# ASU Cards Round 7 CEDA

## 1NC

### 1

#### A. Interpretation

#### 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 – the aff supervises the executive’s targeted killing program, not restricts it.

#### C. Reason 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. Voter for fairness and education.

### 2

#### CP Text: The United States Congress should create a statutory cause of action for damages for those unlawfully injured by targeted killing operations or their heirs that waives the United States’ sovereign immunity and state secrets privileges and confers exclusive jurisdiction over such suits upon the U.S. District Court for the District of Columbia. Congress should grant qualified immunity to officer-defendants by substituting the United States as the defendant in cases where the officer was acting within the scope of their employment. Congress should bar jury trials and model proceedings based upon the Alien Terrorist Removal Court and the Classified Intelligence Procedures Act.

#### The CP solves the aff, preserves executive flexibility and overcomes the government’s ability to assert state secret privileges.

Vladeck, Stephen Professor of Law and Associate Dean for Scholarship, American University Washington College of Law, ‘14

[Stephen, Targeted Killing and Judicial Review”,

http://www.lawfareblog.com/wp-content/uploads/2014/02/Vladeck-Response-Piece.pdf, RSR]

As noted above,70 such review is best provided after the fact, rather than ex ante, in a similar manner as the wrongful death actions recognized by virtually every jurisdiction.71 After-the-fact review avoids the serious logistical, prudential, and potentially constitutional concerns that ex ante review would raise because it does not stop the government from acting at its own discretion, and it allows for more comprehensive consideration of the issues “removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely.”72 Such review should be predicated on an express cause of action created by Congress. In designing such a remedy, Congress can borrow from the model created by FISA, which has provided since its inception that “[a]n aggrieved person, other than [one who is properly subject to surveillance under FISA], who has been subjected to an electronic surveillance . . . shall have a cause of action against any person who committed such violation.”73 An express cause of action would clarify Congress’s intent that such suits should be allowed to go forward, and it would also support arguments against otherwise available common law privileges and immunities. Further to that end, because review would be after the fact, such an action should be for damages, and, unlike FISA, should therefore contain an express waiver of the United States’ sovereign immunity to ensure that money damages will actually be available in such cases74—not so much to make the victim’s heirs whole, but to provide a meaningful deterrent for future government officers. Thus, although many will disagree with this particular aspect of my proposal, I suspect that such a cause of action could serve its purpose even if it only provided for nominal damages, insofar as such nominal damages still establish forward-looking principles of liability.75 Although no special jurisdictional provisions should be necessary (e.g., FISA does not require civil suits under FISA to be brought before the FISC),76 Congress could confer exclusive jurisdiction over such suits upon the U.S. District Court for the District of Columbia.77 This jurisdictional exclusivity would ensure that such cases were brought before federal judges with substantial and sustained experience handling high-profile (and often highly sensitive) national security cases. Borrowing from the model of the Federal Tort Claims Act (“FTCA”),78 as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 (“Westfall Act”), 79 Congress can immunize potential officer-defendants by substituting the United States as the defendant on any claims arising under this cause of action in which the officer-defendant was acting within the scope of his employment.80 As is the case under the Westfall Act, such a move would also necessarily moot application of official immunity doctrines because it would confer absolute immunity upon the officer-defendants,81 and the United States may not invoke official immunity as a party. As under the Westfall Act, substitution would reinforce the idea that the goal is not to punish individual officers, but to establish the liability of the federal government writ large. 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. In this respect, both FISA and the ATRC contemplate litigation between the government and security-cleared counsel without regard to the state secrets privilege, which Congress could otherwise abrogate.85

#### The plan forces the court to issue death warrants— destroys their legitimacy – CP avoids this.

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/)

First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it. Another concern raised by Johnson is that the judges would be highly uncomfortable making such decisions because they would be necessarily involve a secret, purely ex parte process. While courts do this on a daily basis, as when they issue search or arrest warrants, the targeted killing context stands apart in that the judge’s decision would be effectively irreversible. Here again, the use of ex post process would free the courts from this problem, and place it in the executive (which includes the military, incidentally, an organization which deals with this issue as a matter of course).

#### Weakening the court prevents sustainable development

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction of all complex life

Barry 13—Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy [Dr. Glen Barry (Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison), “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere. It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities. Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet. Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies. If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last? The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us. Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric. I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000). Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats. The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life. The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative. Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers. Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long. Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies. In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever. One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries. In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### 3

#### Presidential war powers authority captures the legal system—statutory and judicial restrictions on the president only serve to legitimate state monopolies on violence which make the worst atrocities possible.

Morrissey 2011 [John, Department of Geography at the National University of Ireland, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics* 16:280-305]

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73 In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalise its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritising and mobilising the law as an active player in the war on terror.75 Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law: We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified.80 The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “which international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defence of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “is rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to reexamine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “We will defeat adversaries at the time, place, and in the manner of our choosing”.88 If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximise any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus: Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

#### The alternative is to reject their understanding of the law as an independent neutral entity with the power to restrict practices apart from practices. Instead, we should conceive of the law and practice as co-constitutive—this opens up the space to change the relationship between lived decisionmaking and the autocracy of bureaucratic legal determinations.

Krassman 2012 [Susan, Professor at the Institute for Criminological Research at the University of Hamburg. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25.03]

Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law's political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’ with,46 or is being ‘colonized’ by,47 forms of knowledge that are addressed at governing people and populations. It is, though, precisely this analytical perspective that allows us to capture the mutually productive relationship between targeted killing and the law. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48 Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only the interchange between the legal and political discourse on targeted killing, but notably the relationship between law and security. According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51 Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject's singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53 Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms. Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law's ‘inner morality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms. When targeted killing surfaced on the political stage, appropriate laws appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It enables us to grasp the minute displacements of established legal concepts that,57 while undergoing a transformation, at the same time prove to be faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but filled with a radically different meaning so as to eventually integrate the figure of a terrorist network into its conventional understanding. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network. However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, focus is on practices that, while materializing and producing attendant truth effects, shape the distinctions we make between legal and illegal measures. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. The indeterminateness itself of legal norms proves to be a tool for introducing a new reading of law.

