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### Plan

#### Plan: The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action for damages arising directly out of the constitutional provision allegedly offended, on the basis that special factors do not preclude a right of action.

### Terrorism

#### advantage 1- Terrorism:

#### US counter-terrorism efforts are failing. Overreliance on drones results in civilian deaths that cause blowback- terrorist groups use civilian deaths for recruitment and fundraising, their key strategies for resurgence.

Cronin, prof-GMU, 13 (Audrey Kurth, Professor of Public Policy at George Mason University and the author of How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns, “Why Drones Fail,” Foreign Affairs, Jul/Aug2013, Vol. 92, Issue 4)

Like any other weapon, armed drones can be tactically useful. But are they helping advance the strategic goals of U.S. counterterrorism? Although terrorism is a tactic, it can succeed only on the strategic level, by leveraging a shocking event for political gain. To be effective, counterterrorism must itself respond with a coherent strategy. The problem for Washington today is that its drone program has taken on a life of its own, to the point where tactics are driving strategy rather than the other way around. The main goals of U.S. counterterrorism are threefold: the strategic defeat of al Qaeda and groups affiliated with it, the containment of local conflicts so that they do not breed new enemies, and the preservation of the security of the American people. Drones do not serve all these goals. Although they can protect the American people from attacks in the short term, they are not helping to defeat al Qaeda, and they may be creating sworn enemies out of a sea of local insurgents. It would be a mistake to embrace killer drones as the centerpiece of U.S. counterterrorism. AL QAEDA'S RESILIENCE At least since 9/11, the United States has sought the end of al Qaeda -- not just to set it back tactically, as drones have surely done, but also to defeat the group completely. Terrorist organizations can meet their demise in a variety of ways, and the killing of their leaders is certainly one of them. Abu Sayyaf, an Islamist separatist group in the Philippines, lost its political focus, split into factions, and became a petty criminal organization after the army killed its leaders in 2006 and 2007. In other cases, however, including those of the Shining Path in Peru and Action Directe in France, the humiliating arrest of a leader has been more effective. By capturing a terrorist leader, countries can avoid creating a martyr, win access to a storehouse of intelligence, and discredit a popular cause. Despite the Obama administration's recent calls for limits on drone strikes, Washington is still using them to try to defeat al Qaeda by killing off its leadership. But the terrorist groups that have been destroyed through decapitation looked nothing like al Qaeda: they were hierarchically structured, characterized by a cult of personality, and less than ten years old, and they lacked a clear succession plan. Al Qaeda, by contrast, is a resilient, 25-year-old organization with a broad network of outposts. The group was never singularly dependent on Osama bin Laden's leadership, and it has proved adept at replacing dead operatives. Drones have inflicted real damage on the organization, of course. In Pakistan, the approximately 350 strikes since 2004 have cut the number of core al Qaeda members in the tribal areas by about 75 percent, to roughly 50-100, a powerful answer to the 2001 attacks they planned and orchestrated nearby. As al Qaeda's center of gravity has shifted away from Pakistan to Yemen and North Africa, drone strikes have followed the terrorists. In September 2011, Michael Vickers, the U.S. undersecretary of defense for intelligence, estimated that there were maybe four key al Qaeda leaders remaining in Pakistan and about ten or 20 leaders overall in Pakistan, Somalia, and Yemen. Drones have also driven down the overall level of violence in the areas they have hit. The political scientists Patrick Johnston and Anoop Sarbahi recently found that drone strikes in northwestern Pakistan from 2007 to 2011 resulted in a decrease in the number and lethality of militant attacks in the tribal areas where they were conducted. Such strikes often lead militants simply to go somewhere else, but that can have value in and of itself. Indeed, the drone threat has forced al Qaeda operatives and their associates to change their behavior, keeping them preoccupied with survival and hindering their ability to move, plan operations, and carry them out. The fighters have proved remarkably adaptable: a document found left behind in February 2013 by Islamist fighters fleeing Mali detailed 22 tips for avoiding drone attacks, including using trees as cover, placing dolls and statues outside to mislead aerial intelligence, and covering vehicles with straw mats. Nonetheless, the prospect of living under the threat of instant death from above has made recruitment more difficult and kept operatives from establishing close ties to local civilians, who fear they might also be killed. But the benefits end there, and there are many reasons to believe that drone strikes are undermining Washington's goal of destroying al Qaeda. Targeted killings have not thwarted the group's ability to replace dead leaders with new ones. Nor have they undermined its propaganda efforts or recruitment. Even if al Qaeda has become less lethal and efficient, its public relations campaigns still allow it to reach potential supporters, threaten potential victims, and project strength. If al Qaeda's ability to perpetuate its message continues, then the killing of its members will not further the long-term goal of ending the group. Not only has al Qaeda's propaganda continued uninterrupted by the drone strikes; it has been significantly enhanced by them. As Sahab (The Clouds), the propaganda branch of al Qaeda, has been able to attract recruits and resources by broadcasting footage of drone strikes, portraying them as indiscriminate violence against Muslims. Al Qaeda uses the strikes that result in civilian deaths, and even those that don't, to frame Americans as immoral bullies who care less about ordinary people than al Qaeda does. And As Sahab regularly casts the leaders who are killed by drones as martyrs. It is easy enough to kill an individual terrorist with a drone strike, but the organization's Internet presence lives on. A more effective way of defeating al Qaeda would be to publicly discredit it with a political strategy aimed at dividing its followers. Al Qaeda and its various affiliates do not together make up a strong, unified organization. Different factions within the movement disagree about both long-term objectives and short-term tactics, including whether it is acceptable to carry out suicide attacks or kill other Muslims. And it is in Muslim-majority countries where jihadist violence has taken its worst toll. Around 85 percent of those killed by al Qaeda's attacks have been Muslims, a fact that breeds revulsion among its potential followers. The United States should be capitalizing on this backlash. In reality, there is no equivalence between al Qaeda's violence and U.S. drone strikes -- under the Obama administration, drones have avoided civilians about 86 percent of the time, whereas al Qaeda purposefully targets them. But the foolish secrecy of Washington's drone program lets critics allege that the strikes are deadlier and less discriminating than they really are. Whatever the truth is, the United States is losing the war of perceptions, a key part of any counterterrorism campaign. Since 2010, moreover, U.S. drone strikes have progressed well beyond decapitation, now targeting al Qaeda leaders and followers alike, as well as a range of Taliban members and Yemeni insurgents. With its so-called signature strikes, Washington often goes after people whose identity it does not know but who appear to be behaving like militants in insurgent-controlled areas. The strikes end up killing enemies of the Pakistani, Somali, and Yemeni militaries who may not threaten the United States at all. Worse, because the targets of such strikes are so loosely defined, it seems inevitable that they will kill some civilians. The June 2011 claim by John Brennan, President Barack Obama's top counterterrorism adviser at the time, that there had not been a single collateral death from drone attacks in the previous year strained credulity -- and badly undermined U.S. credibility. The drone campaign has morphed, in effect, into remote-control repression: the direct application of brute force by a state, rather than an attempt to deal a pivotal blow to a movement. Repression wiped out terrorist groups in Argentina, Brazil, Peru, and tsarist Russia, but in each case, it sharply eroded the government's legitimacy. Repression is costly, not just to the victims, and difficult for democracies to sustain over time. It works best in places where group members can be easily separated from the general population, which is not the case for most targets of U.S. drone strikes. Military repression also often results in violence spreading to neighboring countries or regions, which partially explains the expanding al Qaeda footprint in the Middle East and North Africa, not to mention the Caucasus. KEEPING LOCAL CONFLICTS LOCAL Short of defeating al Qaeda altogether, a top strategic objective of U.S. counterterrorism should be to prevent fighters in local conflicts abroad from aligning with the movement and targeting the United States and its allies. Military strategists refer to this goal as "the conservation of enemies," the attempt to keep the number of adversaries to a minimum. Violent jihadism existed long before 9/11 and will endure long after the U.S. war on terrorism finally ends. The best way for the United States to prevent future acts of international terrorism on its soil is to make sure that local insurgencies remain local, to shore up its allies' capacities, and to use short-term interventions such as drones rarely, selectively, transparently, and only against those who can realistically target the United States. The problem is that the United States can conceivably justify an attack on any individual or group with some plausible link to al Qaeda. Washington would like to disrupt any potentially powerful militant network, but it risks turning relatively harmless local jihadist groups into stronger organizations with eager new recruits. If al Qaeda is indeed becoming a vast collective of local and regional insurgents, the United States should let those directly involved in the conflicts determine the outcome, keep itself out, provide resources only to offset funds provided to radical factions, and concentrate on protecting the homeland. Following 9/11, the U.S. war on terrorism was framed in the congressional authorization to use force as a response to "those nations, organizations, or persons" responsible for the attacks. The name "al Qaeda," which does not appear in the authorization, has since become an ill-defined shorthand, loosely employed by terrorist leaders, counterterrorism officials, and Western pundits alike to describe a shifting movement. The vagueness of the U.S. terminology at the time was partly deliberate: the authorization was worded to sidestep the long-standing problem of terrorist groups' changing their names to evade U.S. sanctions. But Washington now finds itself in a permanent battle with an amorphous and geographically dispersed foe, one with an increasingly marginal connection to the original 9/11 plotters. In this endless contest, the United States risks multiplying its enemies and heightening their incentives to attack the country.

#### And, lack of transparency to the drone program collapses allied cooperation on terrorism, which is critical to intelligence sharing.

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

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

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

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

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

#### And, Al-Qaeda is planning attacks on the US.

Byman, Brookings Fellow, 13 (Daniel, professor in the Security Studies Program of Georgetown University's School of Foreign Service and the research director of the Saban Center for Middle East Policy at the Brookings Institution, “Al Qaeda Is Alive in Africa,” Jan 17, http://www.foreignpolicy.com/articles/2013/01/17/al\_qaeda\_is\_alive\_in\_africa)

It has been over a year and a half since Osama bin Laden was killed in Abbottabad, Pakistan, but now it seems like al Qaeda is everywhere: from Algeria to Somalia, from Mali to Yemen, from Pakistan to Iraq. In July 2011, arriving in Afghanistan on his first trip as U.S. defense secretary, Leon Panetta said, "We're within reach of strategically defeating al Qaeda." But on Wednesday, Jan. 16, Panetta seemed to express a good deal less optimism, making clear that the Algerian hostage crisis currently unfolding was "an al Qaeda operation." So has al Qaeda really become this web of linked groups around the world pursuing a common jihad against the West? And what is the relationship between the al Qaeda core and its affiliate organizations? These are important questions; the debate about whether the United States should join the French and step up involvement against jihadi groups in Mali centers on these complicated ties. For while al Qaeda leader Ayman al-Zawahiri and his lieutenants in the Afghanistan-Pakistan area consume much of our thinking on al Qaeda, the United States is also fighting al Qaeda affiliates like al Qaeda in Iraq (AQI), the Yemen-based al Qaeda in the Arabian Peninsula (AQAP), and al-Shabab in Somalia, which is also linked to al Qaeda. In 2012, the United States conducted more drone strikes on AQAP targets than it did against al Qaeda core targets in Pakistan. In Mali, U.S. concern is heightened by reports that some among the wide range of local jihadi groups like Ansar Dine have ties to al Qaeda in the Islamic Maghreb (AQIM). If groups in Mali and other local fighters are best thought of as part of al Qaeda, then an aggressive effort is warranted. But if these groups, however brutal -- and despite the allegiances to the mother ship they claim -- are really only fighting to advance local or regional ambitions, then the case for direct U.S. involvement is weak. The reality is that affiliation does advance al Qaeda's agenda, but the relationship is often frayed and the whole is frequently far less than the sum of its parts. Al Qaeda has always sought to be a vanguard that would lead the jihadi struggle against the United States. Abdullah Azzam, one of the most influential jihadi thinkers and a companion of bin Laden, wrote, "Every principle needs a vanguard to carry it forward" and that this vanguard is a "solid base" -- a phrase from which al Qaeda draws its very name. At the same time, al Qaeda sought to support and unify local Muslim groups as they warred against apostate governments such as the House of Saud in Saudi Arabia and Hosni Mubarak's Egypt. Convincing local groups to fight under the al Qaeda banner seems to neatly combine these goals, demonstrating that the mother organization -- now under Zawahiri -- remains in charge, while advancing the local and regional agendas that the core supports. More practically, in the past, the al Qaeda core has offered affiliates money and safe haven. In Afghanistan, and to a lesser degree in Pakistan, jihadists from affiliated groups came to train and learn and proved far more formidable when they returned to their home war zones. They also returned with a more global agenda, advancing the core's mission of shaping the jihadi movement. It also gave the core a new zone of operational access to conduct terrorist attacks in other places. Perhaps most importantly, the core al Qaeda managed to change the nature of the affiliates' attacks, so that in addition to continuing to strike at local regime forces, they also select targets more in keeping with the core's anti-Western goals. AQIM's attack this week on Western tourists and foreign oil workers in Algeria mimics the change in strategy. AQAP has taken this one step further and gone after the United States outside its region, twice launching sophisticated attacks on U.S. civil aviation.

