that the U.S. "objective" in Libya "is to do what we can to bring down the regime of Qaddafi." Moreover, as Micah Zenko, a fellow at the Council on Foreign Relations, said to me, NATO forces looked the other way at flights by the French government, among others, that re-supplied the Libyan rebels (in violation of the arms embargo mandated under Section 9 of Resolution 1970); sought to kill Qaddafi via airstrikes (eventually indirectly succeeding); helped to plan the operations that allowed the insurgents to capture Tripoli, and provided sensitive and secret satellite imagery to the rebels. In short, the United States went far beyond the mandate established by the Security Council and in effect lied when claiming that the operations in Libya were simply about protecting civilians. Putting aside the international law implications, the administration adopted a position of regime change of a foreign leader without any approval from Congress.¶ What is most surprising about the Obama administration's position is that it likely would not have been a heavy lift to get congressional backing for the operations in Libya in the early stages of the air campaign. But **by disregarding Congress's role on Libya -**- and shifting the intent of the U.S. mission without any congressional input into the decision -- **the president has set a new and potentially troubling precedent**. In contrast, by seeking congressional authorization Obama would have, ironically, restored some of the balance between the legislative and executive branch on issues of use of American military force.¶ Running roughshod over Congress has becom**ing something of** a norm **with**in the **Obama** administration. As one foreign-policy analyst close to the White House said to me "**they** generally **don't do a good job of keeping people in the Hill in the loop on what they are doing.** They see congressional oversight as a nuisance -- even within their own party." **Another analyst** I spoke to **had a one-word response to the question of the administration's attitude toward Congress's role in foreign policy: "Dismissive." Whether the lack of** proper **consultation over** the closing of **the detainee facility at Guantanamo** Bay, the **refusal to share** with intelligence committees **the rationale for** targeted killings, **or even** **brief** Hill **staffers on changes in missile defense deployment, this sort of** ignoring of congressional prerogatives has often been the rule, not the exception.*¶* What has been Congress's response to this disregarding of its role in foreign policy decision-making? **The usual hemming and hawing, but little in the way of concrete action.** During the Bush years, Republicans were more than happy to let the president expand his executive powers when it came to Iraq, Afghanistan, and the global war on terrorism. When Democrats took back the House and Senate from Republicans in 2006, they placed greater scrutiny on the Bush administration's conduct of the war in Iraq -- but still continued to fund the **conflict. Even in Washington's highly partisan current environment, little has changed; it's mostly sound and fury signifying** nothing**.**¶ **Republicans eschewed a constitutional confrontation with the White House over Libya**, though the House GOP did make a rather partisan effort to defund the Libya operations (a measure that failed) and still today House and Senate members raise their frustrations in committee hearings over their heavy-handed treatment by the White House.¶ But the actions of some **Republicans point in a different direction**. Last year, **House Armed Services Committee Chairman** Buck **McKeon actually tried to expand the** original **A**uthorization for **U**se of **M**ilitary **F**orce that granted U.S. kinetic actions just three days after 9/11 -- **which would have actually increased executive war-making power. While some** on the Hill have long **suspected** **the constitutionality of the W**ar **P**owers **R**esolution, it was one of the few checks that Congress maintained over the president (aside from ability to defund operations, which in itself is a difficult tool to wield effectively). Now **they have been complicit in its further watering down**.¶ Aside from Ron Paul, **there's been little mention of the president's overreach** in Libya by the GOP's presidential aspirants. And **why should there be? If any of them become president they too would want to enjoy the expanded executive power that Obama has helped provide for them**. Quite simply, **in a closely divided country in which each party has a fair shot to win the White House every four years,** there is little political incentive **for either Democrats or Republicans to say enough is enough.¶ And with a former constitutional law professor punting on the issu**e (along with the much abused and maligned Congress), **we're now even further from chipping away at the vast power the executive branch has been husbanded on national security issues**. In the end, that may be the greatest legacy of the U.S. intervention in Libya.