### Solvency

#### Executive will circumvent the plan.

Barron & Lederman, 8 --- \*Professor of Law at Harvard, AND \*\* Visiting Professor of Law at Georgetown

(February 2008, David J. Barron and Martin S. Lederman, Harvard Law Review, “THE COMMANDER IN CHIEF AT THE LOWEST EBB -- A CONSTITUTIONAL HISTORY,” 121 Harv. L. Rev. 941)

VII. Conclusion

Powers once claimed by the Executive are not easily relinquished. One sees from our narrative how, in a very real sense, the constitutional law of presidential power is often made through accretion. A current administration eagerly seizes upon the loose claims of its predecessors, and applies them in ways perhaps never intended or at least not foreseen or contemplated at the time they were first uttered. The unreflective notion that the "conduct of campaigns" is for the President alone to determine has slowly insinuated itself into the consciousness of the political departments (and, at times, into public debate), and has gradually been invoked in order to question all manner [\*1112] of regulations, from requirements to purchase airplanes, to limitations on deployments in advance of the outbreak of hostilities, to criminal prohibitions against the use of torture and cruel treatment. In this regard, the claims of the current Administration represent as clear an example of living constitutionalism in practice as one is likely to encounter. There is a radical disjuncture between the approach to constitutional war powers the current President has asserted and the one that prevailed at the moment of ratification and for much of our history that followed. But that dramatic deviation did not come from nowhere. Rarely does our constitutional framework admit of such sudden creations. Instead, the new claims have drawn upon those elements in prior presidential practice most favorable to them. That does not mean our constitutional tradition is foreordained to develop so as to embrace unchecked executive authority over the conduct of military campaigns. At the same time, it would be wrong to assume, as some have suggested, that the emergence of such claims will be necessarily self-defeating, inevitably inspiring a popular and legislative reaction that will leave the presidency especially weakened. In light of the unique public fears that terrorism engenders, the more substantial concern is an opposite one. It is entirely possible that the emergence of these claims of preclusive power will subtly but increasingly influence future Executives to eschew the harder work of accepting legislative constraints as legitimate and actively working to make them tolerable by building public support for modifications. The temptation to argue that the President has an obligation to protect the prerogatives of the office asserted by his or her predecessors will be great. Congress's capacity to effectively check such defiance will be comparatively weak. After all, the President can veto any effort to legislatively respond to defiant actions, and impeachment is neither an easy nor an attractive remedy.

#### Ex ante review is worse than the suqo

#### a. Authority – prior review legitimizes targeted killing for non-immanent threats – locks in the status quo program

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

But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it.

#### b. Deference - Judges won’t want to wade into national security measures – they would defer to the executive if it is an issue of imminence

Vladeck, editor- Journal of National Security Law & Policy, 13 (Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, senior editor of the Journal of National Security Law & Policy, Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…, Sunday, February 10, 2013, <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/>)

III. Drone Courts and the Legitimacy Problem That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante review in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

#### c. Intel gathering The plan gives a perverse incentive to not collect information---the CP corrects that

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/)

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

### Terrorism

#### Drones have been able to prevent AQAP from organizing plots in Yemen – doesn’t matter if it leads to more recruiting.

Jordan, Professor, Department of Political Science and Public Administration at the University of Granada, ‘13

[Javier, “DRONE ATTACKS CAMPAIGN IN YEMEN”, Revista del Instituto Español de Estudios Estratégicos, No. 1, 2013, RSR]

Following the negative experiences undergone in Iraq and Afghanistan, the –Uni- ted States is implementing a focus in the fight against Al Qaeda in Yemen, which is characterised by avoiding the presence of troops on the ground and limiting military actions to precise air strikes. This is not an innovative strategy. We have already had the opportunity to consider this in the 1990’s in scenarios such as Iraq (operation ‘Desert Fox’ in 1998), Bosnia (1995) and Kosovo (1999). In this case, the new development is based upon the argument that the enemy is a proto-insurgent organisation, with a transnational terrorist dimension; and that an increasingly large number of the air strikes are carried out using armed drones. It is still too soon to draw up a balance sheet of the American campaign. From the anti-terrorist viewpoint, the deaths of several AQAP leaders associated with plots of a transnational nature – the most notable case is that of Anwar Al Awlaki- seems to have degraded the organisation’s capacity to carry out new actions. Equally, the fear of informers could be making it hard for foreign volunteers to have access to the AQAP training camps. If both possibilities are true with time, it can be asserted that the air strikes have been effective as an anti-terrorist tool. The fact that AQAP has only launched one new transitional terrorist action (also cut short by the success of an intelligence operation) since the transport airplane bomb plot in November 2010, would seem to be clear evidence. It may well be that such a circumstance could be explained by greater attention by AQAP on the national points of its political agenda. This comes as a consequence of the window of opportunity opened by the greater degree of instability of the Yemeni regime since the start of the Arab uprisings.

#### Ex ante judicial review makes effective drone ops impossible---even limiting the court to vetting names in advance compromises the timelines of operations.

Oliphant, Deputy Editor, the National Journal, ‘13

[James, J.D. from the Ohio State University Morrill College of Law, 5/30/13, “Vetting the Kill List,” National Journal, http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404]

Civil libertarians and even hawks such as former Rep. Jane Harman of California, who served on the House Intelligence Committee, have suggested creating a court modeled on the one that signs off on federal wiretaps of suspected foreign agents. The Foreign Intelligence Surveillance Court in Washington operates in secret and requires the government to make a case before approving a tap. Harman and other proponents say such a body could review names on the “kill list” and weigh in on whether they merit inclusion based on the White House’s criteria for targeting potential threats. Robert Gates, the former Defense secretary, also favors such an approach.¶ But even among supporters, no consensus exists on what questions a drone court would actually review or even whether its scrutiny would come before or after a strike. The most problematic scenario involves any sort of preoperational clearance. Possible windows for action open and shut in a matter of hours. The kill lists are constantly being revised and updated. Even many of those who argue for some sort of oversight mechanism, such as University of Texas law professor Robert Chesney, don’t believe a judge should be involved when it comes to “pulling the trigger.”¶ Still, Chesney says such a court could still vet the names on the list in advance to ensure the administration is following its own guidelines for a strike: the target is connected to al-Qaida; he poses some threat of “imminent” harm; and the government is operating within its legal authority. “Whether and when to fire is a totally separate question,” Chesney says. (He notes that there’s a range of disagreement over how the administration classifies an “imminent” threat and whether a judge would be qualified to make that determination.)¶ But even that small degree of oversight, warns Gregory McNeal, a counterterrorism expert at Pepperdine University, risks throwing sand in the gears by extending the timeline of an op. And to McNeal, this point leads directly to the larger issue of accountability—or, to use the Washington synonym, blame. Judges, he says, simply aren’t ever going to be equipped to identify and navigate the variables involved in a drone strike.¶ Jeh Johnson, formerly the Obama administration’s top lawyer at the Pentagon, expressed his discomfort with court-based oversight in a speech last month at Fordham University. Questions of feasibility and imminence, he said, “are up-to-the-minute, real-time assessments.” More important, Johnson emphasized, “we want military and national security officials to continually assess and reassess these two questions up until the last minute of the operation.”¶ Given that reality, shifting the responsibility of a sign-off to a set of federal judges, who are unelected and serve for life, would allow the White House to escape the consequences of its actions, or more crucially, perhaps its failure to act if a target slips out of harm’s way and then masterminds an attack. Military decisions are, at heart, political ones, McNeal says, and they are rightly made by the branch of government whose top official, the president, faces voters. (A case in point: Republicans suffered at the ballot box in 2006 and 2008 as a result of the public’s displeasure with the Iraq war.) “If you’re a politician,” McNeal says of a drone court, “this is great. Because you aren’t on the hook for anything.”¶ By and large, federal judges don’t want to be in this position. They worry about damaging the integrity of the bench. Retired Judge James Robertson, who served on the U.S. Appeals Court in Washington, argued in The Washington Post that the Constitution forbids the judiciary from issuing advisory opinions. “Federal courts rule on specific disputes between adversary parties,” he wrote. “They do not make or approve policy; that job is reserved to Congress and the executive.” The FISA court is a different animal, because approving surveillance is related to Fourth Amendment protections on search warrants.