#### And, they’ll use nuclear and biological weapons

Allison, IR Director @ Harvard, 12 (Graham, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government, Harvard Kennedy School, "Living in the Era of Megaterror", Sept 7, http://belfercenter.ksg.harvard.edu/publication/22302/living\_in\_the\_era\_of\_megaterror.html)

Forty years ago this week at the Munich Olympics of 1972, Palestinian terrorists conducted one of the most dramatic terrorist attacks of the 20th century. The kidnapping and massacre of 11 Israeli athletes attracted days of around-the-clock global news coverage of Black September’s anti-Israel message. Three decades later, on 9/11, Al Qaeda killed nearly 3,000 individuals at the World Trade Center and the Pentagon, announcing a new era of megaterror. In an act that killed more people than Japan’s attack on Pearl Harbor, a band of terrorists headquartered in ungoverned Afghanistan demonstrated that individuals and small groups can kill on a scale previously the exclusive preserve of states. Today, how many people can a small group of terrorists kill in a single blow? Had Bruce Ivins, the U.S. government microbiologist responsible for the 2001 anthrax attacks, distributed his deadly agent with sprayers he could have purchased off the shelf, tens of thousands of Americans would have died. Had the 2001 “Dragonfire” report that Al Qaeda had a small nuclear weapon (from the former Soviet arsenal) in New York City proved correct, and not a false alarm, detonation of that bomb in Times Square could have incinerated a half million Americans. In this electoral season, President Obama is claiming credit, rightly, for actions he and U.S. Special Forces took in killing Osama bin Laden. Similarly, at last week’s Republican convention in Tampa, Jeb Bush praised his brother for making the United States safer after 9/11. There can be no doubt that the thousands of actions taken at federal, state and local levels have made people safer from terrorist attacks. Many are therefore attracted to the chorus of officials and experts claiming that the “strategic defeat” of Al Qaeda means the end of this chapter of history. But we should remember a deeper and more profound truth. While applauding actions that have made us safer from future terrorist attacks, we must recognize that they have not reversed an inescapable reality: The relentless advance of science and technology is making it possible for smaller and smaller groups to kill larger and larger numbers of people. If a Qaeda affiliate, or some terrorist group in Pakistan whose name readers have never heard, acquires highly enriched uranium or plutonium made by a state, they can construct an elementary nuclear bomb capable of killing hundreds of thousands of people. At biotech labs across the United States and around the world, research scientists making medicines that advance human well-being are also capable of making pathogens, like anthrax, that can produce massive casualties. What to do? Sherlock Holmes examined crime scenes using a method he called M.M.O.: motive, means and opportunity. In a society where citizens gather in unprotected movie theaters, churches, shopping centers and stadiums, opportunities for attack abound. Free societies are inherently “target rich.” Motive to commit such atrocities poses a more difficult challenge. In all societies, a percentage of the population will be homicidal. No one can examine the mounting number of cases of mass murder in schools, movie theaters and elsewhere without worrying about a society’s mental health. Additionally, actions we take abroad unquestionably impact others’ motivation to attack us. As Faisal Shahzad, the 2010 would-be “Times Square bomber,” testified at his trial: “Until the hour the U.S. ... stops the occupation of Muslim lands, and stops killing the Muslims ... we will be attacking U.S., and I plead guilty to that.” Fortunately, it is more difficult for a terrorist to acquire the “means” to cause mass casualties. Producing highly enriched uranium or plutonium requires expensive industrial-scale investments that only states will make. If all fissile material can be secured to a gold standard beyond the reach of thieves or terrorists, aspirations to become the world’s first nuclear terrorist can be thwarted. Capabilities for producing bioterrorist agents are not so easily secured or policed. While more has been done, and much more could be done to further raise the technological barrier, as knowledge advances and technological capabilities to make pathogens become more accessible, the means for bioterrorism will come within the reach of terrorists. One of the hardest truths about modern life is that the same advances in science and technology that enrich our lives also empower potential killers to achieve their deadliest ambitions. To imagine that we can escape this reality and return to a world in which we are invulnerable to future 9/11s or worse is an illusion. For as far as the eye can see, we will live in an era of megaterror.

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

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

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

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

#### And, Bioterror leads to extinction

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The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

#### And, the plan is goldilocks- Applying judicial review and application of due process standards to targeted killing increases the credibility of the program while not hampering our warfighting capabilities.

Murphy and Radsan 09 (Richard and Afsheen John, Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law. Afsheen John Radsan is a Professor, William Mitchell College of Law. He was assistant general counsel at the Central Intelligence Agency from 2002-2004, “DUE PROCESS AND TARGETED KILLING OF TERRORISTS,” 32 Cardozo L. Rev. 405, 2009, lexis)

This Article stays closer to home, arguing that American due process principles should control targeted killing of suspected terrorists and applying those principles to alleged CIA Predator strikes. One obvious spur to our inquiry is the text of the Fifth Amendment itself, which, without obvious limitation, bars the federal government from depriving "any person" of "life" without "due process of law." 21 Other spurs include recent blockbuster opinions - Hamdi v. Rumsfeld 22 and Boumediene v. Bush 23 - that use administrative law principles to limit executive authority to detain persons as enemy combatants. If due [\*410] process controls whom the executive may detain in the war on terror, then surely due process controls whom and how the executive may kill. But on another view, nothing could be more absurd than courts attempting to conform armed conflict to judicial norms. Justice Thomas has been a vocal proponent for this view. 24 Indeed, he used the 2002 Predator strike cited at the beginning of this Article to mount a reductio ad absurdum attack on his colleagues' efforts in Hamdi to impose due process on the detention of enemy combatants. 25 Dissenting, he contended that the controlling plurality's approach led to the absurd conclusion that the government should give terrorists notice and an opportunity to be heard before firing a missile at them. 26 More broadly, Justice Thomas asserted that the courts have neither the authority nor the competence to second-guess the executive's detention of enemy combatants. 27 Implicit is that courts should not second-guess the killing of enemy combatants either. Responding to Justice Thomas's challenge, we contend that the due process model of Hamdi/Boumediene does not break down when applied to the extreme case of targeted killing. Instead, this model supports adoption of procedures that would increase transparency and accountability for targeted killing while still respecting national security needs. To support this contention, we press two claims. The first responds directly to Justice Thomas's gibe that the logic of Hamdi implies an absurd level of judicial control of war. Together, Hamdi and Boumediene give detainees a due process right to judicial review of the government's decision to deprive them of their liberty after their imprisonment had started. On its face, this kind of judicial intervention does not suggest that the CIA must give terrorists notice and an opportunity to be heard before killing them. Rather, by analogy, it suggests that a proper plaintiff should be able to challenge the legality of a targeted killing after an attack. This challenge might take the form of a Bivens-style action. 28 If allowed, these lawsuits would face an [\*411] array of practical and legal obstacles - not the least that a proper plaintiff would need to be alive and willing to bring suit in the United States. Even so, judicial resolution of the merits of a lawsuit that survived these obstacles would increase accountability for targeted killing without posing a significant threat to national security. 29 Therefore, the principles of due process call for this minimal level of judicial intervention.

### Bivens 1AC

#### Advantage two: Bivens

#### The Court is going to rule against al-Aulaki’s Bivens claim, a type of suit that seeks civil damages against constitutional violations from the targeted killing program—this will set a precedent against Bivens application on other national security issues.

Vladeck 12 (Stephen, Al-Aulaqi and the Futility (and Utility) of Bivens Suits in National Security Cases, July 23, http://www.acslaw.org/acsblog/al-aulaqi-and-the-futility-and-utility-of-bivens-suits-in-national-security-cases)

There’s quite a lot to say about the damages suit filed last week by the American Civil Liberties Union and the Center for Constitutional Rights on behalf of the family of Anwar al-Aulaqi and his 16-year-old son Abdulrahman, both of whom were killed (along with a third U.S. citizen) in a pair of drone strikes in Yemen in the fall 0f 2011. And although the suit raises a host of important and thorny legal questions of first impression, including whether a non-international armed conflict existed in Yemen at the time of the strikes and whether a U.S. citizen can claim a substantive due process right not to be collateral damage in an otherwise lawful military operation, I suspect my Lawfare colleague Ben Wittes is quite correct that this case won’t actually resolve any of them. Instead, as Ben suggests, it seems likely that the federal courts will refuse to recognize a “Bivens” remedy — a cause of action for damages arising directly out of the constitutional provision allegedly offended (e.g., the Fifth Amendment’s Due Process Clause), and that the plaintiffs will therefore be unable to state a valid cause of action. As I explain below, such a result would unfortunately perpetuate a fundamental — and increasingly pervasive — misunderstanding of Bivens. Moreover, even if plaintiffs will ultimately lose suits like Al-Aulaqi because of various defenses — including qualified immunity, the state secrets privilege, and the political question doctrine — getting the Bivens question right still matters. To the extent that the specter of judicial review deters governmental misconduct down the road, Bivens suits can and should have a salutary effect on the conduct of U.S. national security policy — so long as they’re properly understood in the first place.

#### Rejecting Bivens suits against the military creates confusion in the case law and lower court splits—setting precedent that Bivens suits are permitted is key to resolve this uncertainty

Loevy 13 (ARTHUR LOEVY, partner Loevy & Loevy, a firm specializing in constitutional and civil rights, with MICHAEL KANOVITZ, Counsel of Record, et al, PETITION FOR A WRIT OF CERTIORARI, DONALD VANCE AND NATHAN ERTEL v.DONALD RUMSFELD, http://cryptome.org/2013/03/vance-ertel-v-rumsfeld.pdf)