#### Qualified legal minds agree – damages will be resolved in secret, no public mechanism

Wexler 13 Lesley Wexler Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests” May 8 http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2262412 , p. 22

3.3.2 Damage suits

Law professor Stephen Vladeck has instead suggested legislation to establish a judicial damages regime for unlawful targeted killings.114 Such legislation would create an express cause of an action for nominal damages arising out of unlawful targeted killings and reform the barriers identified in the al-Aulaqi suits such as the state secrets privilege and sovereign and official immunity doctrines. Unlike a drone court’s focus on prospective listing, damage suits use a retrospective view which Vladeck believes will prevent them from increasing in targeted killings.115¶ Vladeck suggests judges are better suited to such a role given their experience in activities like reviewing combatant status for detention and determining after the fact legitimacy in police officer excessive force suits. Although these suits would likely be resolved “under extraordinary secrecy” and thus provide only very limited public transparency, they may enhance accountability beyond the status quo or beyond a drone court. Yet such accountability would be fairly deferential as Vladeck suggests suits might integrate the executive branch’s internal procedures and accord some respect to executive branch after-action reviews.

#### Their 1AC Vladek 14 evidence says explicitly the trials would bar juries in order to protect government secrecy

Vladeck 14 Stephen Professor of Law and Associate Dean for Scholarship, American University Washington College of Law. “Targeted Killing and Judicial Review” http://www.lawfareblog.com/wp-content/uploads/2014/02/Vladeck-Response-Piece.pdf

As under the FTCA, Congress could bar jury trials in such cases, requiring instead that all factual and legal determinations be made by the presiding judge.82 Again, such a move would help to ensure that these suits could be heard expeditiously and with due regard for the government’s secrecy concerns. On that note, with regard to secrecy, Congress could look to both FISA83 and the provisions of the 1996 immigration laws establishing the Alien Terrorist Removal Court (“ATRC”)84 as models for how to allow for judicial proceedings that are both adversarial and largely secret.

## 1NR

### DA

#### Risk of bioterror is high – results in extinction.

Matheny, research associate at Oxford University’s Future of Humanity Institute, ‘7

[Jason, previously worked at the Center for Biosecurity and holds an MBA from Duke University, “Reducing the Risk of Human Extinction,” Risk Analysis Vol. 27, No. 5, <http://users.physics.harvard.edu/~wilson/pmpmta/Mahoney_extinction.pdf>]

Of current extinction risks, the most severe may be bioterrorism.The knowledge needed to engineer a virus is modest compared to that needed to build a nuclear weapon; the necessary equipment and materials are increasingly accessible and because biological agents are self-replicating, a weapon can have an exponential effect on a population (Warrick, 2006; Williams, 2006). 5 Current U.S. biodefense efforts are funded at $5 billion per year to develop and stockpile new drugs and vaccines, monitor biological agents and emerging diseases, and strengthen the capacities of local health systems to respond to pandemics (Lam, Franco, & Shuler, 2006).

#### Not evaluating consequences turns the aff – stories will be deployed against the detainees

Margulies 9 AFF author, Peter, Professor of Law, Roger Williams University School of Law “The Detainees' Dilemma: The Virtues and Vices of Advocacy Strategies in the War on Terror” Buffalo Law Review 57 Buffalo L. Rev. 347 April, lexis

2. The Ubiquity of Cognitive Bias. Once the lawyer accepts responsibility for consequences, she must still neutralize the cognitive errors that plague deliberation. Countering the temporal discounting deficit should head the crossover advocate's internal agenda. In court, the constellation of rules acts as a backstop for the advocate. [\*423] Because of asymmetrical accountability mechanisms, the crossover advocate is on her own. However, the lack of rules in crossover venues may tempt the advocate to emulate Icarus, flying too high without recognizing that a hard landing is closer than it appears. Consider here how Clive Stafford Smith seized the chance to critique conditions at Guantanamo by telling a reporter that his client would do anything for release, including pleading guilty to being the pope. n268 Only later--if at all--did Smith appreciate that his attempt at sarcasm may have prejudiced his client's efforts for a plea bargain. A commitment to ferreting out short- and long-term consequences is one corrective for the crossover advocate's susceptibility to cognitive miscues.