#### 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.

A2: Groupthink

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

#### AQAP cannot commit attacks.

-Default to empirics

-Fails outside of borders due to incompetence

-Comparatively AQ central is better

-Increased chatter not enough to warrant threat.

Pape and Schneyer, ‘13

[Robert (professor of political science at the University of Chicago, and director of the Chicago Project on Security and Terrorism) and David (Research Associate at the Chicago Project on Security and Terrorism), “Why we shouldn’t be afraid of Al Qaeda in Yemen”, The Boston Globe, 8-16-13,

http://www.bostonglobe.com/opinion/2013/08/15/how-stop-crying-wolf-while-remaining-safe/PVwCQr3be7eQHdrQPCvlJO/story.html?event=event12, RSR]

Such information certainly warrants our attention. But talk is cheap, and it is critical that we don’t give terrorist organizations more credit than they are worth. In order to understand what a terrorist organization is truly capable of, we must look at its past behavior. In this case, Al Qaeda in the Arabian Peninsula is a deadly organization within its own borders, but it has not demonstrated that it possesses the means to successfully carry out an attack on US soil. The one known attempt (carried out by the so-called “underwear bomber”) failed due to incompetence — the device did not properly detonate. Let’s look at the data: AQAP has carried out 39 suicide attacks through 2012, with only one taking place outside of Yemen (just across the border in Jeddah, Saudi Arabia). Suicide attacks represent precisely the sort of attack we would fear—they are far more deadly than any other type. Now, AQAP has certainly proven itself capable of killing foreigners within its own borders, and so we should absolutely take the intercepted communication seriously with respect to our embassy in Yemen. But this is a far cry from being able to carry out an attack on foreign soil.

Consider 9/11, for instance, which obviously we failed to prevent. This failure was not a tactical one, or even a failure to “connect the dots.” Rather, it was a failure to properly assess the threat. In fact, a memo stating “Bin Laden determined to attack US” made it to the White House by early August, 2001— the intelligence was there, but it was simply not given its due credibility or seriousness. The table to the right illustrates this point. Clearly, Al Qaeda proved itself capable of attacking the United States across multiple borders long before 2001. But AQAP has not demonstrated this capability, and “increased chatter” among its leaders, no matter how heavy, is simply not enough evidence to be overly-concerned, unless the government has not revealed other critical details. Even if Zawahiri were directing the attack—which US intelligence officials confirmed he was not—the main Al Qaeda group (now based in Pakistan) has not carried out a successful major attack on Western soil since the London bombings in 2005. Ayman Al-Zawahiri giving his blessing to AQAP leaders only proves how weak the main Al Qaeda group really is. What does this mean from a policy perspective? Has the Obama administration acted correctly? Even if not, perhaps we should be thankful that it “over-assessed” the threat. Better safe than sorry, right? Not exactly. While we should applaud our government for doing everything it can to keep us safe, we can still expect better. It is not a question of whether we over-prepare, but whether we use our intelligence as wisely and efficiently as possible. This means systematically using tactical intelligence by examining it through the lens of past strategic behavior. Of course there will be some terrorist organizations that are so new that we won’t have much past strategic behavior to study. In those circumstances, we must rely on judgment of short-term tactical intelligence. But most cases are in the “muddy middle” — where there is a group that has existed for at least several years, we need to qualify the tactical intelligence based on the demonstrated attack pattern of the group. We shouldn’t assume every group is capable of a major attack on US soil. Critics might point to Umar Farouk Abdulmutallab’s attempted bombing of a passenger plane over Detroit in 2009 as an example of AQAP’s ability to attack US soil. The attack wasn’t successful, but not on account of American security — the device simply didn’t detonate. Terrorism is not baseball, where a .333 batting average is considered successful, and where there are opportunities for multiple “at-bats.” Globally ambitious terrorist organizations thrive on the element of surprise. A single failed attempt — as in 2009 — prompts a violent response from the target nation to neutralize any future threats. That is exactly what the United States did in that case —by introducing full-body scans to airport security to detect precisely the type of device Abdulmutallab used, and by assassinating AQAP leader Anwar Al-Awlaki via drone strikes. If the attempted 2009 bombing was so easy, AQAP would have sent another bomber in Abdulmutallab’s wake, or maybe three or four with him on the same day. The very fact that the device did not detonate does not breed confidence in AQAP’s ability to carry out a successful attack.

### Norms

#### Every author writing about drone norms concludes Obama needs to sit down with other countries and hammer out some norms – aff doesn’t do that so no solvency.

#### No drone prolif/drone wars – the aff’s belief in creating a norm makes exports inevitable that turn the aff.

Zenko and Kreps, 3-10

[Micah (Douglas Dillon Fellow at the Council of Foreign Relations) and Sarah (assistant professor in the Department of Government at Cornell), “The Drone Invasion Has Been Greatly Exaggerated”, Foreign Policy, 3-10-14,

http://www.foreignpolicy.com/articles/2014/03/10/drone\_invasion\_greatly\_exaggerated\_us\_export, RSR]

