# 1NC

### 1NC

#### Interpretation:

#### Restrictions are prohibitions --- the aff is distinct

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

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Restrictions on authority are distinct from conditions

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

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

#### Authority is power delegated to an agent by a principle

Kelly 3 Judge for the State of Michigan, JOSEPH ELEZOVIC, Plaintiff, and LULA ELEZOVIC, Plaintiff-Appellant/Cross-Appellee, v. FORD MOTOR COMPANY and DANIEL P. BENNETT, Defendants-Appellees/Cross-Appellants., No. 236749, COURT OF APPEALS OF MICHIGAN, 259 Mich. App. 187; 673 N.W.2d 776; 2003 Mich. App. LEXIS 2649; 93 Fair Empl. Prac. Cas. (BNA) 244; 92 Fair Empl. Prac. Cas. (BNA) 1557, lexis

Applying agency principles, a principal is responsible for the acts of its agents done within the scope of the agent's authority, "even though acting contrary to instructions." [Dick Loehr's, Inc v Secretary of State, 180 Mich. App. 165, 168; 446 N.W.2d 624 (1989)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=115&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b180%20Mich.%20App.%20165%2cat%20168%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=708331d40466e4347936b73e103c82fb). This is because, in part, an agency relationship arises where the principal [\*\*\*36]  has the right to control the conduct of the agent. [St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n, 458 Mich. 540, 558 n 18; 581 N.W.2d 707 (1998)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=116&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b458%20Mich.%20540%2cat%20558%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c0a63a81a484a6ce53be229bc2290a07) (citations omitted). The employer is also liable for the torts of his employee if "'the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation,'" [McCann v Michigan, 398 Mich. 65, 71; 247 N.W.2d 521 (1976)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=117&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b398%20Mich.%2065%2cat%2071%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=5219d53b6a7119254f8041c911d87fd2), quoting [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=118&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=71c1bf8c001fe5ae1153be4268b8e9e9), p 481; see also [Champion v Nation Wide Security, Inc, 450 Mich. 702, 704, 712; 545 N.W.2d 596 (1996)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=119&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b450%20Mich.%20702%2cat%20704%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=3d1841dc7f4fb90804d8adb6349a6fae), citing [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=120&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c1927abf5bf3954a85d211c044ada141), p 481 ("the master is liable for the tort of his servant if the servant 'was aided in accomplishing the tort by the existence of the agency relation'"). In [Backus v  [\*213]  Kauffman (On Rehearing), 238 Mich. App. 402, 409; 605 N.W.2d 690 (1999)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=121&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b238%20Mich.%20App.%20402%2cat%20409%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=d9947545fee151274d489cbc14123160), this Court stated: The term "authority" is defined by Black's Law Dictionary to include "the power delegated by a principal to an agent." Black's Law Dictionary (7th ed), p [\*\*\*37]  127. "Scope of authority" is defined in the following manner: "The reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." Id. at 1348.

#### Violation:

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

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

Many of us wondered, at the time, just where this came from–since it’s hard to imagine what due process could be without at least some judicial oversight. On this point, the white paper again isn’t very helpful. The sum total of its analysis is Section II.C, on page 10, which provides that:

[U]nder the circumstances described in this paper, there exists no appropriate judicial forum to evaluate these constitutional considerations. It is well established that “[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention,” because such matters “frequently turn on standards that defy the judicial application,” or “involve the exercise of a discretion demonstrably committed to the executive or legislature.” Were a court to intervene here, it might be required inappropriately to issue an ex ante command to the President and officials responsible for operations with respect to their specific tactical judgment to mount a potential lethal operation against a senior operational leader of al-Qa’ida or its associated forces. And judicial enforcement of such orders would require the Court to supervise inherently predictive judgments by the President and his national security advisors as to when and how to use force against a member of an enemy force against which Congress has authorized the use of force.

There are two enormous problems with this reasoning:

First, many of us who argue for at least some judicial review in this context specifically don’t argue for ex ante review for the precise reasons the white paper suggests. Instead, we argue for ex post review–in the form of damages actions after the fact, in which liability would only attach if the government both (1) exceeded its authority; and (2) did so in a way that violated clearly established law. Whatever else might be said about such damages suits, they simply don’t raise the interference concerns articulated in the white paper, and so one would have expected some distinct explanation for why that kind of judicial review shouldn’t be available in this context. All the white paper offers, though, is its more general allusion to the political question doctrine. Which brings me to…

Second, and in any event, the suggestion that lawsuits arising out of targeted killing operations against U.S. citizens raise a nonjusticiable political question is almost laughable–and is the one part of this white paper that really does hearken back to the good ole’ days of the Bush Administration (I’m less sold on any analogy based upon the rest of the paper). Even before last Term’s Zivotofsky decision, in which the Supreme Court went out of its way to remind everyone (especially the D.C. Circuit) of just how limited the political question doctrine really should be, it should’ve followed that uses of military force against U.S. citizens neither “turn on standards that defy the judicial application,” nor “involve the exercise of a discretion demonstrably committed to the executive or legislature.” Indeed, in the context of the Guantánamo habeas litigation, courts routinely inquire into the very questions that might well arise in such a damages suit, e.g., whether there is sufficient evidence to support the government’s conclusion that the target is/was a senior operational leader of al Qaeda or one of its affiliates…

Don’t get me wrong: Any suit challenging a targeted killing operation, even a post hoc damages action, is likely to run into a number of distinct procedural concerns, including the difficulty of arguing for a Bivens remedy; the extent to which the state secrets privilege might preclude the litigation; etc. But those are the arguments that the white paper should’ve been making–and not a wholly unnuanced invocation of the political question doctrine in a context in which it clearly does not–and should not–apply.

V. A Modest Proposal

This all leads me to what I’ve increasingly come to believe is the only real solution here: If folks are really concerned about this issue, especially on the Hill, then Congress should create a cause of action–with nominal damages–for individuals who have been the targets of such operations (or, more honestly, their heirs). The cause of action could be for $1 in damages; it could expressly abrogate the state secrets privilege and replace it with a procedure for the government to offer at least some of its evidence ex parte and in camera; and it could abrogate qualified immunity so that, in every case, the court makes law concerning how the government applies its criteria in a manner consistent with the Due Process Clause of the Fifth Amendment. This wouldn’t in any way resolve the legality of targeted killings, but it would clear the way for courts to do what courts do–ensure that, when the government really is depriving an individual of their liberty (if not their life), it does so in a manner that comports with the Constitution–as the courts, and not just the Executive Branch, interpret it. It’s not a perfect solution, to be sure, but if ever there was a field in which the perfect is the enemy of the good, this is it.

#### Vote neg---

#### Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

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

### 1NC

#### Immigration reform will pass --- it’s Obama’s top priority

Eleanor Clift, 10-25-2013, “Obama, Congress Get Back to the Immigration Fight,” Daily Beast, http://www.thedailybeast.com/articles/2013/10/25/obama-congress-get-back-to-the-immigration-fight.html

But now with the shutdown behind them and Republicans on the defensive, Obama saw an opening to get back in the game. His message, says Sharry: “‘Hey, I’m flexible,’ which after the shutdown politics was important, and he implied ‘if you don’t do it, I’m coming after you.’” For Obama and the Democrats, immigration reform is a win-win issue. They want an overhaul for the country and their constituents. If they don’t get it, they will hammer Republicans in demographically changing districts in California, Nevada, and Florida, where they could likely pick up seats—not enough to win control of the House, but, paired with what Sharry calls “the shutdown narrative,” Democratic operatives are salivating at the prospect of waging that campaign. Some Republicans understand the stakes, and former vice-presidential candidate and budget maven Paul Ryan is at the center of a newly energized backroom effort to craft legislation that would deal with the thorniest aspect of immigration reform for Republicans: the disposition of 11 million people in the country illegally. Rep. Raul Labrador (R-ID), an early advocate of reform who abandoned the effort some months ago, argues that Obama’s tough bargaining during the shutdown means Republicans can’t trust him on immigration. “When have they ever trusted him?” asks Sharry. “Nobody is asking them to do this for Obama. They should do this for the country and for themselves.... We’re not talking about tax increases or gun violence. This is something the pillars of the Republican coalition are strongly in favor of.” Among those pillars is Chamber of Commerce President Tom Donahue, who on Monday noted the generally good feelings about immigration reform among disparate groups, among them business and labor. He expressed optimism that the House could pass something, go to conference and resolve differences with the Senate, get a bill and have the president sign it “and guess what, government works! Everybody is looking for something positive to take home.” The Wall Street Journal reported Thursday that GOP donors are withholding contributions to lawmakers blocking reform, and that Republicans for Immigration Reform, headed by former Bush Cabinet official, Carlos Gutierrez, is running an Internet ad urging action. Next week, evangelical Christians affiliated with the Evangelical Immigration Table will be in Washington to press Congress to act with charity toward people in the country without documentation, treating them as they would Jesus. The law-enforcement community has also stepped forward repeatedly to embrace an overhaul. House Speaker John Boehner says he wants legislation, but not the “massive” bill that the Senate passed and that Obama supports. The House seems inclined to act—if it acts at all—on a series of smaller bills starting with “Kids Out,” a form of the Dream Act that grants a path to citizenship for young people brought to the U.S. as children; then agriculture-worker and high-tech visas, accompanied by tougher border security. The sticking point is the 11 million people in the country illegally, and finding a compromise between Democrats’ insistence that reform include a path to citizenship, and Republicans’ belief that offering any kind of relief constitutes amnesty and would reward people for breaking the law. The details matter hugely, but what a handful of Republicans, led by Ryan, appear to be crafting is legalization for most of the 11 million but without any mention of citizenship. It wouldn’t create a new or direct or special path for people who came to the U.S. illegally or overstayed their visa. It would allow them to earn legal status through some yet-to-be-determined steps, and once they get it, they go to the end of a very long line that could have people waiting for decades. The Senate bill contains a 13-year wait. However daunting that sounds, the potential for meaningful reform is tantalizingly close with Republicans actively engaged in preparing their proposal, pressure building from the business community and religious leaders, and a short window before the end of the year to redeem the reputation of Congress and the Republican Party after a bruising takedown. The pieces are all there for long-sought immigration reform. We could be a few weeks away from an historic House vote, or headed for a midterm election where Republicans once again are on the wrong side of history and demography.

#### Obama’s political capital is vital to reignite momentum for immigration

Reid Epstein 10/17/13, writer at Politico, “Obama’s latest push features a familiar strategy,” http://www.politico.com/story/2013/10/barack-obama-latest-push-features-familiar-strategy-98512.html

President Barack Obama made his plans for his newly won political capital official — he’s going to hammer House Republicans on immigration.¶ And it’s evident from his public and private statements that Obama’s latest immigration push is, in at least one respect, similar to his fiscal showdown strategy: yet again, the goal is to boost public pressure on House Republican leadership to call a vote on a Senate-passed measure.¶ “The majority of Americans think this is the right thing to do,” Obama said Thursday at the White House. “And it’s sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let’s hear them. Let’s start the negotiations. But let’s not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year.”¶ (WATCH: Assessing the government shutdown's damage)¶ And yet Obama spent the bulk of his 20-minute address taking whack after whack at the same House Republicans he’ll need to pass that agenda, culminating in a jab at the GOP over the results of the 2012 election — and a dare to do better next time.¶ “You don’t like a particular policy or a particular president? Then argue for your position,” Obama said. “Go out there and win an election. Push to change it. But don’t break it. Don’t break what our predecessors spent over two centuries building. That’s not being faithful to what this country’s about.”¶ Before the shutdown, the White House had planned a major immigration push for the first week in October. But with the shutdown and looming debt default dominating the discussion during the last month, immigration reform received little attention on the Hill.¶ (PHOTOS: Immigration reform rally on the National Mall)¶ Immigration reform allies, including Obama’s political arm, Organizing for Action, conducted a series of events for the weekend of Oct. 5, most of which received little attention in Washington due to the the shutdown drama. But activists remained engaged, with Dream Act supporters staging a march up Constitution Avenue, past the Capitol to the Supreme Court Tuesday, to little notice of the Congress inside.¶ Obama first personally signaled his intention to re-emerge in the immigration debate during an interview Tuesday with the Los Angeles Univision affiliate, conducted four hours before his meeting that day with House Democrats.¶ Speaking of the week’s fiscal landmines, Obama said: “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ (Also on POLITICO: GOP blame game: Who lost the government shutdown?)¶ When he met that afternoon in the Oval Office with the House Democratic leadership, Obama said that he planned to be personally engaged in selling the reform package he first introduced in a Las Vegas speech in January.¶ Still, during that meeting, Obama knew so little about immigration reform’s status in the House that he had to ask Rep. Xavier Becerra (D-Calif.) how many members of his own party would back a comprehensive reform bill, according to a senior Democrat who attended.¶ The White House doesn’t have plans yet for Obama to participate in any new immigration reform events or rallies — that sort of advance work has been hamstrung by the 16-day government shutdown.¶ But the president emerged on Thursday to tout a “broad coalition across America” that supports immigration reform. He also invited House Republicans to add their input specifically to the Senate bill — an approach diametrically different than the House GOP’s announced strategy of breaking the reform into several smaller bills.¶ White House press secretary Jay Carney echoed Obama’s remarks Thursday, again using for the same language on immigration the White House used to press Republicans on the budget during the shutdown standoff: the claim that there are enough votes in the House to pass the Senate’s bill now, if only it could come to a vote.¶ “When it comes to immigration reform … we’re confident that if that bill that passed the Senate were put on the floor of the House today, it would win a majority of the House,” Carney said. “And I think that it would win significant Republican votes.”