#### Moral evaluation of drones requires considering the most likely alternatives that would replace targeted killings---they’re all worse for civilian casualties and state violence

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

EFFECTIVENESS IS ONE THING, MORALITY ANOTHER. The leading objection to drone warfare today is that it supposedly involves large, or "excessive," numbers of civilian casualties, and that the claims of precision and discrimination are greatly overblown. These are partly factual questions full of unknowns and many contested issues. The Obama administration did not help itself by offering estimates of civilian collateral damage early on that ranged absurdly from zero to the low two digits. This both squandered credibility with the media and, worse, set a bar of perfection -- zero civilian collateral damage -- that no weapon system could ever meet, while distracting people entirely from the crucial question of what standard civilian harms should be set against.¶ The most useful estimates of civilian casualties from targeted killing with drones come from the New America Foundation (NAF) and the Foundation for Defense of Democracies, which each keep running counts of strikes, locations, and estimates of total killed and civilian casualties. They don't pretend to know what they don't know, and rely on open sources and media accounts. There is no independent journalistic access to Waziristan to help corroborate accounts that might be wrong or skewed by Taliban sources, Pakistani media, Pakistani and Western advocacy groups, or the U.S. or Pakistani governments. Pakistan's military sometimes takes credit for drone strikes against its enemies and sometimes blames drone strikes for its own air raids against villages. A third source of estimates, UK-based The Bureau of Investigative Journalism (TBIJ), comes up with higher numbers.¶ TBIJ (whose numbers are considered much too high by many knowledgeable American observers) came up with a range, notes Georgetown law professor and former Obama DOD official Rosa Brooks. The 344 known drone strikes in Pakistan between 2004 and 2012 killed, according to TBIJ, between "2,562 and 3,325 people, of whom between 474 and 881 were civilians." The NAF, she continues, came up with slightly lower figures, somewhere "between 1,873 and 3,171 people killed overall in Pakistan, of whom between 282 and 459 were civilians." (Media have frequently cited the total killed as though it were the civilians killed.) Is this a lot of civilians killed? Even accepting for argument's sake TBIJ's numbers, Brooks concludes, if you work out the "civilian deaths per drone strike ratio for the last eight years…on average, each drone strike seems to have killed between 0.8 and 2.5 civilians." In practical terms, adds McNeal, this suggests 'less than three civilians killed per strike, and that's using the highest numbers" of any credible estimating organization.\*¶ Whether any of this is "disproportionate" or "excessive" as a matter of the laws of war cannot be answered simply by comparing total deaths to civilian deaths, or civilian deaths per drone strike, however. Although commentators often leap to a conclusion in this way, one cannot answer the legal question of proportionality without an assessment of the military benefits anticipated. Moreover, part of the disputes over numbers involves not just unverifiable facts on the ground, but differences in legal views defining who is a civilian and who is a lawful target. The U.S. government's definition of those terms, following its longstanding views of the law of targeting in war, almost certainly differs from those of TBIJ or other liberal nongovernmental groups, particularly in Europe. Additionally, much of drone warfare today targets groups who are deemed, under the laws of war, to be part of hostile forces. Targeted killing aimed at individuated high-value targets is a much smaller part of drone warfare than it once was. The targeting of groups, however, while lawful under long-standing U.S. interpretations of the laws of war, might result in casualties often counted by others as civilians.¶ Yet irrespective of what numbers one accepts as the best estimate of harms of drone warfare, or the legal proportionality of the drone strikes, the moral question is simply, What's the alternative? One way to answer this is to start from the proposition that if you believe the use of force in these circumstances is lawful and ethical, then all things being equal as an ethical matter, the method of force used should be the one that spares the most civilians while achieving its lawful aims. If that is the comparison of moral alternatives, there is simply no serious way to dispute that drone warfare is the best method available. It is more discriminating and more precise than other available means of air warfare, including manned aircraft -- as France and Britain, lacking their own drones and forced to rely on far less precise manned jet strikes, found over Libya and Mali -- and Tomahawk cruise missiles.¶ A second observation is to look across the history of precision weapons in the past several decades. I started my career as a human-rights campaigner, kicking off the campaign to ban landmines for leading organizations. Around 1990, I had many conversations with military planners, asking them to develop more accurate and discriminating weapons -- ones with smaller kinetic force and greater ability to put the force where sought. Although every civilian death is a tragedy, and drone warfare is very far from being the perfect tool the Obama administration sometimes suggests, for someone who has watched weapons development over a quarter century, the drone represents a steady advance in precision that has cut zeroes off collateral-damage figures.¶ Those who see only the snapshot of civilian harm today are angered by civilian deaths. But barring an outbreak of world peace, it is foolish and immoral not to encourage the development and use of more sparing and exact weapons. One has only to look at the campaigns of the Pakistani army to see the alternatives in action. The Pakistani military for many years has been in a running war with its own Taliban and has regularly attacked villages in the tribal areas with heavy and imprecise airstrikes. A few years ago, it thought it had reached an accommodation with an advancing Taliban, but when the enemy decided it wanted not just the Swat Valley but Islamabad, the Pakistani government decided it had no choice but to drive it back. And it did, with a punishing campaign of airstrikes and rolling artillery barrages that leveled whole villages, left hundreds of thousands without homes, and killed hundreds.¶ But critics do not typically evaluate drones against the standards of the artillery barrage of manned airstrikes, because their assumption, explicit or implicit, is that there is no call to use force at all. And of course, if the assumption is that you don't need or should not use force, then any civilian death by drones is excessive. That cannot be blamed on drone warfare, its ethics or effectiveness, but on a much bigger question of whether one ought to use force in counterterrorism at all.