The Decision to Bar Civilian Bivens Actions Contradicts Chappell, Stanley, and Saucier As Well As Lower Courts That Allow Civilians to Sue Military Officials for Constitutional Injuries Review is warranted because the decision to bar civilian constitutional claims against military officials contradicts this Court’s precedents that set the bounds of Bivens actions involving the military. It also creates a split among the lower courts, which until now had permitted Bivens actions by American civilians against military personnel. In light of the continual interaction between military and civilians, this Court should immediately address this division among the circuits. 1. The majority below concluded erroneously that Chappell and Stanley compelled its judgment that no American civilian may ever sue a military official for constitutional violations. App. 12a-13a. This conclusion actually contradicts Chappell and Stanley, which simply applied to Bivens the doctrine of Feres v. United States, 340 U.S. 135 (1950). Feres barred recovery under the Federal Tort Claims Act for servicemembers alleging injuries incident to military service, id. at 141; and Chappell and Stanley applied the same restriction to Bivens actions, see Stanley, 483 U.S. at 684; Chappell, 462 U.S. at 305. Both Chappell and Stanley expressly limited their holdings, rejecting a complete bar on all constitutional claims by servicemembers against other military personnel. This Court left servicemembers room to bring constitutional claims against military officials for violations arising outside of military service------i.e., arising in servicemembers’ capacity as civilians. Stanley, 483 U.S. at 681-83; Chappell, 462 U.S. at 304-05. These cases impose no limits on civilian Bivens actions against the military, 4 but instead draw a line between claims of servicemembers and those of civilians. Chappell, 462 U.S. at 303-04 (‘‘[T]his Court has long recognized two systems of justice[:] one for civilians and one for military personnel.’’). The Seventh Circuit contradicts both decisions by disregarding their limitation to intra-military injuries suffered incident to service and by applying them to foreclose relief for civilians. As Judge Williams noted, the majority’s judgment ‘‘goes well beyond what the Supreme Court has expressly identified as a bridge too far.’’ App. 74a. Saucier further illustrates the conflict between this Court’s decisions and the Seventh Circuit’s new bar to civilian Bivens claims. 553 U.S. 194. Saucier was a Bivens action brought by a civilian after Chappell and Stanley, in which the civilian alleged the use of excessive force by a military official. This Court found that the military officer was entitled to qualified immunity but nowhere suggested that civilians cannot bring Bivens claims against military personnel in the first place. Cf. Stanley, 483 U.S. at 684-85 (distinguishing the question of the Bivens cause of action from the immunity inquiry). The Seventh Circuit’s decision conflicts with this Court’s approval of such suits. 2. It is not surprising given these precedents that the lower courts had unanimously permitted civilians to bring Bivens actions against military officials who violated their constitutional rights. Before this case, five courts, including the Seventh Circuit, had taken that position. See Case v. Milewski, 327 F.3d 564, 568-69 (7th Cir. 2003) (considering civilian claim alleging military officers used excessive force); Morgan v. United States, 323 F.3d 776, 780-82 (9th Cir. 2003) (allowing Bivens action for civilian alleging military officers conducted illegal search); Roman v. Townsend, 224 F.3d 24, 29 (1st Cir. 2000) (entertaining Bivens action by civilian against military police); Applewhite v. U.S. Air Force, 995 F.2d 997, 999 (10th Cir. 1993) (considering military officers’ immunity from civilian’s allegations of illegal strip search); Dunbar Corp. v. Lindsey, 905 F.2d 754, 756-63 (4th Cir. 1990) (permitting civilian Bivens action against military officers for deprivation of property). No court had previously barred such claims.5 The judgment below contradicts decisions of the First, Fourth, Ninth, and Tenth Circuits that permit civilian suits against military officers, consistent with Saucier. This conflict and the uncertainty that the judgment below engenders in interactions between military officials and American civilians------whether contractors, military families, or workers on bases------calls for review by this Court.

#### Civil suits solve-- only subjecting the military to more civilian justice remedies the current crisis in military legitimacy – civil courts restore public confidence in the military while freeing up military resources to spend on operations, training, and recruiting.

Hillman, law prof-UC Hastings, 13 (Elizabeth L. Hillman, a professor of law at the University of California, Hastings, is the president of the National Institute of Military Justice, “Get Civilian Authorities Involved,” July 13, http://www.nytimes.com/roomfordebate/2013/05/28/ensuring-justice-in-the-military/get-civilian-authorities-involved-in-military-justice)

Since the end of the draft in 1973, we’ve become accustomed to a very active military, composed only of volunteers, to which our civilian leaders have reflexively deferred, whether on matters of personnel policy or strategy. Consider the remarkable solicitude that was required before “don’t ask/don’t tell” came to an end. Before this civil rights reform could be implemented, surveys and studies and working groups that dwarfed the resources that have been invested in understanding sexual assault were dedicated to making sure that lesbians and gay men serving openly would not undermine morale. A sense of superiority, and a resentful posture toward civilian authority, have pervaded military culture as our use of the military to pursue national goals has expanded since the end of World War II, and presidential power has grown. The Supreme Court has increasingly deferred to military decision-making. While valuing the sacrifices of service members and honoring our responsibility to veterans, we need to end this isolation of the military from civil society. Doing so would help restore confidence in military justice. The notion that soldiers are superior to civilians was not, of course, invented in the late 20th-century, but historians and legal scholars alike have remarked on this recent trend. Robert L. Goldich casts the post-modern army as staffed with legionnaires rather than citizen-soldiers. Andrew J. Bacevich sees the relatively new “warrior-professional” as standing above, not with, his or her civilian counterpart. Diane H. Mazur considers judicial deference to the military a misguided constitutional doctrine that undermines military professionalism itself. To end the sexual assaults that have eroded confidence in military justice, we need to consider whether our service members, and our nation, are well served by leaving all decisions about crime and punishment entirely in the hands of those in uniform. Civilian authorities should help shoulder the burdens of having a professional armed force by participating in the process of investigating and prosecuting service members' misconduct. Shrinking military jurisdiction so that some crimes committed by service members are prosecuted by civilian courts could help disrupt the isolated culture of the military and educate civilians about military life. If an alleged rape, robbery, or drunk driving offense were prosecuted by civil authorities, military resources could be conserved for military operations, training, and discipline rather than spent on criminal investigation, prosecution and punishment. Even a modest shift in the direction of civil authority would signal the military's openness to change and progress, as well as its essential connection to civil law and government.

#### Scenario One: Military Sexual Assault

#### Allowing court adjudication of Bivens suits against the military is critical to enforce Congressional standards for military justice. Only civilian Bivens suits can check rampant sexual assault in the military, which threatens unit cohesion and mission effectiveness.

Burke 12 (Susan, civil discrimination lawyer known for cases in which she has represented plaintiffs suing the American military, she has represented former detainees of Abu Ghraib and military translators, On Appeal from the United States District Court: APPELLANTS’ OPENING BRIEF, KORI CIOCA et al. Plaintiffs-Appellants, v. DONALD RUMSFELD et al., april 23, http://protectourdefenders.com/images/Burke\_Cicoa\_Appeal\_Brief.pdf)

It is clear that the District Court created a per se rule against servicemembers’ Bivens claims because it dismissed the lawsuit without any factfinding on whether adjudication would impact military discipline in any way, let alone in a negative way. The rape survivors allege Defendants substituted their own views on what should be done for the views of Congress. They allege former Secretaries Rumsfeld and Gates refused to cooperate with Congressional oversight and violated, among others, Public Law 105-85 and the National Defense Authorization Act for Fiscal Year 2009. They allege they were harmed by the Defendants’ intentional flouting of the Congressional rules and regulations designed to reduce unpunished rape and sexual assault in the military. J.A. 52-57 ¶¶ 319-340. The federal courts generally have a duty to adjudicate Constitutional claims, and should voluntarily abstain from such adjudication only in those rare instances when adjudication undermines, rather than strengthens, the democratic values enshrined in the Constitution. In the instant case, adjudication, not abstention, serves to ensure that the entity answerable to the electorate, Congress, controls military discipline, and that its efforts to do so are not intentionally thwarted by unelected Executive branch officials. Rapes and sexual assaults serve no military mission, as has been conclusively established by the military’s own statements. See J.A. 47¶ 304, quoting the 2009 Annual Report on Sexual Assaults in the Military: “In the armed forces sexual assault not only degrades individual resilience but also erodes unit integrity. Service members risk their lives for each other to keep fellow service members out of harm’s way. Sexual assault breaks this important bond and tears apart military units. An effective fighting force cannot tolerate sexual assault within its ranks. Sexual assault is incompatible with military culture, and the costs and consequences for mission accomplishments are unbearable.” It is for all these reasons that Congress acted, not once but repeatedly, to direct Defendants on what they should do to reduce the amount of unpunished sexual predation in the military. Yet Secretaries Rumsfeld and Gates intentionally violated these directives, and instead ushered in an era of an ever-greater number of unpunished rape and sexual assaults. Holding Defendants accountable for intentionally violating Congressional rules and regulations cannot possibly negatively impact military discipline. To the contrary, allowing wrongdoing to flourish at the very highest level of the military, and allowing Defendants to ignore the civilian control required by the Constitution, undermines not only military discipline but the Constitution itself. Our democracy has never elevated the military to a special status outside the reach of Congress and its laws. Yet these two men persuaded the District Court, and seek to persuade this Court, that they should be considered above the law of the land. This Court should reject this cynical and democracy-destroying effort, and hold that a jury of Americans should decide whether these two men should pay damages to the individuals irreparably harmed by their misconduct. The District Court erred by adopting a per se rule and concluding without any fact finding that permitting the rape survivors to bring Bivens claims would impair military discipline or impede a military mission. Such a per se rule contradicts, not adheres to, the Supreme Court’s Chappell decision. Permitting the rape survivors to seek Bivens damages from the former military leaders who viewed themselves as beyond the reach of Congressional rules and regulations will send a clear message of accountability and civilian control over the military.

#### Readiness is critical to signal resolve and prevent rivals from lashing out

Spencer 2000(Jack, Research Fellow at Thomas A. Roe Institute for Economic Policy Studies, “The Facts About Military Readiness”, Heritage Foundation, September 15th, <http://www.heritage.org/Research/Reports/2000/09/BG1394-The-Facts-About-Military-Readiness>)

America's national security requirements dictate that the armed forces must be prepared to defeat groups of adversaries in a given war. America, as the sole remaining superpower, has many enemies. Because attacking America or its interests alone would surely end in defeat for a single nation, these enemies are likely to form alliances. Therefore, basing readiness on American military superiority over any single nation has little saliency. The evidence indicates that the U.S. armed forces are not ready to support America's national security requirements. Moreover, regarding the broader capability to defeat groups of enemies, military readiness has been declining. The National Security Strategy, the U.S. official statement of national security objectives,3 concludes that the United States "must have the capability to deter and, if deterrence fails, defeat large-scale, cross-border aggression in two distant theaters in overlapping time frames."4According to some of the military's highest-ranking officials, however, the United States cannot achieve this goal. Commandant of the Marine Corps General James Jones, former Chief of Naval Operations Admiral Jay Johnson, and Air Force Chief of Staff General Michael Ryan have all expressed serious concerns about their respective services' ability to carry out a two major theater war strategy.5 Recently retired Generals Anthony Zinni of the U.S. Marine Corps and George Joulwan of the U.S. Army have even questioned America's ability to conduct one major theater war the size of the 1991 Gulf War.6 Military readiness is vital because declines in America's military readiness signal to the rest of the world that the United States is not prepared to defend its interests. Therefore, potentially hostile nations will be more likely to lash out against American allies and interests, inevitably leading to U.S. involvement in combat. A high state of military readiness is more likely to deter potentially hostile nations from acting aggressively in regions of vital national interest, thereby preserving peace.

#### Scenario Two: Convention Against Torture

#### Blocking Bivens remedies under special factors of national security questions is a violation of the Convention Against Torture – the plan is critical to aligning the United States with CAT

Amnesty International 13 (global movement of 3 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion, “USA: Chronicle of Immunity Foretold”, http://www.amnestyusa.org/sites/default/files/amr510032013en.pdf)