#### Judicial interference in drone policy wrecks PC---Obama would fight

Elinor June Rushforth 12, J.D. candidate, University of Arizona, James E. Rogers College of Law, Class of 2013, Fall 2012, “NOTE: THERE'S AN APP FOR THAT: IMPLICATIONS OF ARMED DRONE ATTACKS AND PERSONALITY STRIKES BY THE UNITED STATES AGAINST NON-CITIZENS, 2004-2012,” Arizona Journal of International and Comparative Law, 29 Ariz. J. Int'l & Comp. Law 623, p. lexis

Because of staunch political and military support for the drone program, it is unlikely that these attacks will diminish in the near future. If that is indeed the case, it is more important than ever that the Executive, in conjunction with Congress and the judiciary, set out clear standards for these lethal operations. The nation has faced these difficult questions before and "[i]n keeping with the purpose and the pragmatism of Mathews v. Eldridge, this investigation should be as thorough, independent, and public as possible without damage to national security." n189 Specifically, a heightened and public standard of review is needed for the CIA drone program as the military operates within its own chain of command. There should be an open standard of selection that clearly delineates why an individual becomes a target, how long they may be targeted, and who reviews the information about the target. Though these standards are likely to remain classified based on national security concerns, there has been success in integrating national security cases into the judicial process; for example, in the Guantanamo detainee cases. n190 A federal court or panel should also be created, similar to Foreign Intelligence Surveillance Courts that will aid in the targeting process and issue a warrant for a strike. n191¶ A. The Standard for a Lethal Targeting Operation¶ Because of the U.S. commitment to the rule of law, any lethal program not operated by a military branch should be subject to a more public and judicially overseen review. The CIA needs to define exactly who they are searching for; whether it is the "anyone who aids and abets" terrorism level of involvement or a mere scintilla of suspicion. By defining whom they are targeting, a level of credence will be lent to the program. Further, the United States should take a page out of Israel's playbook and declare that there must be actionable intelligence against the proposed target that identifies "the target as a person actively involved in acts of terrorism." n192 There must be an actual plan of attack (time, place, means) in place by that individual that is known through the [\*652] intelligence; n193 this will lessen the likelihood of opportunistic targeting that risks error and miscalculation. Further, an assessment of the distinction and proportionality of the attack should be tied into the decision to attack, n194 as well as a reflection on potential domestic political consequences n195 and foreign political blowback from an attack. n196 Then, supervisors should review a package of information about the proposed target and decide if the intelligence is good enough to continue up the chain of command. Due to the Executive's reassurances, a review process similar to this is already in place, however, without sacrificing national security interests this standard of selection should be made more public. Though the decision to attack terrorist organizations, and those providing material support, has already been made, n197 public support for the tactics used in the Overseas Contingency Operations should help guide the executive and legislative game plan. ¶ B. The Role of the Courts in Targeted Killing Operations¶ The next level of review should be a statutorily created court that is the last stop on the targeted killing process. Though there may be some grumbling among judges and politicians about overextended courts and full dockets, national security concerns and the risk of lethal mistakes should outweigh reluctance to introduce an important check on targeted killing. The President, and perhaps Congress, could also be reluctant to allow courts into what they deem a core executive function. n198 Attorney General Eric Holder gave the public another piece of the Obama administration's targeted killing model when he claimed that the Constitution "guarantees due process, not judicial process" and that "due process [\*653] takes into account the realities of combat." n199 This signals to the public that the Obama administration will remain wary of any encroachment and that the imposition of judicial process on targeted killing would be fought.

#### Ag industry’s collapsing now---immigration’s key

Alfonso Serrano 12, Bitter Harvest: U.S. Farmers Blame Billion-Dollar Losses on Immigration Laws, Time, 9-21-12, http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws/

The Broetjes and an increasing number of farmers across the country say that a complex web of local and state anti-immigration laws account for acute labor shortages. With the harvest season in full bloom, stringent immigration laws have forced waves of undocumented immigrants to flee certain states for more-hospitable areas. In their wake, thousands of acres of crops have been left to rot in the fields, as farmers have struggled to compensate for labor shortages with domestic help.¶ “The enforcement of immigration policy has devastated the skilled-labor source that we’ve depended on for 20 or 30 years,” said Ralph Broetje during a recent teleconference organized by the National Immigration Forum, adding that last year Washington farmers — part of an $8 billion agriculture industry — were forced to leave 10% of their crops rotting on vines and trees. “It’s getting worse each year,” says Broetje, “and it’s going to end up putting some growers out of business if Congress doesn’t step up and do immigration reform.”¶ (MORE: Why Undocumented Workers Are Good for the Economy)¶ Roughly 70% of the 1.2 million people employed by the agriculture industry are undocumented. No U.S. industry is more dependent on undocumented immigrants. But acute labor shortages brought on by anti-immigration measures threaten to heap record losses on an industry emerging from years of stiff foreign competition. Nationwide, labor shortages will result in losses of up to $9 billion, according to the American Farm Bureau Federation.

#### Extinction

Lugar 2k Chairman of the Senator Foreign Relations Committee and Member/Former Chair of the Senate Agriculture Committee (Richard, a US Senator from Indiana, is Chairman of the Senate Foreign Relations Committee, and a member and former chairman of the Senate Agriculture Committee. “calls for a new green revolution to combat global warming and reduce world instability,” pg online @ http://www.unep.org/OurPlanet/imgversn/143/lugar.html)

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. But we do so at our peril. One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of [WMDs] weapons of mass destruction. With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat. Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe. Productivity revolution To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

### 1NC

#### Plan breaks the political question doctrine---triggers a slippery slope

Christopher Ehrfurth 11, 10/10/11, “The Extrajudicial Killing of Anwar al-Awlaki,” http://law.marquette.edu/facultyblog/2011/10/10/the-extrajudicial-killing-of-anwar-al-awlaki/

The legality of the extrajudicial assassination of al-Awlaki was the subject of a civil suit in 2010. After learning that his son had been placed on a CIA/Joint Special Operations Command “kill list”, al-Awlaki’s father brought suit in the U.S. District Court for the District of Columbia against President Obama, Secretary of Defense Robert Gates, and CIA Director Leon Panetta. In an attempt to enjoin the executive branch from killing his son, al-Awlaki introduced several claims based in both constitutional and tort law. The court’s lengthy opinion begins with a compelling recitation of the questions presented:

How is it that judicial approval is required when the United States decides to target a U.S. citizen overseas for electronic surveillance, but that, according to defendants, judicial scrutiny is prohibited when the United States decides to target a U.S. citizen overseas for death? Can a U.S. citizen –himself or through another — use the U.S. judicial system to vindicate his constitutional rights while simultaneously evading U.S. law enforcement authorities, calling for “jihad against the West,” and engaging in operational planning for an organization that has already carried out numerous terrorist attacks against the United States? Can the Executive order the assassination of a U.S. citizen without first affording him any form of judicial process whatsoever, based on the mere assertion that he is a dangerous member of a terrorist organization? How can the courts, as plaintiff proposes, make real-time assessments of the nature and severity of alleged threats to national security, determine the imminence of those threats, weigh the benefits and costs of possible diplomatic and military responses, and ultimately decide whether, and under what circumstances, the use of military force against such threats is justified? When would it ever make sense for the United States to disclose in advance to the “target” of contemplated military action the precise standards under which it will take that military action? And how does the evolving AQAP relate to core al Qaeda for purposes of assessing the legality of targeting AQAP (or its principals) under the September 18, 2001 Authorization for the Use of Military Force?

Al-Aulaqi v. Obama, 727 F.Supp.2d 1, 8-9 (D.D.C. 2010).

Before contemplating the more compelling issues, the court first decided the issue of standing. Al-Awlaki’s father lacked “next-friend” standing because he failed to provide an adequate reason justifying why Anwar could not appear in court on his own behalf. His father claimed that if Anwar presented himself to authorities he would be exposed to attack. The court disagreed, citing public government statements indicating that if al-Awlaki surrendered peacefully he could not be executed without due process.

The court also denied third party standing, holding that Anwar’s father could not show that a parent suffers an injury in fact if his adult child is threatened with a future extrajudicial killing. Anwar’s status as an adult was of particular importance because a parent does not have a constitutionally (or common law) protected liberty interest in maintaining a relationship with his adult child free from government influence.

Prudential standing was denied because, among other reasons, the court refused to “unnecessarily adjudicate rights” that it believed al-Awlaki did not wish to assert himself. The court noted that al-Awlaki made numerous public statements professing his contempt for the U.S. legal system. Al-Awlaki did not believe that he was bound by U.S. laws because, in his view, they are contrary to the teachings of Allah. I personally find it difficult to believe that a person would not want to contest his own assassination, but it also seems unlikely that al-Awlaki would wish to assert legal rights in a court system that he did not recognize as authoritative, especially in a country that he openly despised.

Ultimately, the most compelling issues were not addressed because the court found that judicial review was inappropriate. The court held that separation of powers and the political question doctrine prohibited interfering with the executive branch’s orders with respect to military action abroad. Meaningful review was deemed impossible, because it would require an unmanageable assessment of the quality of the President’s interpretation of military intelligence and his resulting decision (based upon that intelligence) to use military force against terrorist targets overseas:

[T]his Court does not hold that the Executive possesses “unreviewable authority to order the assassination of any American whom he labels an enemy of the state.” (citation omitted), the Court only concludes that it lacks the capacity to determine whether a specific individual in hiding overseas, whom the Director of National Intelligence has stated is an “operational” member of AQAP, (citation omitted), presents such a threat to national security that the United States may authorize the use of lethal force against him. This Court readily acknowledges that it is a “drastic measure” for the United States to employ lethal force against one of its own citizens abroad, even if that citizen is currently playing an operational role in a “terrorist group that has claimed responsibility for numerous attacks against Saudi, Korean, Yemeni, and U.S. targets since January 2009,”(citation omitted) But as the D.C. Circuit explained in Schneider, a determination as to whether “drastic measures should be taken in matters of foreign policy and national security is not the stuff of adjudication, but of policymaking.” (citation omitted) Because decision-making in the realm of military and foreign affairs is textually committed to the political branches, and because courts are functionally ill-equipped to make the types of complex policy judgments that would be required to adjudicate the merits of plaintiff’s claims, the Court finds that the political question doctrine bars judicial resolution of this case.

Al-Aulaqi, 727 F.Supp.2d at 52-53.

It is unfortunate that the Aulaqi case never made it beyond the issue of standing, but perhaps that was the proper outcome. Although Awlaki was a U.S. citizen (and a citizen of Yemen), he was also clearly a member of al-Qaeda. Shortly after 9/11, Congress passed the Authorization for Use of Military Force (“AUMF”). The AUMF provides that:

[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001…in order to prevent any future acts of international terrorism against the United States…

Everyone (except for the guy who leaves “9/11 was inside job” comments beneath every news article on the internet) knows that al-Qaeda is the organization that planned and committed the terrorist attacks that occurred on 9/11. Al-Awlaki was indisputably a member of al-Qaeda. The Executive’s killing of al-Awlaki was certainly aimed at preventing future acts of international terrorism against the United States. If the AUMF can be read as authorizing al-Awlaki’s killing, then it would appear that the President assassinated him with congressional approval. In that scenario, Justice Jackson’s concurrence in Youngstown would indicate that the President was acting at the highest ebb of his authority.

Still, many columnists and politicians like Ron Paul believe that Obama’s decision was illegal on due process grounds. Might Ron Paul be engaging in political grandstanding? I do seem to remember hearing something about an upcoming election. On the other hand, the AUMF only authorizes necessary and appropriate force. In his suit against the Executive, al-Aulaqi suggested that imminence is the key factor in determining whether lethal force is justified. It would have been interesting to find out what legal standard the court would apply to the use of lethal force on foreign soil against a member of al-Qaeda holding U.S. citizenship, but that issue was never addressed.

Was the force used against al-Awlaki necessary and appropriate? It seems difficult to determine without a meaningful presentation of evidence against al-Awlaki. Personally, I don’t think I’ll hold my breath waiting for the day that the general public is offered an explanation as to why al-Awlaki couldn’t be captured and tried in a U.S. courtroom. It is troubling to know that the President can order the extrajudicial execution of a U.S. citizen based upon secret evidence. On the other hand, it has been said that the Constitution is not a suicide pact, and it’s comforting to know that the President is tracking and killing those who are actively trying to kill Americans.

After reading the al-Aulaqi opinion, I was left feeling unsatisfied with the court’s decision to defer to the other branches of government, but I understood why it did so. In many ways, the moral issue of al-Awlaki’s murder leaves me feeling the same way. I think it’s unfortunate that al-Awlaki was not indicted, captured, and tried in Federal court. I also understand that applying traditional due process to a terrorist abroad might create a logistical nightmare and place many innocent lives in danger. Is this a slippery slope? If so, wouldn’t requiring the judicial approval of military strategy abroad be just as slippery? Either way, I respect those who speak out in favor of due process. I also wonder how many of those people, if faced with the same choice as the President, would choose differently.

#### That spills over to climate change cases---litigants are turning to the Courts now and asking them to abrogate the PQD

Laurence H. Tribe 10, the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects.

It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3

The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4

At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5

It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That wrecks coordination necessary to solve warming

Laurence H. Tribe 10, the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45

Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49

There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle.

CONCLUSION

Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

#### Extinction

Flournoy 12 -- Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center. Don Flournoy is a PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University (Don, "Solar Power Satellites," January, Springer Briefs in Space Development, Book, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

### 1NC

#### The Executive branch should publicly articulate its legal rationale for its targeted killing policy, including the process and safeguards in place for target selection. The United States Congress should enact a resolution and issue a white paper stating that, in the conduct of its oversight it has reviewed ongoing targeted killing operations and determined that the United States government is conducting such operations in full compliance with relevant laws, including but not limited to the Authorization to Use Military Force of 2001, covert action findings, and the President’s inherent powers under the Constitution.