#### The risk of a nuclear terror attack is high now.

Matthew, et al, 10/2/13 [ Bunn, Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>]

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

#### There’s a high probability of the impact.

Neely ’13 (Meggaen Neely, CSIS, “Doubting Deterrence of Nuclear Terrorism”, <http://csis.org/blog/doubting-deterrence-nuclear-terrorism?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+csis-poni+%28PONI+Debates+the+Issues+Blog%29>, March 21, 2013)

The 2010 Nuclear Posture Review (NPR) cites nuclear terrorism as “today’s most immediate and extreme danger.” To counter this danger, the NPR lists research initiatives, securing nuclear materials, and a “commitment to hold fully accountable” any who help terrorists obtain nuclear weapons. Matthew Kroenig and Barry Pavel, the self-described authors of U.S. strategy for deterring terrorist networks, explain further how the United States can discourage terrorists from detonating a nuclear weapon. They make useful distinctions between actors in terrorist organizations, which can have implications for U.S. policies. However, the United States should not rely exclusively on deterrence – that is, those policies that attempt to discourage terrorists from detonating a nuclear weapon. Complementary policies that may be more effective will focus on securing nuclear materials and implementing defensive measures, in addition to conventional counterterrorism strategies. Although this shift will not make the task of preventing nuclear terrorism easier, recognizing the limits of deterrence policies will allow the United States to make smarter choices in defending against nuclear terrorism. Assessing the Threat of Nuclear Terrorism The risk that terrorists will set off a nuclear weapon on U.S. soil is disconcertingly high. While a terrorist organization may experience difficulty constructing nuclear weapons facilities, there is significant concern that terrorists can obtain a nuclear weapon or nuclear materials. The fear that an actor could steal a nuclear weapon or fissile material and transport it to the United States has long-existed. It takes a great amount of time and resources (including territory) to construct centrifuges and reactors to build a nuclear weapon from scratch. Relatively easily-transportable nuclear weapons, however, present one opportunity to terrorists. For example, exercises similar to the recent Russian movement of nuclear weapons from munitions depots to storage sites may prove attractive targets. Loose nuclear materials pose a second opportunity. Terrorists could use them to create a crude nuclear weapon similar to the gun-type design of Little Boy. Its simplicity – two subcritical masses of highly-enriched uranium – may make it attractive to terrorists. While such a weapon might not produce the immediate destruction seen at Hiroshima, the radioactive fall-out and psychological effects would still be damaging. These two opportunities for terrorists differ from concerns about a “dirty bomb,” which mixes radioactive material with conventional explosives. According to Gary Ackerman of the National Consortium for the Study of Terrorism and Responses to Terrorism, the number of terrorist organizations that would detonate a nuclear weapon is probably small. Few terrorist organizations have the ideology that would motivate nuclear weapons acquisition. Before we breathe a sigh of relief, we should recognize that this only increases the “signal-to-noise ratio”: many terrorists might claim to want to detonate a nuclear weapon, but the United States must find and prevent the small number of groups that actually would. Transportable nuclear weapons and loose fissile materials grant opportunities to terrorists with nuclear pursuits. How should the United States seek to undercut the efforts of the select few with a nuclear intent? The Problems with Deterrence The answer for U.S. policy is not deterrence. Deterrence involves convincing an adversary that the costs imposed upon him after taking an action will outweigh any benefits gained. It requires altering the strategic calculus (i.e. the analysis of costs and benefits for taking a particular action) of the adversary. These costs come from either punishment imposed on the adversary or from denying the adversary the expected benefits. In execution, deterrence requires policies of consistency and conditionality towards an adversary: consistency in expressing the imposition of costs or denied benefits if the adversary takes a specific action and conditionality in that the possibility of retaliation depends upon the adversary’s decision to take the undesirable action. These requirements of consistency and conditionality cannot be applied to a transnational threat like nuclear terrorism. Terrorists operate across states’ borders, but the burden remains on states to implement deterrence laws and policies that impose costs or deny benefits. One could point to the “glorification” laws in the United Kingdom, which sought to deter suicide terrorism by criminalizing the praise of martyrdom, as an example of such a policy. However, not all countries are able or willing to implement such laws. Alternatively, even countries that are able and willing may hesitate for fear of violating international or domestic norms. For example, with the “glorification” laws, many accused British policymakers of infringing on the right to free speech. Deterrence requires consistency in the communication of certain retaliation should the adversary take an undesired action. In the aggregate, states’ policies will likely lack this consistency and conditionality required for deterring nuclear terrorism. This results in confusion and a lack of credibility for the threat of imposing costs or denying benefits. Of course, terrorists are not susceptible to more “traditional” forms of deterrence like holding territory at risk (given that they do not own territory) or by threatening suicide terrorists with physical harm.