The problem with this now commonly stated assumption -- that the world is fully equipped with drones -- is that while these news articles hyping a drones arms race are exciting, they are also misleading. Take, for example, a report on March 5 that North Korea has developed an armed drone that it could use to threaten the region. The problem is that the capability is little more than a kamikaze missile, a far cry from the American version that the drone is purportedly intended to resemble. Contrary to these sensationalist accounts, the international market for armed drones -- the most potentially threatening and destabilizing type -- is quite small. Actually, it's minuscule, projected to be about $8.35 billion by 2018, around which time the global defense market is expected to reach $1.88 trillion, which would mean that drone expenditures will make up less than 0.5 percent of the world's defense spending. Even though global drone expenditures are expected to grow roughly a billion dollars a year (though they actually fell from $6.6 billion to $5.2 billion between 2012 and 2013), the business of UAVs will remain little more than a small focus of defense spending outside the United States for the next decade. Part of the reason the public is so easily manipulated is that much of what is known about the development of armed drones is clouded in secrecy. Some countries, including the United States, maintain covert programs for obvious reasons like maintaining the strategic element of surprise, while others, such as Iran, boast of armed drones that have not been demonstrably used in order to garner national prestige. There are also government announcements of deadlines for developing them that appear to go unmet, as well as aspirational statements by drone manufacturers for orders that are never fulfilled. Drone sales have indeed increased markedly over the past few years. A decade ago, analysts estimated that global spending on commercial and military drones would be $2 billion in 2005, and the amount projected over the next decade was estimated to be nearly $11 billion. In 2013, $5.2 billion was spent on drones -- a 21 percent decrease from the previous year -- with $89 billion projected for the next 10 years combined. Of that amount, only an estimated 11 percent, or $9.9 billion, is expected to be used to purchase armed drones. However, it is important to keep these numbers in perspective. According to IHS Jane's, global defense spending in 2013 was $1.54 trillion. The global market still belongs overwhelmingly to the United States and Israel, which were estimated in 2012 to comprise three-quarters of all drone sales. A November 2012 report estimated that U.S. defense firms Northrop Grumman and General Atomics accounted for 40 percent and 25 percent, respectively, of worldwide drone manufacturing. No other company had more than 3 percent of the market share. In 2013, the Stockholm International Peace Research Institute estimated that Israel was responsible for 41 percent of drone exports between 2001 and 2011. However, China has reportedly sold two of its smaller armed drones to the United Arab Emirates and Pakistan, raising concerns about whether China would export its larger Predator-equivalent drone (the CH-4) to countries such as Iran. According to the Teal Group, over the next decade 51 percent of global drone procurement and 65 percent of global research and development on drones will be solely American. This should not be surprising given that the United States has been the lead actor in the development and use of all drones and that the Pentagon's budget is bigger than the next 10 largest defense budgets combined. And though many militaries around the world are pursuing drones, the vast majority of armed drones in development will not resemble U.S. armed drones, such as the Predator and Reaper, which have the greatest potential to be used against perceived adversaries domestically or in neighboring territories. Most drones will be used for surveillance to capture full-motion video or collect signals intelligence. Of the 27,420 aerial drones that the Teal Group projects will be purchased in the next decade, just 3 percent are estimated to be either medium-altitude, long-endurance drones (like the weapons-capable Predator and Reaper) or unmanned combat aerial vehicles (armed drones). This is also true for the United States. According to a recent Pentagon report, the United States possesses some 11,000 aerial drones, of which fewer than 400 are capable of being weaponized. That other countries have not followed the United States' lead in acquiring armed drones may be surprising given what might seem to be the enviable position of using them to target adversaries while not incurring any meaningful risk. But while one can buy a rudimentary drone at Brookstone, producing an advanced armed drone is no small technological feat. The United States' armed drones require sophisticated beyond-line-of-sight communications, access to satellite bandwidth, and systems engineering -- from internal fire control to ground control stations -- that are currently beyond the reach of most states. Even countries that have relatively advanced aerospace programs -- Russia, France, and Italy -- will struggle to develop and deploy this systematic architecture of capabilities and processes. Moreover, in some countries domestic politics have impeded armed drone developments. Whereas the U.S. targeted killing program has faced few domestic constraints, drone politics look considerably different in other countries. In late February the European Parliament passed an unprecedented resolution, declaring: "Drone strikes outside a declared war by a state on the territory of another state without the consent of the latter or of the UN Security Council constitute a violation of international law and of the territorial integrity and sovereignty of that country." In Germany, advocates of the armed drone program have encountered intense opposition from a public worried that the lethal capability could compromise the country's defense-only security norms and increase the prospects for military interventions more generally. The German debate demonstrates how the prism through which both sides view armed drones is significantly influenced by their perception of the morality, legality, and necessity of U.S. drone strikes. Thus, while the Ministry of Defense declared for a half-decade that it planned to purchase 16 armed drones, the decision was postponed in November and is once against under review. In an era when most defense budgets -- outside the Asia-Pacific region -- are static or in slight decline, costs will constrain armed drone developments and purchases. As the United States has learned, armed drones are not markedly cheaper than manned fighter aircraft, and in some situations they are actually more expensive. Human intelligence is costly and required in large numbers to analyze and disseminate the full-motion video and signals intelligence collected by drones. Before committing to redirect precious defense dollars, governments must identify the military missions for which armed drones are uniquely suited and that cannot reliably be achieved by the weapons systems currently in their arsenals. To date, the majority of governments worldwide simply have not rushed away from manned aircraft, rocket and artillery, or special operation forces -- and toward armed drones. The truth about drone proliferation matters because the Obama administration

is in the final stages of a long, contentious interagency review of U.S. drone exports. If the White House's strategy is based on the misperception of a world characterized by limitless drone proliferation, then a policy of markedly reduced barriers for U.S. drone exports is sensible, because states would ultimately acquire armed drones irrespective of U.S. policies. If, however, proliferation does have structural and normative impediments, then how the United States -- as the largest manufacturer of armed drones -- develops its export strategy could have an impact on the breadth and speed with which the technology diffuses. And then some of the caricatures of drone proliferation may end up being credible. The result could be that more states will be armed with the low-risk technology that arguably lowers the threshold for using force, with potentially destabilizing consequences for regional and international security.

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#### More violation ev – drone courts supervise that which has been authorized

GARRETT EPPS FEB 16 2013, 9:54 AM ET. http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/

The idea of a "drone court" would send federal courts into areas they have never gone before, and indeed from which, I think, the text of the Constitution bars them. It could also put the integrity of our court system at risk. Let's frame the issue properly. The present administration does not claim that the president has "inherent authority" to attack anyone anywhere. Instead, from the documents and speeches we've seen, the administration says it can order drone attacks only as provided by the Authorization for the Use of Military Force passed by Congress after the September 11 attacks--that is, against "those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, President Obama can't suddenly send the drone fleet down to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. That's a marked change from the overall position of the last administration, and it's an important limitation on the president's claimed authority. But because of that limitation, a court would be supervising the president's command decisions in a time of authorized military action--after, that is, the legal equivalent of a "declaration of war." As commander in chief, the president has been given a mission by Congress. By passing the AUMF, Congress has delegated to him its full war power to use in that mission. Nothing in the AUMF is directed to the courts; in fact, I have trouble finding authority for target selection anywhere in Article III. And whatever the technological changes, constitutionally I see no difference between targeting an enemy with a drone and doing the same thing with a Cruise missile or a SEAL Team. Courts simply aren't equipped to decide military tactics.

#### Causes a limits slippery slope – their aff doesn’t fundamentally change legality of strikes. AUMF grants TK authority – means plan doesn’t alter permission.