#### The United States Federal Judiciary should recognize 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, in the area of torture committed by officials of the United States Federal Government. The United States Federal Judiciary should deny certiorari to cases challenging the legality of the United States’ targeted killing policies.

#### The CP’s the best middle ground---preserves the vital counter-terror role of targeted killings while resolving all their downsides

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

Despite President Barack Obama's recent call to reduce the United States' reliance on drones, they will likely remain his administration's weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused.

Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage.

So drone warfare is here to stay, and it is likely to expand in the years to come as other countries' capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid.

#### Solves---the combination of executive disclosure and Congressional support boosts accountability and legitimacy

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

Perhaps the most obvious way to add accountability to the targeted killing process is for someone in government to describe the process the way this article has, and from there, defend the process. The task of describing the government’s policies in detail should not fall to anonymous sources, confidential interviews, and selective leaks. Government’s failure to defend policies is not a phenomenon that is unique to post 9/11 targeted killings. In fact, James Baker once noted

"In my experience, the United States does a better job at incorporating intelligence into its targeting decisions than it does in using intelligence to explain those decisions after the fact. This in part reflects the inherent difficulty in articulating a basis for targets derived from ongoing intelligence sources and methods. Moreover, it is hard to pause during ongoing operations to work through issues of disclosure…But articulation is an important part of the targeting process that must be incorporated into the decision cycle for that subset of targets raising the hardest issues…"519

Publicly defending the process is a natural fit for public accountability mechanisms. It provides information to voters and other external actors who can choose to exercise a degree of control over the process. However, a detailed public defense of the process also bolsters bureaucratic and professional accountability by demonstrating to those within government that they are involved in activities that their government is willing to publicly describe and defend (subject to the limits of necessary national security secrecy). However, the Executive branch, while wanting to reveal information to defend the process, similarly recognizes that by revealing too much information they may face legal accountability mechanisms that they may be unable to control, thus their caution is understandable (albeit self-serving).520

It’s not just the Executive branch that can benefit from a healthier defense of the process. Congress too can bolster the legitimacy of the program by specifying how they have conducted their oversight activities. The best mechanism by which they can do this is through a white paper. That paper could include:

A statement about why the committees believe the U.S. government's use of force is lawful. If the U.S. government is employing armed force it's likely that it is only doing so pursuant to the AUMF, a covert action finding, or relying on the President's inherent powers under the Constitution. Congress could clear up a substantial amount of ambiguity by specifying that in the conduct of its oversight it has reviewed past and ongoing targeted killing operations and is satisfied that in the conduct of its operations the U.S. government is acting consistent with those sources of law. Moreover, Congress could also specify certain legal red lines that if crossed would cause members to cease believing the program was lawful. For example, if members do not believe the President may engage in targeted killings acting only pursuant to his Article II powers, they could say so in this white paper, and also articulate what the consequences of crossing that red line might be. To bolster their credibility, Congress could specifically articulate their powers and how they would exercise them if they believed the program was being conducted in an unlawful manner. Perhaps stating: "The undersigned members affirm that if the President were to conduct operations not authorized by the AUMF or a covert action finding, we would consider that action to be unlawful and would publicly withdraw our support for the program, and terminate funding for it."

A statement detailing the breadth and depth of Congressional oversight activities. When Senator Feinstein released her statement regarding the nature and degree of Senate Intelligence Committee oversight of targeted killing operations it went a long way toward bolstering the argument that the program was being conducted in a responsible and lawful manner. An oversight white paper could add more details about the oversight being conducted by the intelligence and armed services committees, explaining in as much detail as possible the formal and informal activities that have been conducted by the relevant committees. How many briefings have members attended? Have members reviewed targeting criteria? Have members had an opportunity to question the robustness of the internal kill-list creation process and target vetting and validation processes? Have members been briefed on and had an opportunity to question how civilian casualties are counted and how battle damage assessments are conducted? Have members been informed of the internal disciplinary procedures for the DoD and CIA in the event a strike goes awry, and have they been informed of whether any individuals have been disciplined for improper targeting? Are the members satisfied that internal disciplinary procedures are adequate?

3) Congressional assessment of the foreign relations implications of the program. The Constitution divides some foreign policy powers between the President and Congress, and the oversight white paper should articulate whether members have assessed the diplomatic and foreign relations implications of the targeted killing program. While the white paper would likely not be able to address sensitive diplomatic matters such as whether Pakistan has privately consented to the use of force in their territory, the white paper could set forth the red lines that would cause Congress to withdraw support for the program. The white paper could specifically address whether the members have considered potential blow-back, whether the program has jeopardized alliances, whether it is creating more terrorists than it kills, etc. In specifying each of these and other factors, Congress could note the types of developments, that if witnessed would cause them to withdraw support for the program. For example, Congress could state "In the countries where strikes are conducted, we have not seen the types of formal objections to the activities that would normally be associated with a violation of state's sovereignty. Specifically, no nation has formally asked that the issue of strikes in their territory be added to the Security Council's agenda for resolution. No nation has shot down or threatened to shoot down our aircraft, severed diplomatic relations, expelled our personnel from their country, or refused foreign aid. If we were to witness such actions it would cause us to question the wisdom and perhaps even the legality of the program."

#### Solves Bivens---subjects military policy to judicial review and recognizes Bivens actions in the areas that they’ve impacted---if they read Bivens add-ons we can clearly legitimately CP out of those in the 2NC.

## Counter-terror Adv

### Offense

#### Judicial ex-post review of targeted killing would collapse military effectiveness and command structure---causes second-guessing of every crucial battlefield decision

Stuart F. Delery 12, Principal Deputy Assistant Attorney General, Civil Division, 12/14/12, Defendants’ Motion to Dismiss, NASSER AL-AULAQI, as personal representative of the estate of ANWAR AL-AULAQI, et al., Plaintiffs, v. LEON E. PANETTA, et al., in their individual capacities, Defendants, No. 1:12-cv-01192 (RMC), <http://www.lawfareblog.com/wp-content/uploads/2012/12/MTD-AAA.pdf>

First, the D.C. Circuit has repeatedly held that where claims directly implicate matters involving national security and particularly war powers, special factors counsel hesitation. See Doe, 683 F.3d at 394-95 (discussing the “strength of the special factors of military and national security” in refusing to infer remedy for citizen detained by military in Iraq); Ali, 649 F.3d at 773 (explaining that “the danger of obstructing U.S. national security policy” is a special factor in refusing to infer remedy for aliens detained in Iraq and Afghanistan (internal quotation and citation omitted)); Rasul v. Myers, 563 F.3d 527, 532 n.5 (D.C. Cir. 2009) (same for aliens detained at Guantánamo Bay). These cases alone should control Plaintiffs’ claims here. Plaintiffs challenge the alleged targeting of and missile strikes against members of AQAP in Yemen. Few cases more clearly present “the danger of obstructing U.S. national security policy” than this one. Ali, 649 F.3d at 773. Accordingly, national security considerations bar inferring a remedy for Plaintiffs’ claims.19¶ Second, Plaintiffs’ claims implicate the effectiveness of the military. As with national security, the D.C. Circuit has consistently held that claims threatening to undermine the military’s command structure and effectiveness present special factors. See Doe, 683 F.3d at 396; Ali, 649 F.3d at 773. Allowing a damages suit brought by the estate of a leader of AQAP against officials who allegedly targeted and directed the strike against him would fly in the face of explicit circuit precedent. As the court in Ali explained: “It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.” 649 F.3d at 773 (quoting Eisentrager, 339 U.S. at 779). Moreover, allowing such suits to proceed “would diminish the prestige of our commanders, not only with enemies but with wavering neutrals.” Id.; see also Vance, 2012 WL5416500 at \*5 (“The Supreme Court’s principal point was that civilian courts should not interfere with the military chain of command . . . .”); Lebron, 670 F.3d at 553 (barring on special factors grounds Bivens claims by detained terrorist because suit would “require members of the Armed Services and their civilian superiors to testify in court as to each other’s decisions and actions” (citation and internal quotation omitted)). ¶ Creating a new damages remedy in the context of alleged missile strikes against enemy forces in Yemen would have the same, if not greater, negative outcome on the military as in the military detention context that is now well-trodden territory in this and other circuits. These suits “would disrupt and hinder the ability of our armed forces to act decisively and without hesitation in defense of our liberty and national interests.” Ali, 649 F.3d at 773 (citation and internal quotation omitted). To infuse such hesitation into the real-time, active-war decision-making of military officers absent authorization to do so from Congress would have profound implications on military effectiveness. This too warrants barring this new species of litigation.

#### A damages remedy for targeted killings would collapse U.S. relations with every country where we conduct TKs---turns their intel sharing internal links

Stuart F. Delery 12, Principal Deputy Assistant Attorney General, Civil Division, 12/14/12, Defendants’ Motion to Dismiss, NASSER AL-AULAQI, as personal representative of the estate of ANWAR AL-AULAQI, et al., Plaintiffs, v. LEON E. PANETTA, et al., in their individual capacities, Defendants, No. 1:12-cv-01192 (RMC), <http://www.lawfareblog.com/wp-content/uploads/2012/12/MTD-AAA.pdf>

Lastly, litigating this suit directly implicates foreign affairs, yet another special factor under binding precedent. See Ali, 649 F.3d at 774 ( “[T]he danger of foreign citizens’ using the courts . . . to obstruct the foreign policy of our government is sufficiently acute that we must leave to Congress the judgment whether a damage remedy should exist.” (quoting SanchezEspinoza, 770 F.2d at 209)). Although Plaintiffs’ decedents are all U.S. citizens, and therefore the precise foreign affairs concerns detailed in Ali and Sanchez-Espinoza do not squarely arise in this case, see Doe, 683 F.3d at 396, without question, litigating the allegations in this case, which involve at least one foreign citizen and purported events abroad, threatens to disrupt U.S. foreign policy. Cf. Vance, 2012 WL 5416500 at \*4 (“The [Supreme] Court has never created or even favorably mentioned a nonstatutory right of action for damages on account of conduct that occurred outside the borders of the United States.”).21

Plaintiffs’ claims, if litigated, could clearly affect our government’s relations with the government of Yemen. Litigating these issues also could affect our relations with Egypt because Plaintiffs claim Defendants specifically targeted and attempted to kill an Egyptian national. See Compl. ¶ 37.Beyond these countries, Plaintiffs allege that the United States has conducted strikes in other countries as well. See id. ¶ 1. Assuming the truth of Plaintiffs’ allegations, adjudication of this case could disrupt U.S. relations with these countries too. It takes little imagination to envision the repercussions on foreign relations that could be spurred by the creation of an entirely novel and discretionary damages remedy—in private civil litigation no less. Given the above separation-of-powers, national security, military effectiveness, classified information, and foreign policy concerns—and the binding precedent on these issues—the Court should decline to create a remedy for Plaintiffs’ claims in this novel context.

#### Judicial review of targeted killings would collapse the effectiveness of Special Forces missions---lawsuits would disclose sources and methods that are vital to mission accomplishment

Larry Maher 10, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, <http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW_Brief_PACER.pdf>

Finally, the VFW’s membership includes many current and former members of the U.S. armed forces’ elite special operations forces—Army Rangers and Special Forces, Navy SEALs, Air Force parajumpers and combat controllers, and Marine Corps Force Reconnaissance personnel, among others. These elite warriors conduct highly dangerous missions today in Iraq, Afghanistan, and other countries around the world. By definition, special operations “are operations conducted in hostile, denied, or politically sensitive environments to achieve military, diplomatic, informational, and/or economic objectives employing military capabilities for which there is no broad conventional force requirement. These operations often require covert, clandestine, or low-visibility capabilities.” U.S. Joint Chiefs of Staff, Joint Pub. 3-05, Doctrine for Joint Special Operations, at I-1 (2003), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_05.pdf.¶ Special operations are differentiated from conventional operations in many ways, but foremost among these are their “degree of physical and political risk, operational techniques, mode of employment, independence from friendly support, and dependence on detailed operational intelligence and indigenous assets.” Id. “Surprise is often the most important principle in the conduct of successful [special operations] and the survivability of employed [special operations forces],” and the very nature of special operations requires “high levels of security . . . to protect the clandestine/covert nature of missions.” Id. at I-6. More than mission accomplishment is at stake—“[g]iven their operating size, [special operations teams] are more vulnerable to potential hostile reaction to their presence than larger conventional units,” and therefore the protection of sources and methods is essential for the survival of special operations forces. Id. To preserve this element of surprise, special operations forces must broadly conceal their tactics, techniques and procedures, including information about unit locations and movements, targeting decisions, and operational plans for future missions. Disclosure of this information would allow this nation’s adversaries to defend themselves more effectively, potentially inflicting more casualties upon U.S. special operations forces. Such disclosure would also provide information about how the U.S. military gathers information about its adversaries, enabling terrorist groups like Al Qaeda to alter its communications and activities in order to evade future detection and action by the U.S. Government. Such harm would not be limited to just this instance or terrorist group group; these disclosures would also provide future terrorist adversaries and military adversaries with insight into U.S. special operations capabilities which would enable them to counter such capabilities in future conflicts. Cf. Public Declaration of Robert M. Gates, Secretary of Defense, Govt. Exhibit 4, September 23, 2010, at ¶¶ 6-7.¶ In this matter, the Plaintiff asks the Court to pull back the veil on the U.S. special operations community, exposing special operations sources and methods to the public, including this nation’s enemies. This would do tremendous harm to current special operations personnel, including VFW members, who are operating abroad in Iraq, Afghanistan, and elsewhere, and who depend on stealth, security and surprise for their survival and mission accomplishment. Further, in his prayer for relief, Plaintiff asks the Court to order the disclosure of “the criteria that are used in determining whether the government will carry out the targeted killing of a U.S. citizen.” As Secretary Gates states in his public declaration filed by the Government, without confirming or denying any allegation made by Plaintiff, this type of information “constitutes highly sensitive and classified military information that cannot be disclosed without causing serious harm to the national security of the United States." Id. at ¶5. These criteria necessarily reflect the sources, methods and analytic processes used to produce them, and would tend to reveal other information about military' sources and methods which are essential to the success and survival of special operations personnel.