INTERNATIONAL LAW AND BEING ECONOMICAL WITH THE TRU TH In fact, the US government has relied on the availability of Bivens claims in cases of government torture to help show that the US is complying with our obligations under the United Nations Convention Against Torture. A United Nations committee overseeing compliance questioned the fact that the United States had enacted virtually no new legislation to implement the Convention Against Torture. The State Department assured the United Nations that the Bivens remedy is available t o victims of torture by US officials Vance v. Rumsfeld , Seventh Circuit Court of Appeals, Judge Hamilton dissenting A “ Bivens ” claim is one brought under a 1971 US Supreme Cour t decision which established that victims of constitutional violations have a ri ght to recover damages in federal court against the official or officials in question even in the absence of a statutory route to remedy passed by Congress. 17 In 2007 the Supreme Court set out a two-step process in Bivens cases. Firstly, it said that the court in question should determine whether any alternative route to remedy exists requiring the judiciary to “refrain from providing a new and freestanding damages remedy”. Secondly, in the absence of an alternative, the cou rt must make “the kind of remedial determination that is appropriate for a common-law t ribunal, paying particular heed to any special factors counselling hesitation before autho rizing a new kind of federal litigation”. 18 The notion of “special factors” requiring judicial “hesitation”, which appeared in the original Bivens ruling, has been successfully used by the Bush and Obama administrations in persuading courts not to create a judicial remedy f or the kind of abuses alleged by detainees in the post 9/11 counter-terrorism context. In this regard, the “special factors” asserted are factors such as national security, intelligence gat hering, waging war, and foreign relations. These broad notions have smothered the pursuit of remedy for abuses committed in the counter-terrorism context like some executive-spun, court-endorsed fire blanket, with the legislature looking away. Even in the absence of a finding of “special factor s”, the court may find the officials in question to be entitled to “qualified immunity” whic h will also block the lawsuit from being allowed to proceed. The doctrine of qualified immunity in US law protects government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” 19 An official’s conduct violates clearly established law “when, at the time of the challenged conduct, the contours of a right are suf ficiently clear that every reasonable official would have understood that what he is doing violates that right.” 20 The Supreme Court has said that qualified immunity “balances two importan t interests – the need to hold public officials accountable when they exercise power irres ponsibly and the need to shield officials from harassment, distraction, and liability when the y perform their duties reasonably.” 21 Given the blocking of lawsuit after lawsuit, as illust rated below, plaintiffs could be forgiven for concluding that the balance is institutionally weighted towards injustice. The right to an effective remedy is recognized in a ll major international and regional human rights treaties, including the International Covena nt on Civil and Political Rights (ICCPR), ratified by the USA in 1992. Under Article 2.3 of t he ICCPR, any person whose rights under the ICCPR have been violated “shall have an effectiv e remedy, notwithstanding that the violation has been committed by persons acting in a n official capacity”. International law requires that remedies not only be available in the ory, but accessible and effective in practice. 22 The right to an effective remedy can never be derogated from. Even in a state of emergency, “the state party must comply with the fun damental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy th at is effective.” 23 Victims are entitled to equal and effective access to justice; adequate, ef fective and prompt reparation for harm suffered; and access to relevant information concer ning violations and reparation mechanisms. 24 Full and effective reparation includes restitution , compensation, rehabilitation, satisfaction and guarantees of non- repetition. 25 Further, under article 9.5 of the ICCPR, anyone who has been subjected to unlawful d etention must be provided with “an enforceable right to compensation”. The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) also specifically obliges the US A to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabi litation as possible.” 26 All four US citizen plaintiffs in the cases outlined in this report have alleged torture and other ill-treatment as well as unlawful detention by the US military. All four lawsuits have been blocked from proceeding before the evidence of the abuses has been scrutinized on the merits, as a result of the USA’s doctrine of qualified immunity or of Bivens “special factors”. The blocking of these lawsuits in this way clearly contravenes the USA’s obligations to provide a remedy under international law. The UN Com mittee against Torture has emphasised that “under no circumstances may arguments of natio nal security be used to deny redress for victims.” 27 The US courts should not therefore be blocking access to a remedy for victims of torture or other ill-treatment based on “special factors” such as national security, intelligence gathering, waging war, and foreign relations

#### And, US non-compliance undermines global enforcement---other countries use as a justification for human rights violations including religious persecution

CVT 13 (Center for Victims of Torture Policy Report: US Bi-Partisan Leadership Against Torture”, April 2013, international nonprofit dedicated to healing survivors of torture and violent conflict. We provide direct care for those who have been tortured, train partners around the world who can prevent and treat torture, and advocate for human rights and an end to torture, http://www.cvt.org/sites/cvt.org/files/downloads/Report\_Bipartisan%20Leadership%20Against%20Torture\_April%202013.pdf)

SPILL-OVER “JUSTIFICATIONS” AND DANGEROUS PRECEDENT When the United States engages in torture and abuse in the name of national security, it provides justifications for other governments and oppressive regimes to do the same against innocent civilians, journalists, democracy activists, people seeking to practice their own religion, and even puts U.S. troops in danger. CVT has seen strikingly similar patterns worldwide among different leaders – left and right- who rationalize the use of torture by dehumanizing the victim, citing national emergencies and security as justification, and assuming an ability to produce a desired outcome through fear and violence. When crises arise that prove beyond the scope of leaders’ imaginations and/or resources, desperate measures are often supposed necessary. Moreover, when the U.S. government openly violated its international legal obligations, it set a dangerous precedent not only on the issue of torture, but for the broader notion that those duties are optional. U.S. government policies and practices weakened international human rights instruments designed to end torture (the CAT and the Geneva Conventions). Flagrant disregard for treaties and conventions that the U.S. has ratified has profound implications for the global community’s efforts to secure support for international norms. By flouting these obligations, the United States also delivered an implicit message that torture, once seen as the tool of despotic regimes, could be shaped to look like legitimate component of a democratic government’s national defense. Furthermore, the United States’ practice of torture places U.S. troops in danger should they be captured. In remarks on the floor of the U.S. Senate, Senator John McCain cautioned, “… if America uses torture, it could someday result in the torture of American combatants.”52 He went on to warn that the United States should “…be careful that we do not set a standard that another country could use to justify their mistreatment of our prisoners.” 53 HEALING FOR TORTURE SURVIVORS AROUND THE WORLD Whenever laws banning torture are upheld, a message is transmitted to repressive governments and victims seeking an end to impunity wherever it exists. Leaders and ordinary citizens learn that, in some places, those who violate human rights are held responsible. By contrast, the cost of impunity for survivors is enormous. For CVT clients, accountability for perpetrators is intertwined with the healing process and their struggle to make sense of their suffering. The recovery process is made more challenging when the person who committed the violence against them still walks free. Any crack in the culture of impunity can bring victims tremendous strength. One CVT client told us about her reaction when she learned of the arrest in Atlanta of an Ethiopian man accused of murder and torture during a dictatorship in the 1970s. Despite the fact that this man was not her perpetrator, she felt empowered, remarking, “Now I know what to do should I come across the man who raped me.” The ripple effect is felt widely. Any progress helps other victims to feel safer wherever they may be living.

#### China uses US double standards on torture to justify human rights violations against the Uighurs in violation of the Convention Against Torture

Kan-Congressional Research Service-10

U. S. -China Counterterrorism Cooperation: Issues for U. S. Policy

http://www.fas.org/sgp/crs/terror/RL33001.pdf

Questions concern the U.S. stance on the PRC's policy toward the Uighur (Uyghur) people in the northwestern Xinjiang region that links them to what the PRC calls "terrorist" organizations. Congress has concerns about the human rights of Uighurs. China has accused the United States of using "double standards" in counterterrorism in disagreements over how to handle the Uighurs. Xinjiang has a history of unrest dating back before September 2001. particularly since the unrest in 1990. The PRC charges Uighurs with violent crimes and "terrorism," but Uighurs say they have suffered executions, torture, detentions, harassment, religious persecution, and racial profiling. Human rights and Uighur groups have warned that, after the 9/11 attacks, the PRC shifted to use the international counterterrorism campaign to justify the PRC's long-term cultural, religious, and political repression of Uighurs both in and outside of the PRC.1' Since 2002, the PLA has conducted military exercises in Xinjiang with Central Asian countries and Russia to fight what the PRC calls “East Turkistan terrorists" and what it combines as the threat of "three evil forces" (of separatism, extremism, and terrorism). Critics say China has compelled extraditions of Uighurs for execution and other punishment from countries such as Uzbekistan, KyrgyZStan, Kazahkstan, Nepal, and Pakistan, raising questions about violations of the international legal principle of non-refoulement and the United Nations Convention Against Torture.

#### That destabilizes China and pulls them into war with border states

Clarke, China analyst for the Bureau of Intelligence and Research, 2010 (Christopher, independent China consultant, China analyst for 25 years and head of the China Division of the state departments Bureau of Intelligence and Research, “Xinjiang – Where China’s Worry Intersects the World”, http://yaleglobal.yale.edu/content/xinjiang-where-chinas-worry-intersects-world)

The February 15 killing of militant Uighur leader Abdul Haq al-Turkistani by an American drone in the border regions of Pakistan highlights China’s continued sensitivity about its remote and vulnerable western region, Xinjiang. It also brings into focus the role of the Afghanistan-Pakistan region as an international sanctuary for Islamic militants and the reasons for China’s worries about social stability and potential terrorist threats in Xinjiang. China’s neuralgia about security in Xinjiang will continue – and perhaps even increase – as big power competition for influence and resources in Central Asia and its ties to the rest of the world continue to expand. China’s troubles with the minority Uighurs are not new. But with the break up of the Soviet Union and the rising Islamist Taliban in once Soviet-occupied Afghanistan, the regional dynamic has changed. Since the early 1990s, China has faced recurrent waves of unrest in Xinjiang and widespread acts of violence, some of which seem to have been terrorist acts by disgruntled Uighurs. The 2008 attempted hijacking of an airplane in China by three people armed with flammable liquid was one of the latest – and scariest – examples. There also have been several attacks against perceived Uighur collaborators in China and against Chinese interests outside the country. The capture of Uighurs fighting against coalition forces in Afghanistan, some two dozen of whom were imprisoned in Guantanamo, also indicate that China faces a real threat of terrorist acts against its interests at home and abroad. The Chinese, however, have aroused skepticism by dubiously attributing dozens of explosions and incidents of civil unrest to instigation by “East Turkistan terrorist forces.” Officials, for example, blamed an August 2008 attack on a military police unit out for its morning jog, in which 16 officers were killed, on a Uighur terrorist group, despite the fact that the officers apparently were run down by a truck and attacked by a taxi driver and a vegetable vendor, hardly the modus operandi of a sophisticated terrorist organization. Even last July’s massive race riot in Urumqi – set off by rumors that a Uighur woman had been raped and several Uighur men killed by Han Chinese in far-away Guangdong – was labeled as an “organized, violent action against the public” and an act of terrorism. So, while China does face periodic upsurges in politically motivated violence by Uighurs, one has to ask, why? The answer: Beijing has engaged in a systematic, multi-decade program of marginalizing Uighurs in their own homeland, fostering economic growth that favors the Han majority of eastern China and that encourages the exploitation of Xinjiang’s wealth of natural resources for Han areas. Beijing has organized and encouraged an influx of Han into Xinjiang, changing the ethnic ratio since 1949 from about 5 percent Han to more than 40 percent today. Moreover, Uighur culture and the Muslim religion are contained under tight restrictions. Beijing proudly points out that Xinjiang in recent years has been among the fastest growing economies in the country, with per capita income higher than all regions except China’s southeast coast. Most of that growth, however, has accrued to State-owned enterprises, Han entrepreneurs, or the government; not to Uighurs. And income inequalities there have actually expanded significantly in recent years. The region also suffers from some of the worst environmental degradation in China. It is hardly surprising that frustration occasionally boils over into civil unrest – or that such conditions breed terrorist groups intent on taking action against the regime. That many of China’s problems with terrorism and unrest are largely of its own making has reduced international trust and sympathy for the situation. China’s concerns also have both shaped its approach to the broader region and reduced China’s willingness to cooperate with the US in counter-terrorism, negatively affecting the overall US -China relationship. Xinjiang, more than any other area of China, is strategically vulnerable, partially as a result of its location in one of the most fractious neighborhoods outside the Middle East. Representing one-sixth of China’s territory, Xinjiang is rich in oil, gas, and mineral deposits and contains numerous sensitive military installations, including some of the country’s premier nuclear research and testing facilities. It borders the former Soviet republics of Kazakhstan, Kyrgyzstan, and Tajikistan, all of which are less than politically stable.\* Complicating China’s relations with the Central Asian states is the fact that as many as 500,000 Uighurs – and sizable populations of other Chinese “minorities” – live across relatively porous borders and engage in extensive trade and contacts. Several of these countries contain anti-China Uighur separatist organizations, both peaceful and terrorist. And China is very afraid of the potential contagion of “color revolutions” from Central Asia – like the 2005 “Tulip Revolution” in Kyrgyzstan – destabilizing China’s control in Xinjiang. Uighur activities – including violent attacks – have complicated China’s relations with Turkey, a country with which China seeks closer relations but where public and official sentiment is highly critical of China’s treatment of the ethnically-related Uighurs. To control this potentially chaotic situation and to manage Sino-Russian competition for influence, China launched the Shanghai Cooperation Organization (SCO), which includes Russia, China, the Central Asian republics, and a growing number of observers from around the region. China has pushed hard to keep the focus of the SCO on cooperative activities against the “three evils” of “separatism, fundamentalism, and terrorism,” a fear all the member states have in common. Along some of Xinjiang’s most remote and sensitive borders are Tibet, Afghanistan, Pakistan, and the disputed state of Kashmir – any one of which could quickly embroil China in an international crisis. China also tested its “all-weather” friendship with Pakistan pressuring Islamabad to crackdown on Uighur militants seeking refuge in Pakistan. Pakistan reportedly has responded by sending a number of Uighur militants to China for prosecution. Its recent stepped up attacks on terrorist groups – and especially the killing of Abdul Haq and more than a dozen other Uighur militants – has among other things assuaged relations with China. The US intervention in Afghanistan in October 2001 introduced another variable of vulnerability for China with regard to Xinjiang. In the conflict that followed, global support for Al Qaeda drew in more militants to the region, including some Uighurs (as Abdul Haq’s death proved) but it also changed the strategic landscape for China. The introduction of massive US forces into the region, and especially the use of bases such as Manas in Kyrgyzstan, raised visceral and long-standing fears of encirclement by a hostile US intent on “dividing and Westernizing” China. Beijing has put pressure on Central Asian neighbors to expel or severely limit any US military presence and has refused to allow US forces to use Chinese territory for staging or overflights in the war in Afghanistan. China is also working hard to enhance cooperation with its neighbors on energy exploration, exploitation, and transportation as a way of keeping the US and Russia from monopolizing Central Asia’s voluminous oil and natural gas resources. These competing interests, and the residual worry that the US and Russia seek to supplant or minimize Chinese influence in Central Asia will continue to contribute to Beijing’s neuralgia about assuring stability in its far Western extremity, even if the real terrorist threat to China has diminished.