Allyson L. Mitchell, School of Conflict Analysis and Resolution (S-CAR), George Mason University, “My Neighbor Is A Terrorist: Peacebuilding, Drones, and America's Presence in Yemen,” November 2012, http://www.beyondintractability.org/reflection/mitchell-neighbor

Once wary of the use of targeted killings, the United States became an advocate of targeted warfare after 9/11. According to a 2010 United Nations report, targeted killings are defined as, "the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator."[16] Under the rules of International Humanitarian Law, targeted killing is only lawful when met by three requirements; (1) The target is directly participating in the hostilities, (2) The use of force is proportionate, and (3) Precautions were taken to minimize harm to civilians. Under the Law of Inter-State Force, a targeted killing directed by a State in a territory of another State does not violate the second State's sovereignty if (A) the second State gives consent, or (B) the first State is using force in an act of self-defense. This act of self-defense is warranted when "the second state is unwilling or unable to stop armed attacks against the first State launched from its territory".[17] In both these cases the United States has legal authority to use lethal force against AQAP in Yemen; President Saleh had given the U.S. government permission to attack AQAP members and the United States' claim of self-defense is justified due to the previous assaults coordinated by AQAP that Yemeni authorities were unable to prevent. Although the United States appears to have followed the correct guidance in accordance with international laws, U.S. Constitutional Law was called into question because of Mr. al-Awlaki's American citizenship. To validate its claim, the U.S. government rationalized that Mr. Awlaki presented an imminent threat to civilians, that he was working hand-in-hand with the enemy (Al Qaeda), and that there was no feasible way to arrest and extradite him to the U.S. for trial. The justification for the kill order came from a secret memorandum written by the Justice Department's Office of Legal Counsel which concluded "Mr. Awlaki was covered by the authorization to use military force AUMF against Al Qaeda that Congress enacted shortly after the terrorist attacks of Sept. 11, 2001".[18] The document also alluded to the fact that there was future risk of Mr. Awlaki attacking the United States at any given time and this risk posed a significant threat to Americans' safety.

### CP

#### Ex ante will overwhelm ex post review

Vladeck 13 (Stephen I. Vladeck Professor of Law and Associate Dean for Scholarship, American University Washington College of Law, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?,” http://judiciary.house.gov/hearings/113th/02272013\_2/Vladeck%2002272013.pdf)

In the process, the result would be that such ex ante review would do little other than to add the vestiges of legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante review in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea.

#### Ex post review solves – sets clear standards and reduces resentment

Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, ‘13

[Jennifer, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165, RSR]

For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target’s life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism.197 At a minimum, the relevant Inspectors General should engage in regular—and extensive—reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful—and often more searching—inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decision- making, thereby providing a self-correcting mechanism. Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations.198

#### Cause of action creates a deterrent effect that makes officials think twice about drones---drawbacks of judicial review don’t apply

Stephen I. Vladeck 13, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, Feb 27 2013, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?” Hearing Before the House Committee on the Judiciary, http://www.lawfareblog.com/wp-content/uploads/2013/02/Vladeck-02272013.pdf

At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I believe that virtually all of these concerns could be mitigated. ¶ For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. With respect to adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief, it’s difficult to see any pure Article III problem with such a suit for retrospective relief.¶ As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what the Supreme Court’s 1985 decision in Tennessee v. Garner20 contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances—albeit not always ideally—the government’s interest in secrecy with the detainee’s ability to contest the evidence against him.21 Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures,22 so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. And although the Guantánamo procedures have been developed by courts on an ad hoc basis (a process that has itself been criticized by some jurists), 23 Congress might also look to provisions it enacted in 1996 in creating the little-known Alien Terrorist Removal Court, especially 8 U.S.C. § 1534,24 as a model for such proceedings. ¶ More to the point, it should also follow that courts would be far more able as a practical matter to review the relevant questions in these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight—removed from the pressures of the moment and with the benefit of the dispassionate distance that judicial review provides. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc.¶ In addition to the substantive questions, it will also be much easier for courts to review the government’s own internal procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go a long way toward proving the lawfulness vel non of an individual strike.¶ As I mentioned before, there would still be a host of legal doctrines that would likely get in the way of such suits. Just to name a few, there is the present (albeit, in my view, unjustified) hostility to judicially inferred causes of actions under Bivens; the state secrets privilege;and sovereign and official immunity doctrines. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded),25 each of these concerns can be overcome by statute—as at least some of them arguably have been in the context of the express damages actions provided for under FISA. 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many—if not most—of these cases, these legal issues would be vitiated. Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the model of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation.27¶ 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. Some might also object to this proposal as being unnecessary—that, given existing criminal laws and executive orders, there is already a sufficiently clear prohibition on unlawful strikes to render any such damages regime unnecessarily superfluous. ¶ At least as to this last objection, it bears emphasizing that the existing laws depend entirely upon the beneficence of the Executive Branch, since they assume both that the government will (1) willfully disclose details of unlawful operations rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—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 may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

#### Retrospective review solves resentment and violations of international law – it’s the only way to effectively check the executive and compensate victims of errors

Hafetz 13 (Jonathan, Associate Professor of Law, Seton Hall University School of Law, Reviewing Drones, Huffington Post, 8 March 2013, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html, da 8-28-13) PC

FISA, however, provides a poor model for court review of drone strikes. Determining whether, and when, to launch a lethal strike can require time-sensitive decision-making ill-suited to careful judicial deliberation. Even if review addresses only the antecedent question of whether to place a person on a "kill list," judges will invariably defer to claims by executive-branch officials about the imminence of a threat and the necessity of a strike.¶ Pre-strike review, moreover, would place judges in the untenable position of having to sign death warrants -- a position judges are likely to resist. Judges, to be sure, make rulings every day with enormous consequences for human life and liberty. But they typically do so only after a trial, where both sides have presented evidence, and not -- as in the case of the FISA court -- in a secret proceeding based solely on the government's evidence.¶ A FISA review model would, in short, risk legitimizing drone strikes without providing any real check on their use.¶ The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.¶ Government officials, moreover, would be liable only if they violate clearly established legal standards. This limitation helps avoid chilling the use of drones where the law is uncertain, while still deterring their misuse.¶ Critics will contend that civil suits would mark an unprecedented intrusion into executive decision-making. But in recognizing the right of enemy combatants to seek judicial review of their detention through habeas corpus, the Supreme Court has made clear that even a state of war is not a blank check for the president. It misses the essential teaching of these rulings to insist that courts can review the government's decision to deprive a person of his liberty, but not his life.

### Norms

#### The same principles of deterrence apply to drones – countries will be cautious.

Singh, Researcher at the Center for a New American Security, ‘12

[Joseph, 8/13/12, “Betting Against a Drone Arms Race,” Time,

http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ]

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. ¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. ¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. ¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. ¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. ¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. ¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### Air defense takes out any offensive capabilities – no escalation.