#### Special ops key to solve bioterror

Jim Thomas 13, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf

Although nuclear weapons tend to dominate public discourse about WMD threats, bioterrorism also presents a threat that could have consequences on a massive scale. Further, the barriers to developing a bio-weapons capability may be lower. As former Secretary of the Navy Richard Danzig has argued, relative to nuclear programs and materials, biological materials are easier to obtain, conceal, and transport. Biological weapons development programs are also much harder to detect. 202 The indiscriminate mass effects of bio-weapons would have great appeal for many terrorist groups, who may be far less concerned over the prospect of blowback than state actors. Additionally, while traditional chemical weapons are less suited for mass casualty attacks than either nuclear or biological weapons, legacy chemical weapon stockpiles in unstable countries like Syria and Libya pose the danger that desperate rulers will use these capabilities in a last-ditch attempt to save their regime, or that the weapons will fall into the hands of rebel forces, including VENs.203 SOF can contribute to counter-WMD e􀌆orts across every line of operation. ¶ The global CT network SOF have built over the last decade could be repurposed over the ne􀁛t decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. SOF could also have critical responsibilities in the detection and disruption of WMD programs.20􀀗 SOF’s traditional special reconnaissance (SR) skills could help locate or probe suspected WMD sites. Given the e􀁛traordinary measures states and terrorist organizations will take to conceal their WMD programs from traditional overhead intelligence collection systems and international inspectors, clandestine or covert SR would o􀌆er one of the most e􀌆ective means of detecting a program or assessing its maturity. Operating under the authorities of other agencies, SOF could conduct preventive direct-action missions to disrupt development programs, help gain access to an enemy’s military communications networks, or infiltrate heavily guarded WMD facilities. During a con􀃀ict, SOF could conduct surgical strikes against WMD facilities and delivery systems in concert with precision airpower. SOF could also work by, with, and through partner forces to conduct these missions, as foreign nationals may have greater access to target facilities.

#### Extinction

Mhyrvold ’13 Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

### No Program Collapse---1NC

#### There’s a sustainable consensus on the drone program---no chance of judicial, legislative, diplomatic, or domestic political constraints---detention policy empirically proves

Robert Chesney 12, professor at the University of Texas School of Law, nonresident senior fellow of the Brookings Institution, distinguished scholar at the Robert S. Strauss Center for International Security and Law, 8/29/12, “Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2138623>

This multi-year pattern of cross-branch and cross-party consensus gives the impression that the legal architecture of detention has stabilized at last. But the settlement phenomenon is not limited to detention policy. The same thing has happened, albeit to a lesser extent, in other areas.

The military commission prosecution system provides a good example. When the Obama administration came into office, it seemed quite possible, indeed likely, that it would shut down the commissions system. Indeed, the new president promptly ordered all commission proceedings suspended pending a policy review.48 In the end, however, the administration worked with the then Democratic-controlled Congress to pursue a mend-it-don’t-end-it approach culminating in passage of the Military Commissions Act of 2009, which addressed a number of key objections to the statutory framework Congress and the Bush administration had crafted in 2006. In his National Archives address in spring 2009, moreover, President Obama also made clear that he would make use of this system in appropriate cases.49 He has duly done so, notwithstanding his administration’s doomed attempt to prosecute the so-called “9/11 defendants” (especially Khalid Sheikh Mohamed) in civilian courts. Difficult questions continue to surround the commissions system as to particular issues—such as the propriety of charging “material support” offenses for pre-2006 conduct50—but the system as a whole is far more stable today than at any point in the past decade.51

There have been strong elements of cross-party continuity between the Bush and Obama administration on an array of other counterterrorism policy questions, including the propriety of using rendition in at least some circumstances and, perhaps most notably, the legality of using lethal force not just in contexts of overt combat deployments but also in areas physically remote from the “hot battlefield.” Indeed, the Obama administration quickly outstripped the Bush administration in terms of the quantity and location of its airstrikes outside of Afghanistan,52 and it also greatly surpassed the Bush administration in its efforts to marshal public defenses of the legality of these actions.53 What’s more, the Obama administration also succeeded in fending off a lawsuit challenging the legality of the drone strike program (in the specific context of Anwar al-Awlaki, an American citizen and member of AQAP known to be on a list of approved targets for the use of deadly force in Yemen who was in fact killed in a drone strike some months later).54

The point of all this is not to claim that legal disputes surrounding these counterterrorism policies have effectively ended. Far from it; a steady drumbeat of criticism persists, especially in relation to the use of lethal force via drones. But by the end of the first post-9/11 decade, this criticism no longer seemed likely to spill over in the form of disruptive judicial rulings, newly-restrictive legislation, or significant spikes in diplomatic or domestic political pressure, as had repeatedly occurred in earlier years. Years of law-conscious policy refinement—and quite possibly some degree of public fatigue or inurement when it comes to legal criticisms—had made possible an extended period of cross-branch and cross-party consensus, and this in turn left the impression that the underlying legal architecture had reached a stage of stability that was good enough for the time being.

### AT: Terror Recruitment Blowback

#### No blowback or increased terrorist recruitment from drones---painstaking field interviews confirm

Christopher Swift 12, fellow at the University of Virginia's Center for National Security Law, 7/1/12, “The Drone Blowback Fallacy,” http://www.foreignaffairs.com/articles/137760/christopher-swift/the-drone-blowback-fallacy

Critics argue that drone strikes create new adversaries and drive al Qaeda's recruiting. As the Yemeni youth activist Ibrahim Mothana recently wrote in The New York Times, "Drone strikes are causing more and more Yemenis to hate America and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair." The Washington Post concurs. In May, it reported that the "escalating campaign of U.S. drone strikes [in Yemen] is stirring increasing sympathy for al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States." The ranks of al Qaeda in the Arabian Peninsula (AQAP) have tripled to 1,000 in the last three years, and the link between its burgeoning membership, U.S. drone strikes, and local resentment seems obvious.

Last month, I traveled to Yemen to study how AQAP operates and whether the conventional understanding of the relationship between drones and recruitment is correct. While there, I conducted 40 interviews with tribal leaders, Islamist politicians, Salafist clerics, and other sources. These subjects came from 14 of Yemen's 21 provinces, most from rural regions. Many faced insurgent infiltration in their own districts. Some of them were actively fighting AQAP. Two had recently visited terrorist strongholds in Jaar and Zinjibar as guests. I conducted each of these in-depth interviews using structured questions and a skilled interpreter. I have withheld my subjects' names to protect their safety -- a necessity occasioned by the fact that some of them had survived assassination attempts and that others had recently received death threats.

These men had little in common with the Yemeni youth activists who capture headlines and inspire international acclaim. As a group, they were older, more conservative, and more skeptical of U.S. motives. They were less urban, less wealthy, and substantially less secular. But to my astonishment, none of the individuals I interviewed drew a causal relationship between U.S. drone strikes and al Qaeda recruiting. Indeed, of the 40 men in this cohort, only five believed that U.S. drone strikes were helping al Qaeda more than they were hurting it.

### SQ Solves – Yes Allied Coop

#### Allied terror coop is high now, despite frictions

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

## Bivens Adv

### No Precedent/Spillover---General

#### Their Vladeck internal link is backwards---it says that the Court dismissing Al-Aulaqi’s Bivens claim is a result of long-standing Bivens precedent---not that it sets a precedent.

#### No spillover from the plan to sexual assault damages---the Court’s terrified of being perceived as activist on disputes within the military---that distinction means they won’t apply the plan as precedent

Francine Banner 13, Associate Professor of Law, Phoenix School of Law, 2013, “ARTICLE: IMMORAL WAIVER: JUDICIAL REVIEW OF INTRA-MILITARY SEXUAL ASSAULT CLAIMS,” Lewis & Clark Law Review, 17 Lewis & Clark L. Rev. 723

In 2011, governmental officials estimate that approximately 19,000 sexual assaults took place in the United States military. n2 The vast majority of reported assaults were committed against enlisted personnel. n3 Fewer than 200 persons were convicted of crimes of sexual violence, and only 122 were discharged upon conviction. n4 Currently, two pending class [\*725] action lawsuits, Cioca v. Rumsfeld n5 and Klay v. Panetta, n6 seek to impose institutional accountability for sexual violence committed by servicemembers against fellow servicemembers. The lawsuits allege that, despite an official "zero tolerance" policy and repeated efforts to remedy the problem, sexual assault remains widespread across all branches of the military and military academies, fostered by a culture that rewards overt, ritualized displays of hyper-masculinity and severely penalizes victims for reporting incidents of sexual misconduct. n7

The plaintiffs in Cioca and Klay face a Sisyphean battle due to two significant and interrelated obstacles. The most prominent are the Feres n8 principles, which have been interpreted to bar actions by service personnel against military officials for torts committed "incident to service." Since the 1950s, Feres has been expansively interpreted to bar justiciability of claims by military personnel against superior officers not only for negligence and intentional torts, but also for blatant violations of constitutional rights. n9 Despite the strong disapproval of several Supreme Court justices and countless district and appellate courts, the Court has denied certiorari in recent cases challenging application of the doctrine, thus further entrenching it. n10

The other substantial obstacle to these lawsuits is the normative but no less significant specter of "judicial activism" and its mirror, "military deference," the reluctance of the judiciary to usurp Congressional responsibility for the conduct of military affairs. Signing up for the military has been interpreted by the courts to mean that plaintiffs can be administered psychotropic drugs, n11 exposed to toxic chemicals, n12 and sexually assaulted, n13 all without their consent and devoid of meaningful remedy beyond recourse available via the Uniform Code of Military [\*726] Justice (UCMJ) n14 and the chain of command. No matter how profound the injustice or disenfranchised the plaintiff, in case after case, courts are reluctant to disregard what they believe to be established precedent baring judicial review of intra-military claims.

This hands-off position in regard to all things military is part and parcel of what other scholars have categorized as the Rehnquist and Roberts Courts' overarching "anti-litigation" stance. n15 As Chief Justice Roberts tellingly observes of the Court: "It is not our job to protect the people from the consequences of their political choices." n16 "Inactivist conduct" by the highest court has, in turn, led to a hands-off attitude in the appellate courts: "Judges are human, we might reasonably expect that some will take advantage of the increased opportunities to avoid decisions that they would prefer not to make." n17

### Demo---Inev 1NC

#### Global democracy inevitable

Tow 10—Director of the Future Planet Research Centre (David, Future Society- The Future of Democracy, 26 August 2010, http://www.australia.to/2010/index.php?option=com\_content&view=article&id=4280:future-society-the-future-of-democracy&catid=76:david-tow&Itemid=230)