#### Chinese instability and territorial fragmentation risks CCP collapse and nuclear war

Yee and Storey 2002 (Herbert Yee, Professor of Politics and International Relations at the Hong Kong Baptist University, and Ian Storey, Lecturer in Defence Studies at Deakin University, 2002, The China Threat: Perceptions, Myths and Reality, RoutledgeCurzon, pg 5)

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.'2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

#### Rejecting the “special factors” doctrine would end the case-by-case basis that currently plagues Bivens caselaw.

Pfander and Baltmanis 09 (James E. Pfander, the Owen L. Coon Professor of Law at Northwestern; and David Baltmanis, Law Clerk to the Honorable Paul V. Niemeyer, United States Court of Appeals for the Fourth

Circuit; “Rethinking Bivens: Legitimacy and Constitutional Adjudication,” http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1181&context=facultyworkingpapers)

By approving of Bivens and making it the exclusive mode for vindicating constitutional rights, Congress has provided a solid legislative foundation for routine recognition of a Bivens remedy. Such congressional ratification, moreover, requires that the Court adjust its approach to the evaluation of constitutional claims for damages. The Court should no longer regard itself as creating rights of action on a case-by-case basis. Rather, the Court should simply recognize that Congress has authorized suits against federal officials for constitutional violations and has foreclosed all alternative remedies. Along with this recognition, the Court should no longer consider the possible existence of state common law remedies as a reason to proceed cautiously. Congress has eliminated the state common law option and has failed to replace it with suits under the FTCA to vindicate constitutional rights. It thus makes little sense for the Court in Wilkie v. Robbins to tout the possible existence of state common law remedies as the basis for proceeding cautiously in the recognition of a Bivens right of action.86 State common law, as such, no longer applies and no longer offers a way to present constitutional claims. One can imagine an argument that the Westfall Act’s reference to actions for violation of the Constitution operates not to approve an all-purpose Bivens action but to codify the case-by-case Bivens calculus that was in place in 1988 when the statute took effect. The text of the Westfall Act provides little basis for such a contention. The statute refers to a “civil action” “brought” against federal officers asserting a claim for “violation of the Constitution.” State common law, as such, no longer applies and no longer offers a way to present constitutional claims. 87 The unqualified references in the statute seemingly authorize the pursuit of all “civil actions[]” that assert constitutional claims, without suggesting that the federal courts may refrain from hearing certain claims. We explain below why Congress may have chosen to switch from the case-by-case approach to a more routinely available right of action. Finally, one can imagine a formal argument that the statute does nothing more than create an exception to the rule of immunity that the Westfall Act adopted to shield federal employees from common law claims. On such a view, the Act creates no affirmative right to sue, but simply prevents the statutory rule of immunity from displacing the Bivens action. As we have seen, however, the Westfall Act goes well beyond conferring a selective grant of immunity on federal officers; it forecloses pursuit of constitutional claims either by action predicated on state common law or by action against the government itself. Read against the backdrop of the wholesale withdrawal of alternative remedies, the saving reference operates less as a modest exception to immunity than as a congressional selection of the Bivens action as the only method individuals were authorized to use in pressing constitutional claims.88 The withdrawal of alternative remedies explains why Congress made the Bivens action routinely available, rather than dependent on case-by-case analysis. In pre-Westfall days, individual litigants had a right to sue federal officers for constitutional torts by relying on common-law theories of liability and filing suit in state court. Such suits were subject to removal and to the assertion of immunity defenses of varying stringency, but the right of action was available as a matter of course (assuming the plaintiff could identify a common law theory of liability).89 Having cut off that routinely available remedy in the Westfall Act, Congress understandably felt some obligation to provide a statutory alternative. The unqualified terms of the resulting ratification of Bivens suggest that the Westfall Act contemplates rights of action as a matter of course. IV. Rethinking Bivens: Toward a New Remedial Calculus Recognition of the routine availability of a Bivens action will require some changes in the way the federal courts approach constitutional litigation. But the adoption of our approach need not threaten a disruptive break with the past or a ruinous expansion of federal official liability. On the view we take in this Essay, the Westfall Act provides, as section 1983 does in suits against state actors, statutory recognition of a right to pursue constitutional tort claims against federal actors. The existence of an all-purpose right to sue federal officers would eliminate the threshold inquiry into the availability of a Bivens right of action. Constitutional litigation would focus instead on the sufficiency of the alleged constitutional violation, the clarity of constitutional rules, and the qualified immunity of government officials. Instead of the somewhat open-ended inquiry into “special factors” that may counsel hesitation, federal courts would conduct a more focused analysis to determine whether an alternative remedial scheme displaces the Bivens remedy, Such an approach would help clarify and simplify constitutional tort litigation without threatening federal officials with novel forms of personal liability or disrupting existing administrative law schemes. As noted earlier, constitutional tort litigation against state actors under section 1983 now proceeds without any threshold inquiry into the existence of a right of action. The Westfall Act suggests that Bivens claims against federal actors should be treated in precisely the same way.90 Such parallel treatment already prevails over a wide swath of constitutional tort law. When the Court defines the elements of a legally sufficient constitutional claim, the definition applies to constitutional claims against both state and federal actors.91 Similarly, the Court refines the rules of qualified immunity, it does so with the recognition that the same rules apply to officers at all levels of government.92 As the Court explained long ago, it would be “untenable to draw a distinction for purposes of immunity law between suits brought against state officials . . . and suits brought directly under the Constitution against federal officials.”93 With the recognition that Congress has approved routine suability under the Westfall Act, distinctions between the right to sue state and federal officials seem equally untenable.94

### Solvency

#### Executive “trust us” doctrine fails and undermines global stability.

Brooks Ph.D in Law 9/12/12 (Rosa, law professor at Georgetown University and a Schwartz senior fellow at the New America Foundation. “Take Two Drones and Call Me in the Morning” <http://www.foreignpolicy.com/articles/2012/09/12/take_two_drones_and_call_me_in_the_morning?page=0,2&wp_login_redirect=0>)

But though drone technologies enable the United States to reduce some of the costs of using lethal force inside the borders of other states, overreliance on drones may have potentially devastating costs of its own. For one thing, overreliance on drones reflects a dangerous blurring of the boundaries between "war" and "non-war," with grave consequences for the rule of law. As I wrote in an earlier column, whether one regards drone strikes as lawful acts of war or as extrajudicial killings (murders, in plain English) depends wholly on how far one is willing to stretch the law of war in efforts to make it fit an increasingly unprecedented situation. Defenders of the administration's increasing reliance on drone strikes outside "hot" battlefields assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant. Such an assertion wouldn't be troubling if the United States were in a conventional conflict with the uniformed forces of an enemy state. If that were the case, it would be fairly easy for journalists or moderately intrepid citizens to confirm the basic facts justifying government claims about the applicability of the law of war: The presence of thousands of uniformed troops shooting at one another is hard to misconstrue. But outside Afghanistan, the United States is not in a conventional war. It's in an open-ended conflict with an inchoate, undefined adversary -- and administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable because they're based wholly on undisclosed evidence. In this murky context, it's facile to assert that the law of war "obviously" applies to all U.S. drone strikes and leave it at that. As I wrote on Aug. 29, that amounts, in practice, to a claim that the executive branch has the unreviewable power to kill anyone, anywhere, at any time, based on secret criteria and secret information discussed in a secret process by largely anonymous individuals. Law exists to restrain untrammeled power. Sure, it's possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we're working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? Defenders of administration policy argue that these criticisms miss the mark because -- insiders insist -- executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful. No doubt they do. But formal processes tend to further normalize once-exceptional activities -- and "trust us" is a pretty shaky foundation for the rule of law. Here's another reason to worry about the U.S. overreliance on drone strikes: Other states -- and ultimately, nonstate actors -- will follow America's example, and the results won't be pretty. Right now, the United States has a decided technological advantage when it comes to armed drones, but that won't last long. The country should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Right now, the country is doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to get away with murder. Consider Vladimir Putin and Dmitry Medvedev's Russia, in which the life expectancy of dissidents, inquisitive journalists, and unwanted political rivals is already quite short. At the moment, the Russian government at least feels constrained to disclaim responsibility when a troublesome citizen is conveniently murdered. But with the United States putting forward an infinitely flexible interpretation of the law of war, why should Russia bother to cover its tracks in the future? Far simpler just to shrug off the next dissident's death (whether by drone strike in Chechnya or radioactive sushi in London) with a dignified news release. The dead "dissident"? A combatant in Russia's war with terrorists. The evidence? That's classified, but all actions taken are lawful and subject to a rigorous internal Kremlin review process. You got a problem with that? To quote Obama, "There are classified issues, and a lot of what you read in the press … isn't always accurate.… My most sacred duty … is to keep the … people safe." Here's one final reason to worry about drone technologies: They enable a "short-term fix" approach to counterterrorism, one that relies excessively on eliminating specific individuals deemed to be a threat, without much discussion of whether this strategy is likely to produce long-term security gains. Drone strikes -- lawful or not, justifiable or not -- sow fear among the "guilty" and the innocent alike. What impact will they ultimately have on the stability of those societies? To what degree -- especially as we reach further and further down the terrorist food chain -- are we actually creating new grievances? As Defense Secretary Donald Rumsfeld asked during the Iraq war, are we creating terrorists faster than we kill them? And will our increasing use of cross-border strikes have an impact on global stability, undoing fragile post-World War II bargains about sovereignty and the use of force? As far as I can tell, none of these questions is being discussed within the Obama administration in any structured or systematic way. Meanwhile, U.S. reliance on drone strikes continues to increase. And because so much about U.S. drone strikes is classified, it's almost impossible for journalists, regional experts, human rights groups, or the general public to weigh in with informed views. There's nothing preordained about how we use new technologies, but by lowering the perceived costs of using lethal force, drone technologies enable a particularly invidious sort of mission creep. When covert killings are the rare exception, they don't pose a fundamental challenge to the legal, moral, and political framework in which we live. But when covert killings become a routine and ubiquitous tool of U.S. foreign policy, everything is up for grabs.

#### Ex Post review of drone strikes would effectively constrain executive action

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)

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse.

#### Court action is key—using the legal process to protect constitutional rights is critical to counter-terrorism credibility and US soft power.