Lewis, Associate Professor of Law at Ohio Northern University Pettit College of Law, ‘12

[Michael, “Drones and the Boundaries of the Battlefield”, 47 Texas International Law Journal 293 (2012), RSR]

Like any weapons system drones have significant limitations in what they can achieve. Drones are extremely vulnerable to any type of sophisticated air defense system. They are slow. Even the jet-powered Avenger is expected to have a top speed of around 400 knots,20 meaning that they cannot escape from any manned fighter aircraft, even outmoded 1970’s-era fighters that are still used by a number of nations.21 Not only can they not escape manned fighter aircraft, they also cannot hope to successfully fight them. Their air-to-air weapons systems are not as sophisticated as those of manned fighter aircraft, and in the dynamic environment of an air-to-air engagement, the drone operator could not hope to match the situational awareness22 of the pilot of manned fighter aircraft, making the outcome of any air-to-air engagement between drones and manned fighters a foregone conclusion. Further, drones are not only vulnerable to manned fighter aircraft they are also vulnerable to jamming. Remotely-piloted aircraft are dependent upon a continuous signal from their operators to keep them flying and this signal is vulnerable to disruption and jamming. If drones were perceived to be a serious threat to an advanced military, a serious investment in signal jamming or disruption technology could severely degrade drone operations if it did not defeat them entirely.23 These twin vulnerabilities, to manned aircraft and signal disruption, could be mitigated with massive expenditures on drone development and signal delivery and encryption technology but these vulnerabilities could never be completely eliminated. Meanwhile, one of the principal advantages that drones provide, their low cost compared with manned aircraft, would be swallowed up by any attempt to make these aircraft survivable against a sophisticated air defense system. As a result drones will be limited, for the foreseeable future,24 to use in ―permissive‖ environments in which air defense systems are primitive25 or non-existent. While it is possible to find (or create) such a permissive environment in an inter-state conflict,26 permissive environments that will allow for drone use will most often be found in counterinsurgency or counterterrorism operations.

**No Chinese drone aggression – political constraints**

**Erickson ‘13** – associate professor at the Naval War College and an Associate in Research at Harvard University’s Fairbank Center (Andrew, and Austin Strange, researcher at the Naval War College’s China Maritime Studies Institute and a graduate student at Zhejiang University, “China Has Drones. Now What?”, 2013, <http://www.foreignaffairs.com/articles/139405/andrew-erickson-and-austin-strange/china-has-drones-now-what?page=show>, CMR)

Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, **Beijing has cleared only a technological hurdle** -- **and its behavior will continue to be constrained by politics**.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing’s opacity makes it difficult to gauge the exact scale of the program, but according to Ian Easton, an analyst at the Project 2049 Institute, by 2011 China’s air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States’; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian (“sharp sword” in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Burmese drug trafficker, Naw Kham, made clear that it would not be out of the question for China to launch a drone strike in a security operation against a nonstate actor. Meanwhile, as China’s territorial disputes with its neighbors have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines, and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu Islands it disputes with Japan, as the retired Chinese Major General Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ **Beijing**, however, **is unlikely to use its drones lightly**. **It already faces tremendous criticism** from much of the international community **for its perceived brazenness in** continental and maritime **sovereignty disputes**. **With its leaders attempting to allay notions that China’s rise poses a threat** to the region, **injecting drones** conspicuously into these disputes **would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the U**nited **S**tates **could eventually exploit**. For now, **Beijing** is showing that it **understands these risks, and** to date it **has limited its use of drones** in these areas to surveillance, according to recent public statements from China’s Defense Ministry.¶ What about using drones outside of Chinese-claimed areas? **That China did not**, in fact, launch a drone **strike** on **the Burmese drug criminal underscores its caution**. According to Liu Yuejin, the director of the antidrug bureau in China’s Ministry of Public Security, **Beijing considered using a drone** carrying a 20-kilogram TNT payload **to bomb Kham’s mountain** redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham’s capture near the Myanmar-Laos border. **The** ultimate **decision to refrain** from the strike **may reflect** both **a fear of political reproach and a lack of confidence in untested drones, systems, and operators**.¶ **The restrictive position** that **Beijing takes on sovereignty in international forums will further constrain its use of drones**. **China is not likely to publicly deploy drones** for precision strikes or in other military assignments **without first having been granted a credible mandate to do so**. The gold standard of such an authorization is a resolution passed by the UN Security Council, the stamp of approval that has permitted Chinese humanitarian interventions in Africa and antipiracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorization, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But **even with** the **endorsement** of the international community or specific states, **China would have to weigh any benefits of a drone strike** abroad **against the potential for mishaps and perceptions** that **it was infringing on other countries’ sovereignty -- something Beijing regularly decries** when others do it.¶ The **limitations** on China’s drone use **are reflected in the country’s academic literature** on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -- such as a conflagration with Taiwan or the need to attack a U.S. aircraft carrier -- which would presumably involve far more than just drones. **Chinese researchers have thought a great deal about the utility of drones** **for** domestic **surveillance and law enforcement**, as well as for non-combat-related tasks near China’s contentious borders. **Few scholars**, **however**, **have** publicly **considered** the **use of drone strikes overseas**.¶ Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China’s horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. **Even if** such **strikes are operationally prudent, China’s leaders understand** that **they would damage the country’s image abroad**, but they prioritize internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world’s most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorization if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean.¶ Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military’s tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. **Beijing’s overarching approach remains** one of **caution** -- something Washington must bear in mind with its own drone program.

### Terrorism

#### AQAP is only 100 and their operations are all low tech and fail.

Boone, Former Managing Editor of Yemen Times, ‘11

[Jeb, 5-7-11, “Yemen: the new front line in the war for Obama’s second term”,

http://jebboone.com/2011/05/07/yemen-the-new-front-line-in-the-war-for-obamas-second-term/]

However, contrary to popular belief, AQAP is most likely comprised of around 100 religious fanatics somewhere in Shabwa. The operational strength and resources of AQAP is highly overestimated by western governments and analysts. If we look back on AQAP’s three biggest operations since the organization’s founding in January of 2009, we can clearly see that not only are they executed fairly cheaply (AQAP even bragged about this in an issue of inspire) but they really don’t take much skill to pull off. Not to mention, all the following operations ended in failure.

#### They’re confined to Yemen.

Sharp, Specialist in Middle Eastern Affairs, ‘11

[Jeremy, 3-22-11, “Yemen: Background and U.S. Relations”, CRS,

http://fpc.state.gov/documents/organization/159782.pdf]