Democracy, as with all other processes engineered by human civilisation, is evolving at a rapid rate. A number of indicators are pointing to a major leap forward, encompassing a more public participatory form of democratic model and the harnessing of the expert intelligence of the Web. By the middle of the 21st century, such a global version of the democratic process will be largely in place. Democracy has a long evolutionary history. The concept of democracy - the notion that men and women have the right to govern themselves, was practised at around 2,500 BP in Athens. The Athenian polity or political body, granted all citizens the right to be heard and to participate in the major decisions affecting their rights and well-being. The City State demanded services and loyalty from the individual in return. There is evidence however that the role of popular assembly actually arose earlier in some Phoenician cities such as Sidon and Babylon in the ancient assemblies of Syria- Mesopotamia, as an organ of local government and justice. As demonstrated in these early periods, democracy, although imperfect, offered each individual a stake in the nation’s collective decision-making processes. It therefore provided a greater incentive for each individual to cooperate to increase group productivity. Through a more open decision process, improved innovation and consequently additional wealth was generated and distributed more equitably. An increase in overall economic wellbeing in turn generated more possibilities and potential to acquire knowledge, education and employment, coupled with greater individual choice and freedom. According to the Freedom House Report, an independent survey of political and civil liberties around the globe, the world has made great strides towards democracy in the 20th and 21st centuries. In 1900 there were 25 restricted democracies in existence covering an eighth of the world’s population, but none that could be judged as based on universal suffrage. The US and Britain denied voting rights to women and in the case of the US, also to African Americans. But at the end of the 20th century 119 of the world’s 192 nations were declared electoral democracies. In the current century, democracy continues to spread through Africa and Asia and significantly also the Middle East, with over 130 states in various stages of democratic evolution. Dictatorships or quasi democratic one party states still exist in Africa, Asia and the middle east with regimes such as China, North Korea, Zimbabwe, Burma, the Sudan, Belarus and Saudi Arabia, seeking to maintain total control over their populations. However two thirds of sub-Saharan countries have staged elections in the past ten years, with coups becoming less common and internal wars gradually waning. African nations are also starting to police human rights in their own region. African Union peacekeepers are now deployed in Darfur and are working with UN peacekeepers in the Democratic Republic of the Congo. The evolution of democracy can also be seen in terms of improved human rights. The United Nations Universal Declaration of Human Rights and several ensuing legal treaties, define political, cultural and economic rights as well as the rights of women, children, ethnic groups and religions. This declaration is intended to create a global safety net of rights applicable to all peoples everywhere, with no exceptions. It also recognises the principle of the subordination of national sovereignty to the universality of human rights; the dignity and worth of human life beyond the jurisdiction of any State. The global spread of democracy is now also irreversibly linked to the new cooperative globalisation model. The EU, despite its growing pains, provides a compelling template; complementing national decisions in the supra-national interest at the commercial, financial, legal, health and research sharing level. The global spread of new technology and knowledge also provides the opportunity for developing countries to gain a quantum leap in material wellbeing; an essential prerequisite for a stable democracy. The current cyber-based advances therefore presage a much more interactive public form of democracy and mark the next phase in its ongoing evolution. Web 2.0’s social networking, blogging, messaging and video services have already significantly changed the way people discuss political issues and exchange ideas beyond national boundaries. In addition a number of popular sites exist as forums to actively harness individual opinions and encourage debate about contentious topics, funnelling them to political processes. These are often coupled to online petitions, allowing the public to deliver requests to Government and receive a committed response. In addition there are a plethora of specialized smart search engines and analytical tools aimed at locating and interpreting information about divisive and complex topics such as global warming and medical stem cell advances. These are increasingly linked to Argumentation frameworks and Game theory, aimed at supporting the logical basis of arguments, negotiation and other structured forms of group decision-making. New logic and statistical tools can also provide inference and evaluation mechanisms to better assess the evidence for a particular hypothesis. By 2030 it is likely that such ‘intelligence-based’ algorithms will be capable of automating the analysis and advice provided to politicians, at a similar level of quality and expertise as that offered by the best human advisers. It might be argued that there is still a need for the role of politicians and leaders in assessing and prioritising such expert advice in the overriding national interest. But a moment’s reflection leads to the opposite conclusion. Politicians have party allegiances and internal obligations that can and do create serious conflicts of interest and skew the best advice. History is replete with such disastrous decisions based on false premises, driven by party political bias and populist fads predicated on flawed knowledge. One needs to look no further in recent times than the patently inadequate evidential basis for the US’s war in Iraq which has cost at least half a million civilian lives and is still unresolved. However there remains a disjunction between the developed west and those developing countries only now recovering from colonisation, the subsequent domination by dictators and fascist regimes and ongoing natural disasters. There is in fact a time gap of several hundred years between the democratic trajectory of the west and east, which these countries are endeavouring to bridge within a generation; often creating serious short-term challenges and cultural dislocations. A very powerful enabler for the spread of democracy as mentioned is the Internet/Web- today’s storehouse of the world’s information and expertise. By increasing the flow of essential intelligence it facilitates transparency, reduces corruption, empowers dissidents and ensures governments are more responsive to their citizen’s needs. Ii is already providing the infrastructure for the emergence of a more democratic society; empowering all people to have direct input into critical decision processes affecting their lives, without the distortion of political intermediaries. By 2040 more democratic outcomes for all populations on the planet will be the norm. Critical and urgent decisions relating to global warming, financial regulation, economic allocation of scarce resources such as food and water, humanitarian rights and refugee migration etc, will to be sifted through community knowledge, resulting in truly representative and equitable global governance. Implementation of the democratic process itself will continue to evolve with new forms of e-voting and governance supervision, which will include the active participation of advocacy groups supported by a consensus of expert knowledge via the Intelligent Web 4.0. Over time democracy as with all other social processes, will evolve to best suit the needs of its human environment. It will emerge as a networked model- a non-hierarchical, resilient protocol, responsive to rapid social change. Such distributed forms of government will involve local communities, operating with the best expert advice from the ground up; the opposite of political party self-interested power and superficial focus-group decision-making, as implemented by many current political systems. These are frequently unresponsive to legitimate minority group needs and can be easily corrupted by powerful lobby groups, such as those employed by the heavy carbon emitters in the global warming debate.

## CMR Adv

### McCormack Votes Neg

#### McCormack is neg evidence

McCormack 13 (Wayne McCormack is the E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, U.S. Judicial Independence: Victim in the “War on Terror”, Aug 20, <https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/>)

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as **state secrets and standing requirements**. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials.

The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But a long pattern of threats and intimidation to depart from established law undermines judicial independence. That has been the course of the U.S. “war on terror” for over a decade now.

Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference.

**====KENTUCKY’S UNDERLINING STOPS====**

1. Guantanamo.

In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards to be developed by the lower courts **with “deference” to Executive determinations**. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.”

2. Detention and Torture

Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP)

Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities.

Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity.

Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP.

1 553 U.S. 723 (2008).

2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007).

3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009).

4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012).

5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP.

3. Unlawful Detentions

Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant.

Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7

Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security.

Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute

4. Unlawful Surveillance

Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others.

5. Targeted Killing

Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes.

6. Asset Forfeiture

6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009).

7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007).

8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)

9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002).

10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013).

**====KENTUCKY’S UNDERLINING BEGINS AGAIN====**

11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010)

Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge.

### No Model/No JI Model

#### No model and the US isn’t key---other countries fear a strong judiciary

Miguel Schor 8, Professor of Law @ Suffolk University Law School, “Judicial Review and American Constitutional Exceptionalism,” Osgoode Hall Law Journal, Vol. 46, 2008

This article questions the conventional wisdom that the logic of Marbury has conquered the world’s democracies by exploring two questions: why do social movements contest constitutional meaning by fighting over judicial appointments in the United States, and why does such a strategy make little sense in democracies that constitutionalized rights in the late twentieth century?6 The short answer is that the United States has been both a model and an anti-model 7 in the worldwide spread of judicial review. The United States stood astride the world after the Second World War and elements of American constitutionalism such as judicial review proved irresistible to democracies around the globe.8 Polities that adopted judicial review in the late twentieth century, however, rejected the key assumption on which judicial review in the United States is founded.. American constitutionalism assumes that law is separate from politics and that courts have the power and the duty to maintain that distinction.

This assumption was rejected because other democracies learned from the American experience that courts that exercise judicial review are powerful political as well as legal actors. The fear of providing constitutional courts with too much power played an important role in shaping judicial review outside the United States. 9 When judicial review began to spread around the globe in the second half of the twentieth century, the hope of Marbury (the promise of constitutionalized rights) became fused with the fear of Lochner 10 (the possibility that courts might run amok). In seeking to thread a needle between Marbury and Lochner , the American assumption that a constitution is a species of law was rejected in favour of a very different baseline assumption that constitutions are neither law nor politics, but an entirely new genus of “political law.” 11Consequently, democracies abroad adopted stronger mechanisms by which citizens can hold constitutional courts accountable 12and which make it less likely that social forces will use appointments as a vehicle for constitutional battles. Pg. 37-38

### CMR Inev

#### CMR is secure

**Shanker, 9/13/13** (Thom, New York Times, “Pentagon in Back Seat as Kerry Leads Charge”

<http://www.nytimes.com/2013/09/14/us/politics/syria-crisis-underlines-pentagons-move-to-the-back-seat.html?pagewanted=all&_r=2&>

WASHINGTON — In the weeks of sometimes bewildering debate in Washington about what to do in Syria, one truth has emerged: President Obama has transformed his relationship with the Pentagon and the military.

The civilian policy makers and generals who led Mr. Obama toward a troop escalation in Afghanistan during his first year in office, a decision that left him deeply distrustful of senior military leaders, have been replaced by a handpicked leadership that includes Defense Secretary Chuck Hagel and Gen. Martin E. Dempsey, the chairman of the Joint Chiefs of Staff.

Through battlefield experience — Mr. Hagel as an infantryman in 1967 and 1968 in Vietnam, and General Dempsey as a commander during some of the most violent years in Iraq — both men share Mr. Obama’s reluctance to use American military might overseas. A dozen years after the Pentagon under Donald H. Rumsfeld began aggressively driving national security policy, the two have wholeheartedly endorsed a more restricted Pentagon role.

“Hagel was not hired to be a ‘secretary of war,’ ” said one senior Defense Department official. “That is not a mantle the president wants him to wear.”

The crisis in Syria is the most recent and most powerful example of how Mr. Obama, elected twice on a promise to disengage the United States from overseas conflicts, has moved the Pentagon to a back seat. In this case, it is Secretary of State John Kerry who is leading the charge, not the far less vocal Mr. Hagel and General Dempsey.

“Whether you call it a reset of the Pentagon or a reflection of what our overall policy is,” the Pentagon official said, “the military instrument is not going to be the dominant instrument of our policy, particularly in an instance like Syria, where we are not looking at military force to solve the underlying civil war.”

### Doesn’t Solve

#### Ex post doesn’t add legitimacy – damage’s already been done

Crandall 12 (Carla, Law Clerk – Supreme Court of Missouri, “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” Florida Journal of International Law, April, 24 Fla. J. Int'l L. 55, Lexis)

Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). n6 Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. n7 They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. n8

As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied **ex post** represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable.

In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why **resolving the legitimacy of their use is so critical**. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld n9 and Boumediene v. Bush, n10 the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes.

### Impact Defense

#### No chance of prolif – treaty norms, and most analysts don’t regard it as a significant threat

Sarah Chankin-Gould 4, a Scoville Peace Fellow with the Arms Sales Monitoring Project at the Federation of American Scientists, Winter 2004, FAS Public Interest Report, Vol. 57, No. 1, online: http://www.fas.org/faspir/2004/v57n1/tlatelolco.htm,

In 1967, before the Nuclear Non- Proliferation Treaty (NPT) and at the height of the Cold War, the states of Latin America signed the Treaty of Tlatelolco, creating the world’s first regional Nuclear Weapons Free Zone (NWFZ). Today, Latin America is off the radar screen of much of the arms control community, and nuclear proliferation in the hemisphere is not regarded as a significant threat. Yet rather than detracting from the importance of the Tlatelolco regime, this should serve as a reminder of what the Treaty has accomplished. The Treaty of Tlatelolco has contributed to the development of non-proliferation norms in the region. It was signed only five years after the Cuban Missile Crisis, at which time Cuba remained committed to maintaining the option of nuclear weapons as long as its conflict with the US persisted. In addition, Argentina and Brazil were engrossed in their own race for nuclear arms during the 1970s and 80s. Today, following Cuba’s 2002 ratification, all 33 states in the region have signed and ratified the Treaty. The Treaty of Tlatelolco The Treaty commits States Parties to use nuclear power for peaceful means. The parties are required to prohibit and prevent the testing, use, manufacture, production, acquisition, receipt, storage, installation, deployment and possession of nuclear weapons in their territory. To ensure its effectiveness, the Treaty includes two Additional Protocols committing states with responsibility for territories in the region (France, Holland, the UK and US), and the major nuclear powers (China, France, Russia, UK, and US) to maintaining the NWFZ. The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean – OPANAL – serves as a secretariat for the Treaty regime. A five-member elected Council meets every two months, with states serving four-year terms. In addition, a General Conference of all Member States is convened every two years. The Agency is responsible for ensuring compliance with the Treaty and fulfilling the mandates of the Council and General Conference, including writing reports and maintaining contact with relevant states and international organizations. OPANAL and its Member States have shown a commitment to promoting nuclear non-proliferation both in their own NWFZ and around the world.

#### No prolif impact

Colin H. Kahl 13, Senior Fellow at the Center for a New American Security and an associate professor in the Security Studies Program at Georgetown University’s Edmund A. Walsh School of Foreign Service, Melissa G. Dalton, Visiting Fellow at the Center for a New American Security, Matthew Irvine, Research Associate at the Center for a New American Security, February, “If Iran Builds the Bomb, Will Saudi Arabia Be Next?” <http://www.cnas.org/files/documents/publications/CNAS_AtomicKingdom_Kahl.pdf>