Sidhu, J.D, 11 (Dawinder S., J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania. Mr. Sidhu is an attorney whose primary intellectual focus is the relationship between individual rights and heightened national security concerns, “JUDICIAL REVIEW AS SOFT POWER: HOW THE COURTS CAN HELP US WIN THE POST-9/11 CONFLICT,” NATIONAL SECURITY LAW BRIEF Vol 1, No 1, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb>)

The legal principles established by the Framers and enshrined in the Constitution are a source of attraction only if we have meaningfully adhered to them in practice. Part II will posit that the Supreme Court’s robust evaluation of cases in the wartime context suggests that the nation has been faithful to the rule of law even in times of national stress. As support, this part will provide exam- ples of cases involving challenges to the American response to wars both before and after 9/11, the discussion of which will exhibit American respect for the rule of law. While the substantive results of some of these cases may be particularly pleasing to Muslims, for instance the extension of habeas protections to detainees in Guantánamo, 30 this part will make clear that it is the legal process—not substantive victories for one side or against the government—which is the true source of American legal soft power. If it is the case that the law may be an element of soft power conceptually and that the use of the legal process has refl ected this principle in practice, the conclusion argues that it would benefit American national security for others in the world to be made aware of the American constitutional framework and the judiciary’s activities related to the war. Such information would make it more likely that other nations and peoples, especially moderate Muslims, will be attracted to American interests. This Article thus reaches a conclusion that may seem counterintuitive—that the judicial branch, in the performance of its constitutional duty of judicial review, furthers American national secu- rity and foreign policy objectives even when it may happen to strike down executive or legislative arguments for expanded war powers to prosecute the current war on terror and even though the executive and legislature constitute the foreign policy branches of the federal government. In other words, a “loss” for the executive or legislature, may be considered, in truth, a reaffirmation of our constitutional system and therefore a victory for the entire nation in the neglected but necessary post-9/11 war of ideas. 31 As such, it is the central contention of this Article that the judicial branch is a repository of American soft power and thus a useful tool in the post-9/11 conflict

#### Judicial review solves drone overreliance- causes better decision-making while still allowing use of drones

Adelsberg 12 (Samuel S., \* J.D. Candidate 2013, Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens” Harvard Law & Policy Review 6 Harv. L. & Pol'y Rev. 437, Lexis)

 [\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens. Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

## 2AC

### 2AC Restriction

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### We meet-Ex post review is a restriction on targeting killing authority-Ex Ante review increases executive authority and links to all of their ground arguments

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>)

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats. These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse. 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. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so. Proponents of a specialized targeted killing court are right to recognize that the judiciary has a crucial role to play in articulating and enforcing legal limits on the government’s use of lethal force. Congress need not establish a new court, however, in order for the judiciary to do what the Constitution already empowers and obliges it to do.

#### C/I – Authority is what the president may do not what the president can do

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

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

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Their evidence which cuts off before the paragraph ends shockingly concludes aff on the restriction, imminence, and ground question.

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

II. Drone Courts and the Separation of Powers

In my view, the adversity issue is the deepest legal flaw in “drone court” proposals. But the idea of an ex ante judicial process for signing off on targeted killing operations may also raise some serious separation of powers concerns insofar as such review could directly interfere with the Executive’s ability to carry out ongoing military operations… First, and most significantly, even though I am not a particularly strong defender of unilateral (and indefeasible) presidential war powers, I do think that, if the Constitution protects any such authority on the part of the President (another big “if”), it includes at least some discretion when it comes to the “defensive” war power, i.e., the President’s power to use military force to defend U.S. persons and territory, whether as part of an ongoing international or non-international armed conflict or not. And although the Constitution certainly constrains how the President may use that power, it’s a different issue altogether to suggest that the Constitution might forbid him for acting at all without prior judicial approval–especially in cases where the President otherwise would have the power to use lethal force. This ties together with the related point of just how difficult it would be to actually have meaningful ex ante review in a context in which time is so often of the essence. If, as I have to think is true, many of the opportunities for these kinds of operations are fleeting–and often open and close within a short window–then a requirement of judicial review in all cases might actually prevent the government from otherwise carrying out authority that most would agree it has (at least in the appropriate circumstances). This possibility is exactly why FISA itself was enacted with a pair of emergency provisions (one for specific emergencies; one for the beginning of a declared war), and comparable emergency exceptions in this context would almost necessarily swallow the rule. Indeed, the narrower a definition of imminence that we accept, the more this becomes a problem, since the time frame in which the government could simultaneously demonstrate that a target (1) poses such a threat to the United States; and (2) cannot be captured through less lethal measures will necessarily be a vanishing one. Even if judicial review were possible in that context, it’s hard to imagine that it would produce wise, just, or remotely reliable decisions.

### 2AC Debt Ceiling

#### Won’t pass – GOP won’t cave on shutdown or debt ceiling

Drucker**, Washington Examiner,** 10-3-13

(David, “GOP stands firm against funding bill, will link to debt ceiling fight”, <http://washingtonexaminer.com/gop-stands-firm-against-funding-bill-will-link-to-debt-ceiling-fight/article/2536750>, ldg)

House Republicans are unlikely to blink in the standoff over Obamacare that precipitated a government shutdown, fearing that acceding now to Democratic demands for a “clean” spending bill would weaken their hand in upcoming negotiations over the the debt ceiling. Those Republicans said Wednesday that the spending impasse that shut down the government early Tuesday is less about conservatives' desire to derail Obamacare than it is about strengthening their hand in the debt-ceiling talks. That borrowing limit must be raised by Oct. 17 to prevent the government from defaulting on its financial obligations and Republicans say any future agreement to reopen the government would link the spending bill and the debt ceiling. “This is not just about Obamacare anymore,” centrist Rep. Michael Grimm, R-N.Y., said. “We’re not going to be disrespected,” conservative Rep. Marlin Stutzman, R-Ind., added. “We have to get something out of this. And I don’t know what that even is.” In the weeks leading up to Tuesday's government shutdown, House Republicans pushed for a short-term budget bill that would fund the government at current levels, but also fully and permanently defund Obamacare. President Obama and Senate Democrats rejected that proposal and three others that would have at least slowed implementation of the Affordable Care Act. House Republicans now say they won't agree to a funding bill unless Senate Democrats agree to meet in a conference committee to hash out their differences. They rebuffed a proposal from Senate Democrats Wednesday to form a conference committee only after the funding bill was approved and the government reopened. With the third day of the shutdown dawning and the deadline to raise the debt ceiling fast approaching, House Republican leaders believe maintaining party unity over the budget bill is paramount. Any divisions or concessions would only bolster Obama's hand in the debt ceiling talks. House Republican leaders will drive their rank and file particularly hard to support a debt ceiling proposal that includes provisions on tax and entitlement reform and other GOP priorities. They also don't want to cut short the epic battle against Obamacare that conservatives have long sought. For those reasons, House Speaker John Boehner, R-Ohio, is unlikely to put up a "clean" budget bill that funds the government without Democratic concessions. “The [budget bill] is now part of the debt ceiling fight and we may see a shutdown that extends to mid-October,” said a veteran Republican operative with relationships on Capitol Hill. “Boehner could not pass a [budget bill] with mostly Democratic support now and then have any chance of holding Republicans on the debt ceiling.” House GOP leaders and most of their rank and file never supported conservatives' efforts to use the budget bill and the threat of a government shutdown to defund Obamacare, fearing a political backlash. Polls consistently show most people oppose the strategy and would blame Republicans if the government closed. But having gone as far as they have, House Republicans now say they won't back down. And they expect to score political points in the process. Republican House leaders were surprised that Democrats unanimously opposed GOP efforts to pass small, targeted appropriations bills that would keep only parts of the government open, but they are happy to watch Democrats vote against measures that would open national parks and restore veterans' programs ahead of the 2014 elections. Just as important, however, is the marker Boehner has laid down in this fight and how his caucus would react if he suddenly reversed course and supported a clean budget bill. Boehner originally opposed linking Obamacare to the government funding bill, but gave in to conservatives' demands. Republicans say the speaker has been forceful in closed-door meetings on the funding bill but his credibility could be indelibly damaged if he caves in to Democratic demands now. Rep. Tom Cole, R-Okla., who is close with leadership, suggested that the House majority is prepared to hold the line on a government funding bill and the debt ceiling increase if Senate Democrats refuse to negotiate a compromise. When asked if House Republicans would vote on a "clean" continuing resolution, he said, "Why in the world would you do that?” Cole said of the clean funding bill. “That’s basically, at this point, a surrender to the Democratic position.”

#### A. MASSIVE detainment case in the DC Court now – causes fights.

Greenhouse 10/2

Linda, teaches at Yale Law School, Fish or Cut Bait http://opinionator.blogs.nytimes.com/2013/10/02/fish-or-cut-bait/

It was the most important military commission case to come before any court in the more than seven years since the Supreme Court invalidated the Bush administration’s first effort to set up military commissions to try Guantánamo detainees for war crimes. The argument on Monday in al-Bahlul v. United States, before seven judges of the United States Court of Appeals for the District of Columbia Circuit, was impressive on all counts. The question was whether “conspiracy to commit war crimes” and “material support for terrorism” are crimes for which 9/11 defendants can be tried by military commission. Both lawyers — Michel Paradis, a civilian Defense Department lawyer assigned to represent the defendant, Ali al-Bahlul, and Ian Gershengorn, the newly appointed chief deputy solicitor general, arguing for the government — presented their cases with ease and mastery. The judges let the lawyers talk, interrupting only for pertinent questions, listening attentively to the answers, and (amazingly, to anyone who has ever attended a Supreme Court argument) interrupting one another not at all. (An eighth judge, the newly confirmed Sri Srinivasan, Mr. Gershengorn’s predecessor in the solicitor general’s office, was recused because he had worked on the case for the government.) In other words, what I witnessed in the appeals court’s grand “ceremonial courtroom,” reserved for the infrequent occasions when the entire court sits en banc, was the American legal system at its best. And yet. By the end of the morning, I couldn’t shake the feeling that the object of all this energy, expertise and professional good will — the modern military commission — was fundamentally unworthy of any of it, a jury-rigged ship foundering in a heavy sea of law, politics and the struggle among the branches of government that has been a hallmark of the prolonged Guantánamo saga. The D.C. Circuit can’t save it, even if it were so inclined — which it didn’t appear to be.

#### A. Allows political cover

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter.

#### No chance of war from economic decline---best and most recent data

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40 None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

### 2AC Bivens Counterplan

#### Line drawing fails—any limits to Biven’s availability means that the remedies will be denied in any circumstance

Banta 08 (Banta, Natalie, Death by a Thousand Cuts or Hard Bargaining?: How the Court‘s Indecision in Wilkie v. Robbins Improperly Eviscerates the Bivens Action,

http://www.law2.byu.edu/jpl/papers/v23n1\_Natalie\_Banta.pdf)

The ideal maxim expounded in Marbury v. Madison—that for every right there is a remedy—is far from true in practical applications of modern litigation. Due to immunity doctrines, many injured individuals are left without a remedy when the government is the defendant in the suit.8 Moreover, the complex doctrine of justiciability provides another bar to receiving remedies when rights have been violated.9 The curtailment of the availability of a Bivens cause of action is another example in the modern legal system where an individual injured by a federal officer has no remedy. It is unclear, however, why federal officers should be excluded from paying damages if they violate an individual‘s constitutional rights. State actors, for example, are still required under 42 U.S.C. § 1983 to pay damages if they violate federal constitutional rights. Because Bivens causes of actions were created by federal common law instead of a statutorily defined structure akin to § 1983, Bivens causes of actions have hardly been embraced. With the most recent decision in Wilkie v. Robbins,10 not much of the original jurisprudence established in Bivens remains. Wilkie continues the trend of substantially retreating from the original Bivens action. By failing to provide a Bivens remedy when the Court conceded that no other adequate remedy existed, and by expanding the policy arguments for ―special factors counseling hesitation,‖11 the Wilkie decision not only prevents the extension of the Bivens remedy, but effectively limits prior cases where the remedy has been granted to their facts.12 The Court‘s retrenchment of the availability of the Bivens remedy reinforces the idea that as a practical matter not every right has a remedy. The Court avoids deciding whether the alternative remedies are adequate to preclude the Bivens actions. The Court also avoids deciding whether the BLM agents violated Robbins‘s constitutional rights through the series of threats and intimidation levied against him. The majority weighs the BLM actions as ―death by a thousand cuts‖13 at one point and ―hard bargaining‖14 at another, and then assumes that the intimidation was not severe enough to warrant a remedy. Finally, the Court pronounces that Congress should decide whether there should be a remedy for intimidation by federal officers.15 By avoiding the pivotal decision of whether a right was actually violated, the Court changes the analysis to focus on factors that allow the limitation of the Bivens remedy in almost any circumstance. This note begins with a brief discussion of the principal issues discussed in Bivens and then traces the development of the two exceptions to the Bivens action that have swallowed the rule. Part III discusses the facts, holding, and dissent of Wilkie v. Robbins. Part IV argues that the Wilkie decision broadly denies the enforcement of a constitutional right and improperly eviscerates the Bivens remedy in four ways. First, the Court departs from the most important consideration in determining whether a Bivens remedy applies, which is deciding whether an alternative remedy exists. Second, the Court adopts an unnecessarily broad interpretation of special factors counseling hesitation to include concern over opening the floodgates to litigation and the difficulty of deciding whether a right was violated that precludes a Bivens remedy. Third, the Court improperly declines to decide whether a constitutional right was in fact violated before deciding how the severity of the violation of the right affects the plaintiff‘s receipt of damages. Fourth, the Court improperly bases its denial of the Bivens remedy on concerns about legislating, but in doing so, reveals the legislative nature of the Bivens remedy itself as being a matter of federal common law. This note concludes by discussing the future of the availability of the Bivens remedy.