#### Status quo target vetting is carefully calibrated to avoid every aff impact in balance with CT--- there’s only a risk that restrictions destroy it.

McNeal, Associate Professor of Law, Pepperdine University, ‘13

[Gregory, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>]

Target vetting is the process by which the government integrates the opinions of subject matter experts from throughout the intelligence community.180 The United States has developed a formal voting process which allows members of agencies from across the government to comment on the validity of the target intelligence and any concerns related to targeting an individual. At a minimum, the vetting considers the following factors: target identification, significance, collateral damage estimates, location issues, impact on the enemy, environmental concerns, and intelligence gain/loss concerns.181 An important part of the analysis also includes assessing the impact of not conducting operations against the target.182 Vetting occurs at multiple points in the kill-list creation process, as targets are progressively refined within particular agencies and at interagency meetings.¶ A validation step follows the vetting step. It is intended to ensure that all proposed targets meet the objectives and criteria outlined in strategic guidance.183 The term strategic is a reference to national level objectives—the assessment is not just whether the strike will succeed tactically (i.e. will it eliminate the targeted individual) but also whether it advances broader national policy goals.184 Accordingly, at this stage there is also a reassessment of whether the killing will comport with domestic legal authorities such as the AUMF or a particular covert action finding.185 At this stage, participants will also resolve whether the agency that will be tasked with the strike has the authority to do so.186 Individuals participating at this stage analyze the mix of military, political, diplomatic, informational, and economic consequences that flow from killing an individual. Other questions addressed at this stage are whether killing an individual will comply with the law of armed conflict, and rules of engagement (including theater specific rules of engagement). Further bolstering the evidence that these are the key questions that the U.S. government asks is the clearly articulated target validation considerations found in military doctrine (and there is little evidence to suggest they are not considered in current operations). Some of the questions asked are:¶ • Is attacking the target lawful? What are the law of war and rules of engagement considerations?¶ • Does the target contribute to the adversary's capability and will to wage war?¶ • Is the target (still) operational? Is it (still) a viable element of a target system? Where is the target located?¶ • Will striking the target arouse political or cultural “sensitivities”?¶ • How will striking the target affect public opinion? (Enemy, friendly, and neutral)?¶ • What is the relative potential for collateral damage or collateral effects, to include casualties?¶ • What psychological impact will operations against the target have on the adversary, friendly forces, or multinational partners?¶ • What would be the impact of not conducting operations against the target?187¶ As the preceding criteria highlight, many of the concerns that critics say should be weighed in the targeted killing process are considered prior to nominating a target for inclusion on a kill-list.188 For example, bureaucrats in the kill-list development process will weigh whether striking a particular individual will improve world standing and whether the strike is worth it in terms of weakening the adversary's power.189 They will analyze the possibility that a strike will adversely affect diplomatic relations, and they will consider whether there would be an intelligence loss that outweighs the value of the target.190 During this process, the intelligence community may also make an estimate regarding the likely success of achieving objectives (e.g. degraded enemy leadership, diminished capacity to conduct certain types of attacks, etc.) associated with the strike. Importantly, they will also consider the risk of blowback (e.g. creating more terrorists as a result of the killing).191

#### Organizational effectiveness – drones force Al-Qaeda to massively alter their organizational structure, making attacks impossible – this is a perception argument, which means even if they win the intel is bad, a strong program solves

Jordan, Professor, Department of Political Science and Public Administration at the University of Granada, ‘14