\*cites Jacques Hymans, USC Associate Professor of IR\*\*\*

I I I . LESSONS FROM HISTOR Y Concerns over “regional proliferation chains,” “falling nuclear dominos” and “nuclear tipping points” are nothing new; indeed, reactive proliferation fears date back to the dawn of the nuclear age.14 Warnings of an inevitable deluge of proliferation were commonplace from the 1950s to the 1970s, resurfaced during the discussion of “rogue states” in the 1990s and became even more ominous after 9/11.15 In 2004, for example, Mitchell Reiss warned that “in ways both fast and slow, we may very soon be approaching a nuclear ‘tipping point,’ where many countries may decide to acquire nuclear arsenals on short notice, thereby triggering a proliferation epidemic.” Given the presumed fragility of the nuclear nonproliferation regime and the ready supply of nuclear expertise, technology and material, Reiss argued, “a single new entrant into the nuclear club could catalyze similar responses by others in the region, with the Middle East and Northeast Asia the most likely candidates.”16 Nevertheless, predictions of inevitable proliferation cascades have historically proven false (see The Proliferation Cascade Myth text box). In the six decades since atomic weapons were first developed, nuclear restraint has proven far more common than nuclear proliferation, and cases of reactive proliferation have been exceedingly rare. Moreover, most countries that have started down the nuclear path have found the road more difficult than imagined, both technologically and bureaucratically, leading the majority of nuclear-weapons aspirants to reverse course. Thus, despite frequent warnings of an unstoppable “nuclear express,”17 William Potter and Gaukhar Mukhatzhanova astutely note that the “train to date has been slow to pick up steam, has made fewer stops than anticipated, and usually has arrived much later than expected.”18 None of this means that additional proliferation in response to Iran’s nuclear ambitions is inconceivable, but the empirical record does suggest that regional chain reactions are not inevitable. Instead, only certain countries are candidates for reactive proliferation. Determining the risk that any given country in the Middle East will proliferate in response to Iranian nuclearization requires an assessment of the incentives and disincentives for acquiring a nuclear deterrent, the technical and bureaucratic constraints and the available strategic alternatives. Incentives and Disincentives to Proliferate Security considerations, status and reputational concerns and the prospect of sanctions combine to shape the incentives and disincentives for states to pursue nuclear weapons. Analysts predicting proliferation cascades tend to emphasize the incentives for reactive proliferation while ignoring or downplaying the disincentives. Yet, as it turns out, instances of nuclear proliferation (including reactive proliferation) have been so rare because going down this road often risks insecurity, reputational damage and economic costs that outweigh the potential benefits.19 Security and regime survival are especially important motivations driving state decisions to proliferate. All else being equal, if a state’s leadership believes that a nuclear deterrent is required to address an acute security challenge, proliferation is more likely.20 Countries in conflict-prone neighborhoods facing an “enduring rival”– especially countries with inferior conventional military capabilities vis-à-vis their opponents or those that face an adversary that possesses or is seeking nuclear weapons – may be particularly prone to seeking a nuclear deterrent to avert aggression.21 A recent quantitative study by Philipp Bleek, for example, found that security threats, as measured by the frequency and intensity of conventional militarized disputes, were highly correlated with decisions to launch nuclear weapons programs and eventually acquire the bomb.22 The Proliferation Cascade Myth Despite repeated warnings since the dawn of the nuclear age of an inevitable deluge of nuclear proliferation, such fears have thus far proven largely unfounded. Historically, nuclear restraint is the rule, not the exception – and the degree of restraint has actually increased over time. In the first two decades of the nuclear age, five nuclear-weapons states emerged: the United States (1945), the Soviet Union (1949), the United Kingdom (1952), France (1960) and China (1964). However, in the nearly 50 years since China developed nuclear weapons, only four additional countries have entered (and remained in) the nuclear club: Israel (allegedly in 1967), India (“peaceful” nuclear test in 1974, acquisition in late-1980s, test in 1998), Pakistan (acquisition in late-1980s, test in 1998) and North Korea (test in 2006).23 This significant slowdown in the pace of proliferation occurred despite the widespread dissemination of nuclear know-how and the fact that the number of states with the technical and industrial capability to pursue nuclear weapons programs has significantly increased over time.24 Moreover, in the past 20 years, several states have either given up their nuclear weapons (South Africa and the Soviet successor states Belarus, Kazakhstan and Ukraine) or ended their highly developed nuclear weapons programs (e.g., Argentina, Brazil and Libya).25 Indeed, by one estimate, 37 countries have pursued nuclear programs with possible weaponsrelated dimensions since 1945, yet the overwhelming number chose to abandon these activities before they produced a bomb. Over time, the number of nuclear reversals has grown while the number of states initiating programs with possible military dimensions has markedly declined.26 Furthermore – especially since the Nuclear Non-Proliferation Treaty (NPT) went into force in 1970 – reactive proliferation has been exceedingly rare. The NPT has near-universal membership among the community of nations; only India, Israel, Pakistan and North Korea currently stand outside the treaty. Yet the actual and suspected acquisition of nuclear weapons by these outliers has not triggered widespread reactive proliferation in their respective neighborhoods. Pakistan followed India into the nuclear club, and the two have engaged in a vigorous arms race, but Pakistani nuclearization did not spark additional South Asian states to acquire nuclear weapons. Similarly, the North Korean bomb did not lead South Korea, Japan or other regional states to follow suit.27 In the Middle East, no country has successfully built a nuclear weapon in the four decades since Israel allegedly built its first nuclear weapons. Egypt took initial steps toward nuclearization in the 1950s and then expanded these efforts in the late 1960s and 1970s in response to Israel’s presumed capabilities. However, Cairo then ratified the NPT in 1981 and abandoned its program.28 Libya, Iraq and Iran all pursued nuclear weapons capabilities, but only Iran’s program persists and none of these states initiated their efforts primarily as a defensive response to Israel’s presumed arsenal.29 Sometime in the 2000s, Syria also appears to have initiated nuclear activities with possible military dimensions, including construction of a covert nuclear reactor near al-Kibar, likely enabled by North Korean assistance.30 (An Israeli airstrike destroyed the facility in 2007.31) The motivations for Syria’s activities remain murky, but the nearly 40-year lag between Israel’s alleged development of the bomb and Syria’s actions suggests that reactive proliferation was not the most likely cause. Finally, even countries that start on the nuclear path have found it very difficult, and exceedingly time consuming, to reach the end. Of the 10 countries that launched nuclear weapons projects after 1970, only three (Pakistan, North Korea and South Africa) succeeded; one (Iran) remains in progress, and the rest failed or were reversed.32 The successful projects have also generally needed much more time than expected to finish. According to Jacques Hymans, the average time required to complete a nuclear weapons program has increased from seven years prior to 1970 to about 17 years after 1970, even as the hardware, knowledge and industrial base required for proliferation has expanded to more and more countries.33 Yet throughout the nuclear age, many states with potential security incentives to develop nuclear weapons have nevertheless abstained from doing so.34 Moreover, contrary to common expectations, recent statistical research shows that states with an enduring rival that possesses or is pursuing nuclear weapons are not more likely than other states to launch nuclear weapons programs or go all the way to acquiring the bomb, although they do seem more likely to explore nuclear weapons options.35 This suggests that a rival’s acquisition of nuclear weapons does not inevitably drive proliferation decisions. One reason that reactive proliferation is not an automatic response to a rival’s acquisition of nuclear arms is the fact that security calculations can cut in both directions. Nuclear weapons might deter outside threats, but leaders have to weigh these potential gains against the possibility that seeking nuclear weapons would make the country or regime less secure by triggering a regional arms race or a preventive attack by outside powers. Countries also have to consider the possibility that pursuing nuclear weapons will produce strains in strategic relationships with key allies and security patrons. If a state’s leaders conclude that their overall security would decrease by building a bomb, they are not likely to do so.36 Moreover, although security considerations are often central, they are rarely sufficient to motivate states to develop nuclear weapons. Scholars have noted the importance of other factors, most notably the perceived effects of nuclear weapons on a country’s relative status and influence.37 Empirically, the most highly motivated states seem to be those with leaders that simultaneously believe a nuclear deterrent is essential to counter an existential threat and view nuclear weapons as crucial for maintaining or enhancing their international status and influence. Leaders that see their country as naturally at odds with, and naturally equal or superior to, a threatening external foe appear to be especially prone to pursuing nuclear weapons.38 Thus, as Jacques Hymans argues, extreme levels of fear and pride often “combine to produce a very strong tendency to reach for the bomb.”39 Yet here too, leaders contemplating acquiring nuclear weapons have to balance the possible increase to their prestige and influence against the normative and reputational costs associated with violating the Nuclear Non-Proliferation Treaty (NPT). If a country’s leaders fully embrace the principles and norms embodied in the NPT, highly value positive diplomatic relations with Western countries and see membership in the “community of nations” as central to their national interests and identity, they are likely to worry that developing nuclear weapons would damage (rather than bolster) their reputation and influence, and thus they will be less likely to go for the bomb.40 In contrast, countries with regimes or ruling coalitions that embrace an ideology that rejects the Western dominated international order and prioritizes national self-reliance and autonomy from outside interference seem more inclined toward proliferation regardless of whether they are signatories to the NPT.41 Most countries appear to fall in the former category, whereas only a small number of “rogue” states fit the latter. According to one count, before the NPT went into effect, more than 40 percent of states with the economic resources to pursue nuclear programs with potential military applications did so, and very few renounced those programs. Since the inception of the nonproliferation norm in 1970, however, only 15 percent of economically capable states have started such programs, and nearly 70 percent of all states that had engaged in such activities gave them up.42 The prospect of being targeted with economic sanctions by powerful states is also likely to factor into the decisions of would-be proliferators. Although sanctions alone proved insufficient to dissuade Iraq, North Korea and (thus far) Iran from violating their nonproliferation obligations under the NPT, this does not necessarily indicate that sanctions are irrelevant. A potential proliferator’s vulnerability to sanctions must be considered. All else being equal, the more vulnerable a state’s economy is to external pressure, the less likely it is to pursue nuclear weapons. A comparison of states in East Asia and the Middle East that have pursued nuclear weapons with those that have not done so suggests that countries with economies that are highly integrated into the international economic system – especially those dominated by ruling coalitions that seek further integration – have historically been less inclined to pursue nuclear weapons than those with inward-oriented economies and ruling coalitions.43 A state’s vulnerability to sanctions matters, but so too does the leadership’s assessment regarding the probability that outside powers would actually be willing to impose sanctions. Some would-be proliferators can be easily sanctioned because their exclusion from international economic transactions creates few downsides for sanctioning states. In other instances, however, a state may be so vital to outside powers – economically or geopolitically – that it is unlikely to be sanctioned regardless of NPT violations. Technical and Bureaucratic Constraints In addition to motivation to pursue the bomb, a state must have the technical and bureaucratic wherewithal to do so. This capability is partly a function of wealth. Richer and more industrialized states can develop nuclear weapons more easily than poorer and less industrial ones can; although as Pakistan and North Korea demonstrate, cash-strapped states can sometimes succeed in developing nuclear weapons if they are willing to make enormous sacrifices.44 A country’s technical know-how and the sophistication of its civilian nuclear program also help determine the ease and speed with which it can potentially pursue the bomb. The existence of uranium deposits and related mining activity, civilian nuclear power plants, nuclear research reactors and laboratories and a large cadre of scientists and engineers trained in relevant areas of chemistry and nuclear physics may give a country some “latent” capability to eventually produce nuclear weapons. Mastery of the fuel-cycle – the ability to enrich uranium or produce, separate and reprocess plutonium – is particularly important because this is the essential pathway whereby states can indigenously produce the fissile material required to make a nuclear explosive device.45 States must also possess the bureaucratic capacity and managerial culture to successfully complete a nuclear weapons program. Hymans convincingly argues that many recent would-be proliferators have weak state institutions that permit, or even encourage, rulers to take a coercive, authoritarian management approach to their nuclear programs. This approach, in turn, politicizes and ultimately undermines nuclear projects by gutting the autonomy and professionalism of the very scientists, experts and organizations needed to successfully build the bomb.46 Alternative Sources of Nuclear Deterrence Historically, the availability of credible security guarantees by outside nuclear powers has provided a potential alternative means for acquiring a nuclear deterrent without many of the risks and costs associated with developing an indigenous nuclear weapons capability. As Bruno Tertrais argues, nearly all the states that developed nuclear weapons since 1949 either lacked a strong guarantee from a superpower (India, Pakistan and South Africa) or did not consider the superpower’s protection to be credible (China, France, Israel and North Korea). Many other countries known to have pursued nuclear weapons programs also lacked security guarantees (e.g., Argentina, Brazil, Egypt, Indonesia, Iraq, Libya, Switzerland and Yugoslavia) or thought they were unreliable at the time they embarked on their programs (e.g., Taiwan). In contrast, several potential proliferation candidates appear to have abstained from developing the bomb at least partly because of formal or informal extended deterrence guarantees from the United States (e.g., Australia, Germany, Japan, Norway, South Korea and Sweden).47 All told, a recent quantitative assessment by Bleek finds that security assurances have empirically significantly reduced proliferation proclivity among recipient countries.48 Therefore, if a country perceives that a security guarantee by the United States or another nuclear power is both available and credible, it is less likely to pursue nuclear weapons in reaction to a rival developing them. This option is likely to be particularly attractive to states that lack the indigenous capability to develop nuclear weapons, as well as states that are primarily motivated to acquire a nuclear deterrent by security factors (as opposed to status-related motivations) but are wary of the negative consequences of proliferation.

# 2NC/1NR

## War Fighting DA

### XT Delery

Delery WAY better than any card they’ve read ---

Plan Fetters field commanders bc it deters them from using force---no one wants to be held individually accountable --- plan causes suits against individuals which none of their link D assumes --- our evidence says that quick action is crucial in the context of CT so weighing the risks of judicial review means we don’t act until it’s too late.

#### The prospect of judicial involvement causes battlefield risk aversion---TK decisions are made in split-seconds---any delay has massive negative effects on missions

Larry Maher 10, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, <http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW_Brief_PACER.pdf>

War is the province of chance. “If we now consider briefly the subjective nature of war—the means by which war has to be fought—it will look more than ever like a gamble . . . [i]n the whole range of human activities, war most closely resembles a game of cards.” Clausewitz, 86-87. Within this field of human endeavor, the most successful armies are those led by decisive commanders who visualize the operational environment and make rapid, sound decisions. Combat leadership involves the motivation of others to risk their lives, and only the most decisive and confident leaders can inspire this kind of self-sacrifice.¶ Leadership is the multiplying and unifying element of combat power. Confident, competent, and informed leadership intensifies the effectiveness of all other elements of combat power by formulating sound operational ideas and assuring discipline and motivation in the force . . . Leadership in today’s operational environment is often the difference between success and failure.¶ Dept. of the Army, Field Manual 3-0, Operations, at ¶¶ 4-6 - 4-8 (2008), available at http://www.army.mil/fm3-0/fm3-0.pdf.¶ Battle command is a subset of combat leadership—it is how wartime leaders operationalize their intent and transmit their guidance to subordinate units. Battle command is the art and science of understanding, visualizing, describing, directing, leading, and assessing forces to impose the commander’s will on a hostile, thinking, and adaptive enemy. Battle command applies leadership to translate decisions into actions—by synchronizing forces and warfighting functions in time, space, and purpose—to accomplish missions. Battle command is guided by professional judgment gained from experience, knowledge, education, intelligence, and intuition. It is driven by commanders.¶ Id. at ¶ 5-9. Battlefield decisionmaking involves the visualization of the battlefield and all its components, the deliberate assessment of operational risk, and the selection of a course of action which accepts certain risks in order to achieve tactical, operational or strategic success. Id. at ¶5-10; see also Gen. Frederick M. Franks, Jr., Battle Command: A Commander’s Perspective, Military Review, May-June 1996, at 120-121. “Given the inherently uncertain nature of war, the object of planning is not to eliminate or minimize uncertainty but to foster decisive and effective action in the midst of such uncertainty.” Army Field Manual 3-07, Stability Operations, at ¶ 4-4 (2008), available at http://usacac.army.mil/cac2/repository/FM307/FM3- 07.pdf.¶ In bringing this case, Plaintiff asks this Court to substitute itself as the battlefield commander, and to second-guess the strategic, operational and tactical decisions made by this nation’s military chain of command in the campaign against Al Qaeda. Judicial decisionmaking is incompatible with military decisionmaking. Rather than produce rapid, confident, decisive actions, judicial resolution of this matter would produce deliberate and measured decisions which are the product of adversarial process, and which would reflect judicial considerations, not strategic or tactical ones.¶ Also, judicial involvement may induce risk aversion among commanders, who would worry about how their actions might be judged in courtrooms far removed from the battlefield, and thus hedge their battlefield decisions in order to protect themselves and their units from future judicial scrutiny. This is particularly true of Plaintiff’s prayer for relief, which calls upon the Court to enjoin the Government from using lethal force “except in circumstances in which they present concrete, specific, and imminent threats to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats.” Such decisions about the use of force can often be made by soldiers in a split-second, on the basis of intuition and training. The specter of judicial involvement will affect the way soldiers and leaders approach these decisions, potentially complicating and slowing their decisions by injecting judicial considerations which have no place on the battlefield.