#### --The Executive would effectively challenge the counterplan in Court

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

Alternatively, Congress could pass legislation that explicitly prohibits the targeted killing of Americans unless the circumstances present a concrete threat of imminent danger.236 As the analysis in Part II.A indicates, targeted killing is a premeditated offensive military strategy, not a defensive practice.237 Congress could exercise its own constitutional powers as the war-making body of government to ensure that no American may be targeted for extrajudicial lethal force by the Executive Branch.238 Similarly, Congress could amend the AUMF to include a prohibition of the targeted killing of Americans.239 Although this has the potential to limit the military in counterterrorism measures in circumstances such as the Aulaqi case, it would emphasize congressional commitment to fundamental constitutional rights even in the face of terrorist threats.240 The irony of the Aulaqi case is that based on the publicly available evidence, there is good reason to believe the DOJ’s assertion that Anwar al-Aulaqi presented significant danger to the country.241 But allowing the president to target Aulaqi for extrajudicial killing presents its own danger, as it establishes a broad and unreviewable killing power with potential for error and abuse.242 Americans must have more reassurance that the powers of the Executive Branch are limited and reasonable. Although a legislative solution is appealing given the success of the analogous FISA court, a statutory ban on the targeted killings of Americans is certainly the preferable option. When a government unilaterally assassinates one of its own citizens in circumvention of civil liberties, this raises profound questions about the legitimacy of that government, especially in a representative democracy. It also stands in contradiction to the American constitutional legacy, in which separate but coequal branches of government were created primarily to limit the possibility of tyranny and other government abuses of power. A congressional ban on the targeted killing of Americans would represent a legislative rebuke of executive excesses in protection of fundamental civil liberties. Congressional action of any kind, however, faces a very serious hurdle: as the DOJ made clear in the Aulaqi case, the executive branch position is that any infringement on the President's targeted killing authority is simply unconstitutional. Yet if congress were to prohibit targeted killing and a court found that such a law is an unconstitutional infringement on executive authority, there is still another and perhaps final option. In the event that a federal court interprets the constitution to actually permit the targeted killing of Americans by the Executive Branch, then it would be necessary to fix this constitutional flaw. A constitutional amendment prohibiting the practice of targeted killing would thus permanently extinguish the concerns over targeted killing. 243

#### A. public doesn’t trust the executive

Roach 13 (Kent, eds. Cole, D. Fabbrini, F. Vedaschi, A., David Cole, Federico Fabbrini, Arianna Vedaschi, “Managing Secrecy and its Migration in a Post-9/11 World,” Secrecy, National Security and the Vindication of Constitutional Law, google books pg 118-119)

At the same time, the taint of prior uses of secret evidence as well as public suspicion that secrecy will be used to cover up torture and other misconduct lingers. Although Congress decided at the end of 2011 to create a rebuttable presumption in favor of military detention and trial of alien terrorists suspected of involvement in al Qaeda, President Obama has indicated that he will waive this option when it might prevent other countries from extraditing or transferring terrorist suspects to the United States. Secret evidence as it was previously used at Guantanamo stands a potent and easily understood symbol of unfair counter-terrorism. The unfairness of secret evidence towards those targeted may have strategic as well as normative costs. Many believe that al Qaeda has morphed into an ideology that builds on grievances and a sense that Muslims are under attack throughout the world. In such a context, the public relations costs of using secret evidence should be taken seriously because it may promote a sense that innocent people have been unfairly detained, convicted or targeted as terrorists. Secret evidence is used by the US military and the CIA in decisions about targeted killing. Attorney General Holder has stressed that the evidence supporting such decisions is carefully reviewed within the government and has argued that the process satisfies due process because due process need not be judicial process." The problem with this approach is that it requires people to trust the government that the secret evidence has been thoroughly tested and vetted even though the executive has an incentive to err on the side of security. In contrast to the Israeli courts, American courts have taken a hands-off approach to review of targeted killing.12 The Israeli courts have in one prominent case reviewed targeted killings and have stressed the importance of both ex ante and ex post review within the military and involving the courts.0 To be sure. Israel has not gone as far as the United Kingdom in giving security cleared special advocates access to secret information, but it has provided a process that goes beyond the executive simply reviewing itself. The Obama administration does not seem to think that anyone could seriously challenge the legitimacy of their attempts to keep strategic military information behind targeted killings secret. In a sense, this is a return to a Cold War strategy where the need to preserve secrets from the other side was widely accepted. What has changed since 9/11, however, is that terrorism as opposed to invasion or nuclear war is widely accepted as the prime threat to national security. Terrorism is seen by many as a crime and the use of war-like secrecy is much more problematic in responding to a crime than to a threat of invasion or nuclear war. Hence, the legitimacy of the US's use of secrets to kill people in its controversial war against al Qaeda has been challenged. It may become a liability in the US's dealings with the Muslim world.

### 2AC Warfighting

#### A. Qualified immunity prevents

Pillard 99 (Cornelia, Associate Professor of Law, Georgetown University Law Center, former Deputy Assistant Attorney General- Office of Legal Counsel in the Department of Justice, “Taking Fiction Seriously: The Strange Results of Public Officials' Individual Liability Under Bivens,” <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1719&context=facpub>)

These two parallel but distinct regimes-indemnification and qualified immunity-create different sets of incentives. Either of the two regimes, taken alone, would protect against chilling public employees' vigorous performance of their duties, as qualified immunity would allow for dismissal of most suits and indemnification would ensure that employees need not pay monetary judgments or settlements out of their own pockets.122 In terms of plaintiffs' incentives to sue, in contrast, the two regimes differ significantly. 123 [start footnote 122:] 122. One might argue that qualified immunity, by eliminating not just employees' obligations to pay but also forestalling liability findings flowing from their conduct, more effectively prevents overdeterrence. An employee who is fully reimbursed for monetary losses may still seek to avoid the risk to reputation that comes from being a defendant in a civil rights lawsuit. One response to that concern, however, is that if it were generally understood that under Bivens (as under Ex parte Young) individual defendants function as stand-ins for the government, reputational harm to the individual would be minimized. When a bureaucrat is personally sued for a failure to provide due process, for example, the observing public fairly assumes that such lawsuits come with the job, and that the individual is not a bad person for being formally held responsible. Another response to the concern about overdeterrence flowing from risks to reputation is that, to the extent reputational harm persists even when the government is known to be the real party in interest, a concern to shield defendants from such harm would seem to require qualified immunity even in cases of governmental liability-such as municipal liability under section 1983-because those cases are typically premised on the missteps of identified government employees. The Court in Owen v. City of Independence, 445 U.S. 622, 655-56 (1980), however, held that qualified immunity is unwarranted in those cases, and the Court does not seem poised to reconsider Owen. See, e.g., Board of County Comm'rs v. Brown, 520 U.S. 397, 405-06 (1997) (relying on Owen). Putting aside the reputational concerns, therefore, the two regimes both appear adequately to serve an interest in avoiding public employee overdeterrence.

#### B. The only way anyone could sue is by suing the entire DOD – that’s impossible – sovereign immunity and lack of a remedial extension

Rehnquist 01 (Chief Justice Rehnquist, Opinion in: CORRECTIONAL SERVICES CORPORATION,

PETITIONER v. JOHN E. MALESKO, on writ of certiorari to the united states court of appeals for the second circuit, Nov 27, http://www.law.cornell.edu/supremecourt/text/534/61)

In sum, respondent is not a plaintiff in search of a remedy as in Bivens and Davis . Nor does he ~~[~~they] seek a cause of action against an individual officer, otherwise lacking, as in Carlson. Respondent instead seeks a marked extension of Bivens , to contexts that would not advance Bivens’ core purpose of deterring individual officers from engaging in unconstitutional wrongdoing. The caution toward extending Bivens remedies into any new context, a caution consistently and repeatedly recognized for three decades, forecloses such an extension here.

#### Unique link turn – Drone program collapses now without more accountability

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

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

#### No link – we won’t rule on imminence, on constitutional rights

Scott 98 (COMMANDER ROGER D. SCOTT, “KIMMEL, SHORT, MCVAY: CASE STUDIES IN EXECUTIVE AUTHORITY, LAW AND THE INDIVIDUAL RIGHTS OF MILITARY COMMANDERS,” 156 Mil. L. Rev. 52, lexis)

Behind the common law concept of official immunity lies the belief that the public interest in information about government actions, and the need of public officials to act and speak decisively without fear of lawsuits, support an efficiency-based privilege accorded to statements public officials make in the execution of their duties. The Supreme Court in Barr specifically contemplated that harm to reputation might be done under a rule of absolute immunity and embraced the traditional common law of immunity as the law of the land notwithstanding. 310 Supporting the public policy served by the common law, the Barr Court upheld official immunity on the grounds that government officials should be free to perform their duties and exercise the discretion pertinent to their offices "unembarrassed by the fear of damage suits -- suits which would consume time and energies which would otherwise be devoted to governmental service, and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government." 311 The Court stated this rationale for official immunity as strongly the previous century in Spalding v. Vilas, 312 like Barr, a defamation case. The defendant official in Spalding [\*131] v. Vilas was a postmaster, and in Barr, the Acting Director of the Office of Rent Stabilization. Within the rational framework applied by the Supreme Court, the public interest in ensuring that military command is "fearless, vigorous, and effective," and not encumbered with lawsuits over discretionary decisions, is particularly compelling -- and that interest is most compelling in the case of command decisions made by the Commander in Chief in time of grave national crises. The Supreme Court later held in Butz v. Economou 313 that federal officials enjoyed only a qualified, good-faith immunity from suits for constitutional torts (known as Bivens actions), 314 but it seemed to have left intact the Barr rule of absolute immunity for all common law torts, including particularly defamation. 315 The Court then clarified in Paul v. Davis that defamation, even if it produces stigma or injury to reputation, does not rise to the level of a constitutional tort unless the defamation deprives some other constitutionally protected "liberty" or "property" interest. 316 As stated by one lower federal court, "Defamation or injury to reputation, while actionable in tort, is insufficient to invoke procedural due process guarantees." 317 More recently, the Court suggested in Siegert v. Gilley 318 that "no consequences, however grave, resulting from a loss of reputation can make defamation actionable as a constitutional tort." 319 Other lower federal courts have read Siegert as holding squarely that defamation is never cognizable as a constitutional tort. 320

### 2AC Saudi DA

#### US-Saudi relations are low and the impact is inevitable – U.S. posture towards Iran and Syria

Knickmeyer 9/29/13 (Ellen, “U.S. Moves on Syria, Iran Anger Saudi Arabia” <http://online.wsj.com/article/SB10001424052702303643304579104910000148876.html>)