Furthermore, some analysts reject outright the hypothesis that AQAP will develop mass tribal support in Yemen that will enable it to control territory and strike beyond the country’s borders. Although many AQAP members are Yemenis, a significant portion are Saudi citizens and foreign fighters, 35 who may be treated as temporary guests by a host tribe, but who would have to marry into the tribe to be considered full-fledged members. Although such marriages do occur, there is no public evidence that they are dramatically increasing, particularly between foreign nationals and Yemeni women. 36 Furthermore, there is no indication that large numbers of Yemeni tribesmen are open to Al Qaeda’s ideological appeal. According to former U.S. Ambassador to Yemen Edmund Hull: In 2002, Abu Ali al Harithi, then Al Qaeda's leader in Yemen, was killed by an American drone in a strike that was coordinated with the Yemeni government. By tribal custom, any perceived illegitimate killing would have been grounds for a claim by the tribe against the government. No such claim was made. In fact, when receiving the body for burial, one of his kinsmen noted that ‘'he had chosen his path, and it had led to his death.'’ This was not an anomaly. In my experience, there is no deep-seeded affinity between Yemeni tribes and the Al Qaeda movement. Tribes tend to be opportunistic, not ideological, so the risk is that Al Qaeda will successfully exploit opportunities created by government neglect. There are also family affinities—cousins, linked to uncles, linked to brothers. These do matter. But what matters most is the ‘mujahedeen fraternity’—Yemenis with jihadist experience in Afghanistan, Iraq, Saudi Arabia or elsewhere. Finally, what would matter—and significantly—would be innocent casualties resulting from counterterrorism operations, which could well set off a tribal response. 37

## 1NR

### NB

#### Nuke war doesn’t cause extinction nor turn bioD loss.

Seitz 11, Harvard University Center for International Affairs visiting scholar, (Russell, “Nuclear winter was and is debatable,” Nature, 7-7-11, Vol 475, pg37)

Alan Robock'scontention that there has been no real scientific debate about the 'nuclear winter' concept is itself **debatable** (Nature 473, 275–276; 2011). **This potential climate disaster**, popularized in Science in 1983, **rested on** the output of **a one-dimensional model that was later shown to** overestimatethe smoke **a nuclear holocaust** might engender. More refined estimates, combined with advanced three-dimensional models (see http://go.nature.com.libproxy.utdallas.edu/kss8te), have dramatically reduced the extent and severity of the projected cooling. Despite this, Carl Sagan, who co-authored the 1983 Science paper, went so far as to posit “the extinction of Homo sapiens” (C. Sagan Foreign Affairs 63, 75–77; 1984). **Some regarded this apocalyptic prediction as** an exercise inmythology. George **Rathjens of** the **M**assachusetts **I**nstitute of **T**echnology **protested: “Nuclear winter is** the worstexample of themisrepresentation of science **to the public** in my memory,” (see http://go.nature.com.libproxy.utdallas.edu/yujz84) **and climatologist** Kerry **Emanuel** observed that **the subject had “become** notorious for its lack of scientific integrity**”** (Nature 319, 259; 1986). Robock's single-digit fall in temperature is at odds with the subzero (about −25 °C) continental cooling originally projected for a wide spectrum of nuclear wars. Whereas Sagan predicted darkness at noon from a US–Soviet nuclear conflict, Robock projects global sunlight that is several orders of magnitude brighter for a Pakistan–India conflict — literally the difference between night and day. Since 1983**, the projected worst-case cooling has fallen** from a Siberian deep freeze spanning 11,000 degree-days Celsius (a measure of the severity of winters) **to numbers so** unseasonably **small as to call** the very term **'nuclear winter' into question.**

#### Legitimacy loss turns the case --- makes restriction of the president ineffective

Hansford 6 (Thomas Hansford, Assistant Professor of Political Science, University of South Carolina and James Spriggs, Associate Professor of Political Science, University of California, Davis, “The Politics of Precedent on the U.S. Supreme Court,” p. 18-24)

**Judges promote** legitimacy **because they recognize that it encourages** acceptance of and compliance with their decisions(Gibson 1989; Mon¬dak 1990, 1994; Tyler and Mitchell 1994). In our view of Supreme Court decision making, the justices value legitimacy for instrumental reasons, namely, as a means to the end of producing efficacious policy (see Epstein and Knight 1998). As discussed more fully below, **court decisions are** not self-executing **and thus third parties must implement them before they have any real effects. Since** legitimacy encourages compliance, **it enhances the power of courts and** facilitates their ability to cause legal **and** political change. Landes and Posner (1976, 273) make this point when stating: "No matter how willful a judge is, he is likely to follow precedent to some extent, for if he did not the practice of decision according to precedent (stare decisis, the lawyers call it) would be undermined and the precedential significance of his own decisions thereby reduced." Justice Stevens (1983, 2) reiterates this point by noting that stare decisis "obvi¬ously enhances the institutional strength of the judiciary." The significance of institutional and decisional legitimacy follows from two well-known characteristics of the judiciary. While these features apply to all courts, we will discuss them in the context relevant for our purposes-the U.S. Supreme Court. First, unlike elected officials or bureaucrats, the justices are expected to provide neutral, legal justifica¬tions for their decisions (Friedman et al. 1981; Maltz 1988). One important element of this expectation is that the justices show respect for the Court's prior decisions (Powell 1990). A recent national survey, for instance, demonstrates that the American public expects the Court to decide based on legal factors (Scheb and Lyons 2001). Nearly eighty-five percent of respondents to this survey indicated that precedent should have some or a large impact on the justices' decisions. By contrast, over seventy-three percent of respondents thought that whether judges were Democrats or Republicans should have no influence on their decisions. As these data indicate, Americans overwhelmingly believe in the idea that judges should make decisions based on neutral, legal criteria. Second, **the Court lacks significant implementation powers and thus relies on its external reputation to encourage implementation of and compliance with its decisions**. Alexander Hamilton pointed this idea out in Federalist 78: "The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm for the efficacy of its judgments." The basic idea is that the Court must rely on third parties to implement its policies, and a central way to promote compliance is through fostering institutional and decisional legitimacy (see Knight and Epstein 1996). **If the Court**, or a particular majority opinion, **is perceived as** somewhat **illegitimate, then** the **prospects for** compliance may decrease. The power of the Court, that is, rests on its "prestige to persuade" (Ginsburg 2004, 199).

#### The Court will hate the aff - collapses the rule of law

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “A FISC for Drones?,” http://centerforpolicyandresearch.com/2013/02/09/a-fisc-for-drones/)

Additionally, Chesney notes that “Some judges want absolutely nothing to do with this … due to hostility to the idea of judicial involvement in death warrants. (And that’s without considering the possibility of warrant-issuing judges finding themselves the object of suit or prosecution abroad.)” Judges would likely be much more comfortable with ex post review.: Ex post review would free them from any implication that they are issuing a “death warrant” and would place them in a position that they are much more comfortable with reviewing executive uses of force after the fact. While there are clearly parallels that could be drawn between the ex ante review proposed here and the search and seizure warrants that judges routinely deal with, there are also important differences. First and foremost is that this implicates not the executive’s law enforcement responsibility but its war-making and foreign relations responsibilities, with which courts are loath to interfere, but are sometimes willing to review for abuse.