[Javier, “The Effectiveness of the Drone Campaign against Al Qaeda Central: A Case Study”, The Journal of Strategic Studies, Vol. 37, No. 1, 2014, RSR]

Continuous targeting of Al Qaeda Central leaders forces them to devote substantial attention and energy to self-protection rather than to coordinating the organisation. The permanent presence of drones and the fear of discovery would aggravate the communication problems between the different network nodes, especially among those forming part of the command and control structure. An indication of this can be seen in the month and a half it took Al Qaeda to publicly announce the appointment of Ayman Al Zawahiri as its leader following the death of Osama Bin Laden. Such a delay is hard to explain in an organisation in which the designation of a new commander in chief needs to be swift. The security measures recommended by Bin Laden in his letters are useful for self-protection but make management of the organisation extremely difficult in the tribal territories and, in particular, outside these areas.27 The diminished contact between nodes at the core of the hierarchy, and between these and the nodes abroad, also reduces the possibilities of executing complex attacks requiring coordination between the different network components. The coordination problems can undermine the internal cohesion of the organisation. Centrifugal forces are more likely to be triggered when central leadership is weak. The lack of face-to-face meetings to identify and resolve misunderstandings also contributes to an aggravation of internal strife. Written messages conveyed by whatever means and telephone conversations (particularly if very brief for reasons of security) lack the contextual information and human touch needed to generate trust and cohesion, especially in situations of internal crisis. Physical distance debilitates the solidity of clandestine networks and makes them vulnerable to infiltration and betrayal from within.28 A Newsweek report dated January 2012 reflected the opinion of one young militant: ‘=Al Qaeda was once full of great jihadis, but no one is active and planning operations anymore. Those who remain are just trying to survive.’29 According to a Pakistani intelligence agent who works in the tribal territories, Al Qaeda leaders used to visit the camps to offer encouragement to their followers but they have virtually ceased doing so now.30 Thus, the CIA drone campaign would be forcing Al Qaeda to switch frombeing an organisation in which its leaders exerted control at strategic, operational and, to a lesser degree, tactical levels to an increasingly decentralised organisation, whose leaders seek to influence strategy through public communiqués but have very little operational capacity and practically none at tactical level beyond its Afghanistan/Pakistan operations area. The correspondence seized in Abbottabad indicates that Osama Bin laden continued to issue general instructions to his lieutenants for transmission to cells in other countries and to Al Qaeda’s regional affiliates. However, due to the debilitated central core, the latter received increasingly less support from the parent organisation.31

#### Drones don’t cause anti-Americanism and reducing strikes doesn’t solve it---zero data supports their claims

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics argue that drones strikes engender much resentment among the local population and serve as a major recruitment tool for the terrorists, possibly radicalizing more individuals than they neutralize. This argument has been made especially in reference to Pakistan, where there were anti-American demonstrations following drones strikes, as well as in Yemen.44 However, such arguments do not take into account the fact that anti-American sentiment in these areas ran high before drone strikes took place and remained so during periods in which strikes were signiﬁcantly scaled back. Moreover, other developments—such as the release of an anti-Muslim movie trailer by an Egyptian Copt from California or the publication of incendiary cartoons by a Danish newspaper—led to much larger demonstrations. Hence stopping drone strikes—if they are otherwise justiﬁed, and especially given that they are a very effective and low-cost way to neutralize terrorist violence on the ground45—merely for public relations purposes seems imprudent.

#### Shifting to capture missions is impossible---every alternative to drones is worse for CT

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Critics of drone strikes often fail to take into account the fact that the alternatives are either too risky or unrealistic. To be sure, in an ideal world, militants would be captured alive, allowing authorities to question them and search their compounds for useful information. Raids, arrests, and interrogations can produce vital intelligence and can be less controversial than lethal operations. That is why they should be, and indeed already are, used in stable countries where the United States enjoys the support of the host government. But in war zones or unstable countries, such as Pakistan, Yemen, and Somalia, arresting militants is highly dangerous and, even if successful, often inefficient. In those three countries, the government exerts little or no control over remote areas, which means that it is highly dangerous to go after militants hiding out there. Worse yet, in Pakistan and Yemen, the governments have at times cooperated with militants. If the United States regularly sent in special operations forces to hunt down terrorists there, sympathetic officials could easily tip off the jihadists, likely leading to firefights, U.S. casualties, and possibly the deaths of the suspects and innocent civilians.