RIYADH—The Obama administration's handling of overtures on Syria and Iran have outraged regional ally Saudi Arabia, which is signaling it wants to do more to boost the power of armed Sunni rebel groups on the ground in Syria as the U.S. pursues diplomacy. Saudis fear that Syrian President Basher al-Assad will use the time afforded by U.S.- and U.N.-backed diplomacy on Syria "to impose more killing and to torture its people," Saudi Foreign Minister Saud al-Faisal said Thursday night in New York, in a warning that was overshadowed by the attention paid to the weekend's first public contacts in three decades between the presidents of Iran and the U.S. Accordingly, Saudi Arabia wants "intensification of political, economic and military support to the Syrian opposition…. to change the balance of powers on the ground" in Syria, Prince Saud said in his remarks to the Friends of Syria group, a coalition of Western and Gulf Arab countries and Turkey that supports the Syria opposition against Mr. Assad. The state-run Saudi Press Agency carried a transcript of his remarks. The Saudi government has had no public comment so far on the groundbreaking phone call Friday between U.S. President Barack Obama, whose country Saudi Arabia sees as the main military protector of its interests, and new Iranian President Hasan Rouhani, whose country Saudi Arabia sees as its main threat. Asharq al Awsat, one of Saudi Arabia's leading newspapers, led its front page the morning after the phone call with a photo of Mr. Rouhani, bowed over with laughter. The Saudi foreign minister's declaration is significant because Saudi Arabia, while one of the main suppliers of Syria's predominately Sunni opposition, up to now has heeded U.S. fears throughout the conflict that aid to Syrian rebels could strengthen armed, anti-Western Sunni factions. Shiite Muslim Iran backs Mr. Assad in the Syrian conflict, while most Sunni Muslim-ruled Gulf Arab states support the rebels fighting to overthrow Mr. Assad. Saudi Arabia, for example, long held off on supplying Stinger-style missiles to Syrian rebels because of U.S. worries the missiles could be used against Western targets, security analysts briefed by Saudi officials say. Saudi Arabia increased pressure on the U.S. to allow arming the rebels with antiaircraft weapons this summer, as larger numbers of Hezbollah fighters entered the conflict on the side of Mr. Assad's regime. Saudis now feel that the Obama administration is disregarding Saudi concerns over Iran and Syria, and will respond accordingly in ignoring "U.S. interests, U.S. wishes, U.S. issues" in Syria, said Mustafa Alani, a veteran Saudi security analyst with the Geneva-based Gulf Research Center. "They are going to be upset—we can live with that," Mr. Alani said Sunday of the Obama administration. "We are learning from our enemies now how to treat the United States." Two developments have particularly alarmed Saudi Arabia and the United Arab Emirates, another Gulf state: U.S.-backed diplomacy that is giving Mr. Assad an opportunity to surrender his chemical weapons, heading off a U.S.-military strike against the Assad regime; and warming relations between Messrs. Obama and Rouhani. On Sept. 12, as Mr. Rouhani was tweeting some of the first Iranian overtures in decades to the West, former Saudi diplomat Turki al Faisal was telling a London defense forum that Iran's leaders should stand trial for war crimes for supporting Mr. Assad. "The current charade of international control over Bashar's chemical arsenal would be funny if it were not so blatantly perfidious, and designed not only to give Mr. Obama an opportunity to back down, but also to help Assad butcher his people," Prince Turki said then. Saudi unhappiness didn't mean that the kingdom would start supporting terrorist groups, Mr. Alani stressed. Saudi Arabia, like the U.S., has been targeted by al Qaeda, a group born of U.S. and Saudi support for fighters against the Soviet occupation of Afghanistan in the 1980s. However, the U.S. is more conservative than the Gulf countries in what it considers terrorist groups in Syria. The U.S. has declared Syrian rebel group Jabhat al-Nusra to be a terrorist organization, while many in the Gulf consider the rebel faction to be a legitimate, predominantly Syrian fighting force against Mr. Assad. Sunni-dominated Gulf Arab governments, especially Saudi Arabia, deeply fear that Shiite Muslim-ruled Iran wants to use Shia populations in Iraq, Saudi Arabia, Kuwait, Bahrain and Yemen to destabilize Gulf Arab governments and try to throw the regional balance of power toward Iran. Saudi Arabia wants the U.S. and Iran to improve relations for the sake of Middle East stability, but no longer trusts the Obama administration to look out for Saudi Arabia's fears of perceived Iranian expansionism, said Mr. Alani, the analyst with the Gulf Research Center. In truth, Saudi and other Gulf Arab countries have little leverage to advance their aims in any U.S.-Iran diplomacy, Gulf security analysts said. Beyond revving up support for rebels in Syria, Saudis have only a few other means, such as directing more of their arms or energy deals to Asia, said Michael Stephens, researcher at the Royal United Services Institute think tank in Qatar. "They feel a little bit powerless in all this," Mr. Stephens said. "The fact that this process is going on…it directly affects them and they have no say in it."

#### No proliferation impact – U.S. alliance and disincentives check

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(Riccardo, “Avoiding the Unnecessary War. Myths and Reality of the West-Iran Nuclear Standoff”, March, online pdf, ldg)

There are at least three countries that might feel compelled to catch up with Iran: Turkey, Egypt, and Saudi Arabia. However, no automatism should be presumed. Turkey is part of a nuclear-armed military alliance, NATO, hosts US nuclear weapons in its bases, and has recently agreed to install parts of a US-built and NATO-run ballistic missile defence system on its soil. These are all good reasons for Turkey to remain a non-nuclear-weapon state.34 Saudi Arabia has developed over time a deep relationship with the United States ranging from counter-terrorism cooperation to Saudi massive presence in American financial markets - which would work as a US-imposed brake to Saudi potential nuclear ambitions. Furthermore, the nuclear dispute with Iran has prompted the United States to undertake a military build-up in the Persian Gulf, coupled with pledges of US military aid packages not only to Saudi Arabia but also to the smaller Gulf states. On one occasion, US Secretary of State Hillary Rodham Clinton even went as far as to predict the extension of the US “nuclear umbrella” over its allies in the Gulf if Iran indeed went nuclear.35 Similarly to Turkey, Saudi Arabia has at least as many good reasons to forgo the nuclear military path than do otherwise. Egypt is a more complicated case. The Egyptians have historically struggled to resist the temptation of the atomic bomb. A key factor behind their restraint has been massive US assistance (worth over one billion dollars a year, most of which in military aid), which is to continue to have a moderating effect even on a post-Arab Spring Egypt. In fact, whatever government emerges from the unwieldy political process ongoing in Egypt would be ill-advised if it added yet another complication to the mountain of political and economic problems it is set to cope with. Egypt’s dire need for foreign assistance, both political and financial, would not be well served if the new government in Cairo were to flirt with dreams of an indigenous nuclear arsenal. In addition, all three aforementioned countries are compliant parties to the NonProliferation Treaty. US security guarantees, financial assistance, and “moral” persuasion are to be factored in when assessing the motivations that Turkey, Saudi Arabia or Egypt might have to remain committed to the treaty. But they are part of a broader strategic calculus extending beyond the bargain with the United States. The NPT has been an effective, if imperfect, means to avoid uncontrolled proliferation of nuclear weapon states for over forty years. While Iran’s withdrawal would deal a severe blow to this fundamental pillar of international security, a nuclear arms race in the Gulf would all but vanquish its residual authority. Together with US pledges of aid and security guarantees, the unwillingness of Turkey, Egypt and Saudi Arabia to take responsibility for the near collapse of the international non-proliferation regime make a nuclear arms race an unlikely prospect.

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#### ---Judical restrictions on war powers include constitutional rights protections

Steele 76 (Sr. Dist. Judge Steel, Kovach v. Middendorf 424 F.Supp. 72, 76 -77 (D.C.Del. 1976)), from a 1976 case from a federal trial court in Delaware)

Defendants argue that in both its two year and four year aspects this case presents a political and not a judicial question within the constitutional power of the Court to decide. Defendants point out that Congress alone has the power under the Constitution “(T)o provide and maintain a Navy”, Art. I, s 8, Cl. 13 and “(T)o make \*77 Rules for the Government and Regulation of the . . . naval Forces”. Art. I, s 8, Cl. 14. Defendants argue that the Constitution has placed the power exclusively in Congress to legislate and in the President to execute in all areas relating to the conduct of the Navy, and that decisional responsibilities in those areas are beyond the constitutional limits of judicial power. Defendants rely primarily upon Orloff v. Willoughby, 345 U.S. 83, 93-94, 73 S.Ct. 534, 97 L.Ed. 842 (1953) and Gilligan v. Morgan, 413 U.S. 1, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973) to support this view. Neither of these cases nor the others referred to by plaintiffdiscuss the issue whether courts, under the power constitutionally conferred upon them, may impose restrictions upon legislative or executive decisions made in the exercise of their war powers if those decisions infringe upon constitutionally protected rights. That courts have the power to do so is settled. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 164-165, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). See United States v. MacIntosh, 283 U.S. 605, 622, 51 S.Ct. 570, 75 L.Ed. 1302 (1931)

#### ---Constitutional rights are restrictions

Boumediene Appellete Brief 2005 (Boumediene v. Bush 476 F.3d 981, 993, 375 U.S.App.D.C. 48, 60 (C.A.D.C.,2007)- Appellate brief)

\*993 \*\*60 As against this line of authority, the dissent offers the distinction that the Suspension Clause is a limitation on congressional power rather than a constitutional right. But this is no distinction at all. Constitutional rights are rights against the government and, as such, are restrictions on governmental power. See H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 534, 69 S.Ct. 657, 93 L.Ed. 865 (1949) (“Even the Bill of Rights amendments were framed only as a limitation upon the powers of Congress.”). FN12 Consider the First Amendment. (In contrasting the Suspension Clause with provisions in the Bill of Rights, see Dissent at 995-96, the dissent is careful to ignore the First Amendment.) Like the Suspension Clause, the First Amendment is framed as a limitation on Congress: “Congress shall make no law ....” Yet no one would deny that the First Amendment protects the rights to free speech and religion and assembly.

#### Authority includes ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

### Warfighting

#### Base kickout now because of unaccountability

Foust 5/1/12 (Josh, a fellow at the American Security Project, Joshua's research focuses on the role of market-oriented development strategies in post-conflict environments, and on the development of metrics in understanding national security policy, “How Strong Is al Qaeda Today, Really?” <http://www.theatlantic.com/international/archive/2012/05/how-strong-is-al-qaeda-today-really/256609/>)

The many successes in the fight against al-Qaeda have also come with substantial costs. In Pakistan and Yemen, an obsession with kinetic activities -- killing the bad guys -- has worsened political chaos and entrenched anti-Americanism. Some other countries now deny the U.S. permission to fly drones over their territory because they fear the political backlash that Obama's favorite weapon could bring. We don't know yet if these political consequences can be overcome, though it's a safe bet that continuing the same terror policies won't lessen them.

#### Courts can protect secrecy

Vladeck et al 08 (Steven, A CRITIQUE OF “NATIONAL SECURITY COURTS”, A REPORT BY THE CONSTITUTION PROJECT’S LIBERTY AND SECURITY COMMITTEE & COALITION TO DEFEND CHECKS AND BALANCES, June 23,

http://www.constitutionproject.org/pdf/Critique\_of\_the\_National\_Security\_Courts.pdf)

Advocates of national security courts that would try terrorism suspects claim that traditional Article III courts are unequipped to handle these cases. This claim has not been substantiated, and is made in the face of a significant — and growing — body of evidence to the contrary. A recent report released by Human Rights First persuasively demonstrates that our existing federal courts are competent to try these cases. The report examines more than 120 international terrorism cases brought in the federal courts over the past fifteen years. It finds that established federal courts were able to try these cases without sacrificing either national security or the defendants’ rights to a fair trial.3 The report documents how federal courts have successfully dealt with classified evidence under the Classified Information Procedures Act (CIPA) without creating any security breaches. It further concludes that courts have been able to enforce the government’s Brady obligations to share exculpatory evidence with the accused, deal with Miranda warning issues, and provide means for the government to establish a chain of custody for physical evidence, all without jeopardizing national security.