#### Court legitimacy high, plan destroys it – controversial and violates Article III

Epps 13 (Garrett Epps, Professor of Law at the University of Baltimore, “Why a Secret Court Won’t Solve the Drone-Strike Problem,” The Atlantic, February 16, 2013, http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/)

Washington's idea of the week is a secret court, based on the Foreign Intelligence Surveillance Court, which issues secret wiretap warrants in certain espionage cases. **Executive officials would go before the drone court and present** their **evidence that an individual** abroad, perhaps a U.S. citizen, **is** an Al Qaeda affiliate and an **imminent danger. Judges** on the panel **would issue, in effect, a** secret death warrant--a certification that lethal force can be used against the "enemy combatant."¶ Sen. Dianne Feinstein spoke favorably about the idea at confirmation hearings for C.I.A. Director-designate John Brennan. So did former Defense Secretary Robert Gates. Thursday, the New York Times joined in the chorus. ¶ **Americans love courts** and judges. **But they trust them because,** in our system, **they are** independent of elected officials--not part of the political machine. They are also what lawyers call "courts of limited jurisdiction." **In carefully chosen language, Article III of the Constitution extends** "the **judicial power"** of the United States **to a specific and limited set of "cases and controversies." Federal courts** decide cases; they do not fight wars, collect the garbage, or set health-care policy. And most particularly, they **may** not become an advisory agency **of the executive branch**.¶ The idea of a **"drone court" would send federal courts into areas** they have never gone before, and indeed **from which,** I think, the text of **the** Constitution bars them. **It could** also **put the** integrity of our court system at risk.¶ Let's frame the issue properly. **The present administration does not claim that the president has "inherent authority" to attack anyone anywhere. Instead,** from the documents and speeches we've seen, **the administration says it can order drone attacks only as provided by the** Authorization for the Use of Military Force **passed by Congress** after the September 11 attacks--that is, against "those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." ¶ Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, **President Obama can't suddenly send the drone fleet down** to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. **That's** a marked change from the overall position of the last administration, and it's **an** important limitation **on the president's** claimed **authority.**¶ But **because of that limitation, a court would be supervising the president's command decisions in a time of** authorized military action--after, that is, the legal equivalent of a "declaration of war." As commander in chief, the president has been given a mission by Congress. By passing the AUMF, Congress has delegated to him its full war power to use in that mission. Nothing in the AUMF is directed to the courts; in fact, I have trouble finding authority for target selection anywhere in Article III. And whatever the technological changes, constitutionally I see no difference between targeting an enemy with a drone and doing the same thing with a Cruise missile or a SEAL Team. **Courts simply** aren't equipped **to** decide military tactics.¶ The FISA Court, on the other hand, doesn't really reach beyond Article III--judges since ancient times have issued warrants for searches and arrests, and the individuals being spied on are suspected of crimes against the United States. But I don't know of a deep-rooted tradition of common-law courts telling the shire reeve he can hunt someone down and kill him without trial.¶ **There's yet another problem: what criteria would a "drone court" apply?** In the "white paper" obtained by NBC News earlier this month, the Department of Justice says that a decision to order a strike involves three requirements: (1) the target represents "an imminent threat of violent attack"; (2) capturing the target would be "infeasible"; and (3) a lethal attack can be carried out "in a manner consistent with law of war principles." A court might be able to apply the first criterion, though just barely; but **there is** simply no precedent **for an Article III judge** balancing the prospective risks of a capture operation vs. that of a missile, **or assessing** the probability of **"collateral damage"** if the strike goes forward. **We have left "the judicial power" behind altogether, and created a** panel of poorly trained generals in sloppy black uniforms.¶Finally, **in time of war, there will be occasions when a target emerges and decisions must be made** too quickly **for even a secret court proceeding.** And thus the "drone court" would not be able to rule on some cases; an ambitious president could find many exceptions.¶ In addition, **an ambitious executive might** also **use the secret court as a means to** extend the drone-strike authority beyond actions in time of authorized military action. **With such a review mechanism in place,** the argument might go, **there's no danger in ceding the president's authority to use drones against enemies not so designated by Congress.**¶ What about after the fact, then? Could there be a secret court that would hear the administration's case for a drone strike and then decide whether that strike had been justified?¶ Not hardly, I think.¶ **A court that meets in secret, hears** only one side **of a dispute, and issues** a final **judgment without notifying** other **parties is** not any kind of Article III court I recognize. **It is not deciding cases; it is** granting absolution.

### Solvency

#### No incentive to comply – Obama’s done it before --- means there’s no aff

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(2/5/2013, Norman, “For the Glory of What? Drones, Israel, and the Eclipse of Democracy,” <http://www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/>)

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

#### The executive always has the upper hand – rally around the leader effect, answers their legitimacy claims

Rojas, 12 --- Associate Professor of Sociology at Indiana University (4/16/2012, Fabio, “rachel maddow will not bring peace,” <http://orgtheory.wordpress.com/2012/04/16/rachel-maddow-will-not-bring-peace/>)

Andrew Sullivan’s blog excerpted a passage from Rachel Maddow’s recent book. Understandably, Maddow’s book urges Congress to take a stand against war: When we go to war, we should raise taxes to pay for it. We should get rid of the secret military. The reserves should go back to being reserves. We should cut way back on the contractors and let troops peel their own potatoes. And above all, Congress should start throwing its weight around again… I agree in principle, but disagree on practice. Rules and institutions that end war are ineffective for two reasons. First, if you really want war, you can always vote to have a new rule for war or to make an exception. Also, most rules have wiggle room in them, which makes it easy to wage war under other guises. Secondly, there’s a consistent “rally around the leader effect.” It is incredibly hard for anyone to oppose leaders during war time. Elected leaders are in a particularly weak position. Simply put, legislatures can’t be trusted to assert their restraining role in most cases.

#### Only the CP solves this – rubberstamp turns the entirety of the aff.

Taylor 13 (Paul is a Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, Former DOD Lawyer Frowns on Drone Court, Transparent Policy Blog, 23 March 2013, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/, da 8-15-13) PC

Last week Jeh Johnson, the general council for the Department of Defense during President Obama’s first term, warned at a conference at Fordham Law School that the President’s targeted killing policies breeds mistrust among the public:¶ “The problem is that the American public is suspicious of executive power shrouded in secrecy. In the absence of an official picture of what our government is doing, and by what authority, many in the public fill the void by imagining the worst.”¶ However, he was skeptical about recent calls for a “drone court” to review and approve or deny targeted killing decisions:¶ “To be sure, a national security court composed of a bipartisan group of federal judges with life tenure, to approve targeted lethal force, would bring some added levels of credibility, independence and rigor to the process, and those are worthy goals.”¶ …¶ “But, we must be realistic about the degree of added credibility such a court can provide. Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government”s applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. … [While] the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a ‘rubber stamp’ because it almost never rejects an application. How long before a ‘drone court’ operating in secret is criticized in the same way?”¶ Apparently not long, since I have already raised this criticism in a previous post. However, I coupled this criticism with a proposed solution: using ex post review, rather than ex ante. By removing from the judge’s consideration the concern for the pressing national security need involved in deciding whether a proposed target is an imminent threat, ex post review would allow the judge to be more critical of the Administration’s case, and make the court less likely to become another “rubber stamp.”