### Must Read – Spillover

#### Ex-post review would involve rulings on fundamental questions of overall TK legality like the scope of armed conflict with Al-Qaeda and the executive’s interpretation of imminence

Jonathan Hafetz 13, Associate Professor of Law, Seton Hall University School of Law, 3/8/13, “Reviewing Drones,” http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.

Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.

For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.

Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.

Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.

Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.

Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

### JR Link---Narrowing AUMF

#### Judicial review would result in limiting AUMF drone strikes to declared zones of armed conflict---that functionally bans drones

Milena Sterio 12, Associate Professor of Law, Cleveland-Marshall College of Law, Fall 2012, “Presidential Powers and Foreign Affairs: Rendition and Targeted Killings of Americans: The United States' Use of Drones in the War on Terror: The (Il)legality of Targeted Killings Under International Law,” Case Western Reserve Journal of International Law, 45 Case W. Res. J. Int'l L. 197

After the terrorist attacks of 9/11, President George W. Bush, in his capacity as Commander-in-Chief, authorized the use of drones against leaders of al-Qaeda forces, pursuant to Congress' Authorization for Use of Military Force (AUMF). n1 Pursuant to AUMF, drones could be utilized against al-Qaeda forces to target or to kill enemies. It has been reported that the United States possesses two types of drones: smaller ones, which predominantly carry out surveillance missions, and larger ones, which can carry hellfire missiles and have been used to conduct strikes and targeted killings. n2 Drone strikes have been carried out by both the military as well as the CIA. As Jane Mayer famously noted in her article:

The U.S. government runs two drone programs. The military's version, which is publicly acknowledged, operates in the recognized war zones of Afghanistan and Iraq, and targets enemies of U.S. troops stationed there. As such, it is an extension of conventional warfare. The C.I.A.'s program is aimed at terror suspects around the world, including in countries where U.S. troops are not based. n3

[\*199]

Moreover, although the President had designated Afghanistan and its airspace as a combat zone, the United States has used drones in other areas of the world, such as Yemen, where al-Qaeda forces have been targeted and killed. n4 In fact, the U.S. approach for the use of drones is that members of al-Qaeda forces may be targeted anywhere in the world: that the battlefield follows those individuals who have been designated as enemies due to their affiliation with al-Qaeda. n5 While many in the international community have criticized the United States' expansive geographical use of drones against al-Qaeda forces, n6 officials in the Bush Administration have defended the drone program as consistent and conforming to international law. n7 President Obama has continued this approach and has expanded the use of drones in the war on terror. n8 Moreover, high-level officials in the Obama Administration have offered detailed legal justifications for the legality of the American drone program.

Harold Koh, State Department Legal Advisor, justified the use of drones at the American Society of International Law Annual Meeting on March 25, 2010, arguing "it is the considered view of this Administration . . . that U.S. targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war." n9 In his speech, Koh cited both domestic law (AUMF) and international law as proof that the United States is engaged in armed conflict with al-Qaeda, the Taliban, and "associated forces." n10 Targeted killings, according to Koh, are justified because they are performed in [\*200] accordance with the laws of war. n11 In other words, the United States conducts targeted strikes consistent with the well-known principles of distinction and proportionality to ensure that the targets are legitimate and collateral damage minimized. n12

Koh offered four reasons supporting the legality of targeted drone killings. First, enemy leaders are legitimate targets because they are belligerent members of an enemy group in a war with the United States. n13 Second, drones can constitute appropriate instruments for such missions, so long as their use conforms to the laws of war. n14 Third, enemy targets are selected through "robust" procedures; as such, they require no legal process and are not "unlawful extrajudicial" killings. n15 Finally, Koh argued that using drones to target "high level belligerent leaders" does not violate domestic law banning assassinations. n16

The Obama Administration has continued to use drones in Pakistan, as well as in Yemen. Increasingly, however, the American drone program has been run by the CIA. n17 Leon Panetta, the CIA Director, has praised the drone program stating that drones were "the only game in town." n18 On September 30, 2011, a CIA-operated drone targeted and killed an American citizen in Yemen, Anwar al-Awlaki. n19 Al-Awlaki had been accused of holding prominent roles within the ranks of al-Qaeda and had been placed on a hit list, authorized by President Obama. n20 His assassination marked the first time in history an American citizen had been targeted abroad without any judicial involvement or proceedings to determine guilt of any crime.

In a subsequent speech, Attorney General Eric Holder confirmed the Obama Administration's view on the legality of targeted killings, including killings of American citizens. On March 5, 2012, in a speech at Northwestern University, Holder claimed targeted killings of American citizens are legal if the targeted citizen is located abroad, a [\*201] senior operational leader of al-Qaeda or associated forces, actively engaged in planning to kill Americans, poses an imminent threat of violent attack against the United States (as determined by the U.S. government), and cannot be captured; such operations must be conducted in a manner consistent with applicable law of war principles. n21

Despite Koh's and Holder's justifications, many have questioned the legality of the American use of drones to perform targeted killings of al-Qaeda members and of U.S. citizens. Philip Alston, UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, has famously stated his concerns that drones "are being operated in a framework which may well violate international humanitarian law and international human rights law." n22 This article highlights some of the most relevant issues surrounding the (il)legality of targeted killings under the current approach of the Obama Administration. This article concludes that most targeted killings are illegal under international law; only a very small number of such killings, performed under carefully crafted circumstances, could potentially comply with the relevant rules of jus ad bellum and jus in bello, and only if one accepts the premise that the United States is engaged in an armed conflict against al-Qaeda. This article discusses the following issues related to the use of drones to perform targeted killings: the definition of the battlefield and the applicability of the law of armed conflict (Part II); the identity of targetable individuals and their status as combatants or civilians under international law (Part III); the legality of targeted killings under international humanitarian law (Part IV); and the location and status of drone operators (Part V).

II. What and Where is the Battlefield? Which Laws Apply?

Under the Bush Administration approach, the United States post 9/11 was engaged in a global war against terrorists. Under this expansive approach, the war had no geographic constraints, and the battlefield was of a global nature. n23 In other words, the war followed [\*202] the terrorist enemies, and wherever they were located was where the battlefield could be temporarily situated. According to the Bush Administration, as well as the U.S. Supreme Court case Hamdan v. Rumsfeld, the United States was at war against al-Qaeda and Taliban forces, and the applicable laws were the laws of war. n24 Thus, military force, including the use of drones, could be used if consistent with the laws of war.

Under the Obama Administration, the rhetoric has slightly changed: the United States is no longer engaged in a global war on terror but rather, in a war against al-Qaeda, the Taliban, and associated forces. n25 However, the Obama Administration, by conducting drone strikes in a variety of locations, including Pakistan and Yemen, has followed the Bush Administration view of the global battlefield. The Obama Administration believes, like the Bush Administration, that the laws of war apply to the use of drone strikes because the United States is engaged in an armed conflict. n26 Moreover, the Obama Administration has claimed drones can be used in countries that harbor terrorist enemies and are unwilling or unable to control territory where such enemies are located. n27 This rationale would likely exclude places like England and France from the possible definition and localization of the battlefield, but would purport to justify the use of drones in places like Pakistan and Yemen, where remote territories are hard to control and where central governments cannot claim to possess effective control. n28 [\*203]

The above described terminology ("global war on terror" and "war against al-Qaeda, the Taliban, and associated forces") is vastly important, as it designates the applicable legal framework surrounding targeted killings and drone strikes. If one accepts the premise that the United States is engaged in armed conflict against al-Qaeda terrorists, then one has to conclude that laws of war apply. n29 If laws of war apply, then the rules of jus ad bellum determine whether military force is utilized in a lawful way. In fact, laws of war permit targeted killings if two particular requirements of jus ad bellum are satisfied: the use of force is necessary and the use of force is proportionate.

First, a state resorting to force must prove its decision to resort to force was a result of an armed attack and necessary to respond to such attack. n30 It is possible to argue that al-Qaeda's campaign of terrorist attacks against the United States, including 9/11, corresponded to an armed attack. However, it is also possible to argue that "al Qaeda's campaign against the United States does not trigger the right of self-defensive force . . . because al Qaeda has not launched a full scale military offensive." n31 Another difficulty in this context is that al-Qaeda is not a state, and under traditional international law, only states could initiate armed attack against states, thus triggering the right to self-defense. n32 While some commentators have argued that the use of force in self-defense against a non-state actor should be [\*204] permissible, "in an era where non-state groups project military-scale power," n33 this view remains controversial. n34

Second, a state resorting to the use of force must prove its use of force was proportionate to the military campaign's objective. n35 The proportionality test of jus ad bellum should "be applied contextually, to determine whether the overall goal of a use of force . . . is a proportionate objective." n36 Because the CIA operates the drone program in Pakistan in secrecy, it is impossible to determine conclusively whether the program meets the proportionality requirement of jus ad bellum. It is possible to argue the resort to targeted killings through the use of drones is at least sometimes necessary and proportionate (for example, when a U.S. military commander possesses information that a high-value al-Qaeda operative, engaged in planning armed attacks against Americans, is located in a specific location which is relatively easily reachable via drones, and the commander decides that neutralization of the al-Qaeda target is necessary to prevent attacks against Americans). It is probable that many drone strikes do not meet the requirements of jus ad bellum, but it is nonetheless difficult to conclude, under this approach, that the entire drone program is per se illegal. Should the U.S. government--specifically the CIA--release more facts regarding the drone program, it may become plausible to assess the lawfulness of this type of force through the jus ad bellum prism.

If, however, one rejects the conclusion that the United States is engaged in armed conflict, then the legality of the entire drone program becomes questionable. One could logically conclude the United States is not fighting a true war, but chasing terrorists. Under this view, the law of armed conflict would no longer apply, and the United States could use force against such terrorists only under a law enforcement paradigm--only when the use of force is absolutely necessary. Moreover, if the laws of war do not apply, then international human rights law dictates that targeted killings are legal only if a threat imminent and the reaction necessary, because under human rights law, "it is never permissible for killing to be the sole [\*205] objective of an operation." n37 "A killing is only legal to prevent a concrete and imminent threat to life, and, additionally, if there is no other non-lethal means of preventing that threat to life." n38 The International Covenant on Civil and Political Rights (ICCPR) prohibits "arbitrary" killing, as well as punitive or deterrent killings of terrorists. n39 The very nature of the American drone program, where targeted killings are utilized to neutralize al-Qaeda operatives, even though such killings are not absolutely necessary, is contrary to international human rights law. Under this paradigm, one must conclude that the drone program is illegal.

#### Geographic limits on first-resort targeted killings creates an incentive for terrorists to geographically scatter to new safe havens

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

Consequently, the geographic scope of operations associated with TAC presents unique challenges (if not dilemmas). Unlike the accepted typology of international conflicts—inter–State armed hostilities—the geographic scope of TAC is not framed by the complementary international legal principles of neutrality. However, unlike the accepted non–international conflict typology—internal armed hostilities—the enemy center of gravity and/or attacks that will produce decisive effect will often be located in areas far removed from “hot zones”. Understanding this dynamic is critical to assessing the validity or wisdom of imposing a geographic “box” on permissible TAC scope. Operational range is not an arbitrary element of LOAC regulation. It is, instead, a logical consequence of the nature of the conflicts themselves: in the more conventional context—be it international or non–international armed conflict—the enemy center of gravity is rarely dispersed beyond the hot zone of conflict. In contrast, the enemy in TAC deliberately avoids consolidating its center of gravity in such zones, but instead operates out of whatever safe haven offers the best opportunity for protection from the reach of State military capabilities.52

This does not mean that the uncertainties created by the intersection of threat–based scope and TAC are insignificant. To the contrary, extending the concept of armed conflict to a transnational non–State opponent has resulted in significant discomfort related to the assertion of State military power. But attempting to decouple the permissible geography of armed conflict from threat–driven strategy by imposing some arbitrary legal limit on the geographic scope of TAC is an unrealistic and ultimately futile endeavor. Other solutions to these uncertainties must be pursued—solutions that mitigate the perceived overbreadth of authority associated with TAC. As explained below, these solutions should focus on four considerations:

(1) managing application of the inherent right of self–defense when it results in action within the sovereign territory of a non–consenting State;

(2) adjusting the traditional targeting methodology to account for the in-creased uncertainties associated with TAC threat identification;

(3) considering the feasibility of a “functional hors de combat” test to account for incapacitating enemy belligerents incapable of offering hostile resistance; and

(4) continuing to enhance the process for ensuring that preventive deten-tion of captured belligerent operatives does not become unjustifiably protracted in duration.

This essay does not seek to develop each of these mitigation measures in depth. Instead, it proposes that focusing on these (and perhaps other innovations in existing legal norms) is a more rational approach to mitigating the impact of TAC than imposing an arbitrary geographic scope limitation. Other scholars have already begun to examine some of these con-cepts, a process that will undoubtedly continue in the future. Whether these innovations take the form of law or policy is another complex ques-tion, which should be the focus of exploration and debate. In short, rejecting the search for geographic limits on the scope of TAC should not be equated with ignorance of the risks attendant with this broad conception of armed conflict. Instead, it must be based on the premise that even if such a limit were proposed, it would ultimately prove ineffective in preventing the conduct of operations against transnational non–State threats where the State concludes such operations will produce a decisive effect. Instead, focusing on the underlying issues themselves and considering how the law might be adjusted to account for actual or perceived authority overbreadth is a more pragmatic response to these concerns.

### JR Link---Imminence

#### Judicial review would result in all targeted killings being ruled unconstitutional---courts would conclude they don’t satisfy the requirement of imminence for use of force in self-defense

Benjamin McKelvey 11, J.D., Vanderbilt University Law School, November 2011, “NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, 44 Vand. J. Transnat'l L. 1353

In the alternative, and far more broadly, the DOJ argued that executive authority to conduct targeted killings is constitutionally committed power. n101 Under this interpretation, the President has the authority to defend the nation against imminent threats of attack. n102 This argument is not limited by statutory parameters or congressional authorization, such as that under the AUMF. n103 Rather, the duty to defend the nation is inherent in the President's constitutional powers and is not subject to judicial interference or review. n104

The DOJ is correct in arguing that the President is constitutionally empowered to use military force to protect the nation from imminent attack. n105 As the DOJ noted in its brief in response, the Supreme Court has held that the president has the authority to protect the nation from "imminent attack" and to decide the level of necessary force. n106 The same is true in the international context. Even though Yemen is not a warzone and al-Qaeda is not a state actor, international law accepts the position that countries may respond to specific, imminent threats of harm with lethal force. n107 [\*1367] Under these doctrines of domestic and international law, the use of lethal force against Aulaqi was valid if he presented a concrete, specific, and imminent threat of harm to the United States. n108

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the "imminence" standard. n109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority. n110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force. n111 Moreover, the overview of the CIA's targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval. n112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define "imminence" as a legal standard. n113 These [\*1368] are general concepts of law, not political questions, and they are subject to judicial review. n114

Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president's authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. n115 "Imminence" would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process. n116 Similarly, the concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat. n117 Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force. n118

#### Expansive interpretation of imminence is key to win the entire war on terror---prevents bio and nuclear terrorism

John Yoo 12, Professor of Law, University of California at Berkeley, School of Law; Visiting Scholar, American Enterprise Institute, 2011/12, “Assassination or Targeted Killings After 9/11,” New York Law School Law Review, http://www.nylslawreview.com/wordpress/wp-content/uploads/2011/08/Yoo-56-1.pdf

Imminence is not a purely temporal concept. The concept traces its origins to the 1837 Caroline affair, in which British forces pursued Canadian insurgents into American territory, destroyed a vessel, and killed dozens of U.S. citizens.74 After that incident, the United States and Great Britain agreed in 1841 that a preemptive attack was justified if the “necessity of self-defense [was] instant, overwhelming, leaving no choice of means, and no moment for deliberation.”75 Imminence classically depended on timing. Only when an attack is soon to occur, and thus certain, can a nation use force in preemptive self-defense. What about the magnitude of harm posed by a threatened attack? According to conventional doctrine, a nation must wait until an attack is imminent before using force, whether the attack is launched by a small band of cross-border rebels, as in the Caroline affair, or by a terrorist organization armed with biological or chemical weapons. Terrorist groups today can launch a sudden attack with weapons of devastating magnitude. To save lives, it is now necessary to use force earlier and more selectively.

Imminence as a concept also fails to deal with covert activity. Terrorists deliberately disguise themselves as civilians. Their organizations have no territory or populations to defend, and they attack by surprise. This makes it virtually impossible to use force in self-defense once an attack is “imminent.” There is no target to attack in the form of the army of a nation-state. The best defense will be available only during a small window of opportunity when terrorist leaders become visible to the military or intelligence agencies. This can occur, as in the case of bin Laden, well before a major terrorist attack occurs. Imminence doctrine does not address cases in which an attack is likely to happen, but its timing is unpredictable. Rules of self defense need to adapt to the current terrorist threat.

In addition to imminence, the United States needs to account for the degree of expected harm, a function of the probability of attack times, the estimated casualties, and damage. There is ample justification for factoring this in, just as it ought to be a factor in ordinary acts of self-defense, as when one is attacked with a gun, as opposed to a set of fists. At the time of the Caroline decision in the early nineteenth century, the main weapons of war were single-shot weapons and artillery, cavalry, and infantry. There was an inherent technological limit on the destructiveness of armed conflict.

The speed and severity possible today mean that the right to preempt today should be greater than in the past. Weapons of mass destruction have increased the potential harm caused by a single terrorist attack from hundreds or thousands of innocent lives to hundreds of thousands, or even millions. This is not even counting the profound, long-term destruction of cities or contamination of the environment and the resulting long-term death or disease for large segments of the civilian population. WMDs can today be delivered with ease—a suicide bomber could detonate a “dirty bomb” using a truck or spread a biological agent with a small airplane. These threats are difficult to detect, as no broad mobilization and deployment of regular armed forces will be visible. Probability, magnitude, and timing are relevant factors that must be considered in determining when to use force against the enemy.

### No Program Collapse---2NC

#### There is no chance that the U.S. will curtail its drone program as a result of criticism---no risk of court rulings, legislation, or domestic political backlash---the U.S. won’t cave in to allies because of a broad, bipartisan consensus on the utility of current drone policy---that’s Chesney.

#### This is empirically proven by detention policy---the early Obama administration wanted to shut down military commissions but a broad consensus in Congress kept them open, despite global backlash and criticism.

#### Criticism over lack of judicial review won’t collapse the program

Benjamin Wittes 13, Senior Fellow in Governance Studies at the Brookings Institution, 2/27/13, “In Defense of the Administration on Targeted Killing of Americans,” <http://www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/>

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation.

There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

Second, a mounting chorus of critics has insisted that judicial review must be a feature of the legal framework that authorizes the targeting of any American nationals. The New York Times, for example, has editorialized that “[g]oing forward, [President Obama] should submit decisions like [the Al-Aulaqi] one to review by Congress and the courts. If necessary, Congress could create a special court to handle this sort of sensitive discussion, like the one it created to review wiretapping.”

The question of whether targeting judgments might benefit from some form of judicial review—either prospectively or after-the-fact—is an enormously complicated one. Scholars have put together several thoughtful proposals for review mechanisms,[6] and I don’t rule out the idea of some form of judicial review—though I tend to disfavor it. But critically, none of these or other proposals to change the rules to include judicial review undermines the integrity of the administration’s view of current law, which simply does not provide for judicial involvement in targeting decisions. Whether some as-yet-unwritten statutory framework might usefully provide for judicial involvement presents a difficult question. But it’s hard to fault Attorney General Holder for failing to bring the Anwar Al-Aulaqi case for prospective review before a court that does not exist.

#### Absolutely zero chance that criticism of the drone program causes the U.S. to ban it

Benjamin Wittes 13, Senior Fellow in Governance Studies at the Brookings Institution, 2/27/13, “In Defense of the Administration on Targeted Killing of Americans,” http://www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation.

There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

### UQ---Drone Doctrine/Use

#### Drone strikes have declined numerically precisely because they’ve been so effective---current policy retains flexibility to employ them as needed

WT 10-9 – Washington Times, 10/9/13, “Drone strikes plummet as U.S. seeks more human intelligence,” http://www.washingtontimes.com/news/2013/oct/9/drone-strikes-drop-as-us-craves-more-human-intelli/print/

The number of drone strikes approved by the Obama administration on suspected terrorists has fallen dramatically this year, as the war with al Qaeda increasingly shifts to Africa and U.S. intelligence craves more captures and interrogations of high-value targets.

U.S. officials told The Washington Times on Wednesday that the reasons for a shift in tactics are many — including that al Qaeda's senior ranks were thinned out so much in 2011 and 2012 by an intense flurry of drone strikes, and that the terrorist network has adapted to try to evade some of Washington's use of the strikes or to make them less politically palatable.

But the sources acknowledged that a growing desire to close a recent gap in actionable human intelligence on al Qaeda's evolving operations also has renewed the administration's interest in more clandestine commando raids like the one that netted a high-value terrorist suspect in Libya last weekend.

Capturing and interrogating suspects can provide valuable intelligence about a terrorist network that has been morphing from its roots with a central command in Pakistan and Afghanistan (known as intelligence circles as the FATA) to more diverse affiliates spread most notably across North Africa, officials and analysts said.

"Al Qaeda's senior leadership in Pakistan has been steadily degraded. What remains of the group's core is still dangerous but spends much of its time thinking about personal security," one senior counterterrorism official told The Times, speaking on the condition of anonymity because of the secret nature of the drone program. "As the nature of the threat emanating from the FATA changes, it follows that the U.S. government's counterterrorism approach is going to shift accordingly."

The decreased reliance on drones was in full view last weekend when one team of commandos from the Army's Delta Force captured long-sought al Qaeda operative Abu Anas al-Libi in Tripoli and a Navy SEAL team failed to take down an al Qaeda affiliate leader in Somalia.

The U.S. has carried out nearly 400 drone strikes over the past decade in Pakistan, Yemen and Somalia, a tactic that killed numerous senior operatives. But al Qaeda leaders have been increasing their own counterintelligence activities and moving to more populated areas in order to increase the risks of civilian casualties, two developments that have made the strikes less politically palatable and effective, analysts and intelligence sources say.

As a result, the number of drone strikes carried out against al Qaeda suspects in the Middle East and South Asia has dropped by half over the past year. There were 22 drone strikes on targets in Pakistan during the first 10 months of this year, compared with 47 carried out during 2012 and 74 in 2011, according to data compiled by the London-based Bureau of Investigative Journalism, the leading independent body examining the U.S. government's secretive drone program.

But intelligence officials and some national security analysts cautioned against reading too deeply into such data, saying the U.S. remains committed to using drones when it makes sense.

#### Obama will expand the use of drones and relax targeting rules in the future---particularly the imminence standard

Alexei Offill-Klein 13, J.D. University of California, Davis, School of Law, Spring 2013, “Note: Targeted Killings: Al-Aulaqi v. Obama and the Misuse of the Political Question Doctrine,” U.C. Davis Journal of International Law & Policy, 19 U.C. Davis J. Int'l L. & Pol'y 207

There are signs the Obama administration intends to expand the drone program even further, and it appears to be relaxing the rules on who may be targeted. n110 For example, the White House recently gave the CIA and the military's Joint Special Operations Command the authority to "strike [\*223] militants in Yemen who may be plotting attacks against the United States, but whose identities might not be completely known, an authority that already exists in Pakistan." n111 In September 2011, John Brennan, the President's chief counterterrorism adviser, observed: "Over time, an increasing number of our international counterterrorism partners have begun to recognize that the traditional conception of what constitutes an "imminent' attack should be broadened in light of the modern-day capabilities, techniques, and technological innovations of terrorist organizations." n112 This statement is further evidence that the Obama administration plans to increase the scope of the drone war to those alleged terrorists who would not previously have been targeted.

### Squo Solves---Saudi/Yemen

#### Drones in Yemen rely on basing and flight access from Saudi---it’s locked in because Saudi could not possibly care about critiques of the program

Patrick W. Ryan 13, Saudi-U.S. Relations Information Service, 2/7/13, “Drone Basing Revelation Underscores Strong Defense and Security Bonds,” http://susris.com/2013/02/07/drone-basing-revelation-underscores-strong-defense-and-security-bonds/

The strength of the defense and security relationship between the United States and Saudi Arabia was highlighted this week with new reports about expanded cooperation in countering Al Qaeda in the Arabian Peninsula (AQAP) militants through the use of armed, remotely piloted aircraft based in the Kingdom. The information, which had been protected by several media outlets, came out as long simmering criticism of the strategy, tactics and legality of using U.S. drones to attack terrorists, especially American citizens among them, came to a head with disclosure of a secret Justice Department memo and in anticipation of today’s confirmation hearing for White House counter terror advisor John Brennan to be Director of the CIA. Brennan, who previously served as CIA station chief in Riyadh, is the principal US official behind the secretive drone program that has become a main element of the American war against Al Qaeda.

“…[American officials] describe an arrangement that has evolved since the frantic, ad hoc early days of America’s war [in Yemen]. The first strike in Yemen ordered by the Obama administration, in December 2009, was by all accounts a disaster. American cruise missiles carrying cluster munitions killed dozens of civilians, including many women and children. Another strike, six months later, killed a popular deputy governor, inciting angry demonstrations and an attack that shut down a critical oil pipeline. Not long afterward, the C.I.A. began quietly building a drone base in Saudi Arabia to carry out strikes in Yemen. American officials said that the first time the C.I.A. used the Saudi base was to kill Mr. Awlaki in September 2011…” [Drone Strikes’ Risks to Get Rare Moment in the Public Eye – NYTimes.com]

The New York Times and Washington Post broke their self-imposed silence to discuss the drone basing arrangement. It was reported as early as 2011 by the Washington Post but the role of Saudi Arabia was subsequently protected. This week Washington Post blogger Erik Wemple assembled an insightful report on the “informal arrangement” among media – The New York Times, The Washington Post and AP – and the U.S. Government to protect the location of the Arabian Peninsula drone base. Wemple blogged yesterday that Washington Post reporters Greg Miller and Karen DeYoung provided background on the disclosure:

“The Washington Post had refrained from disclosing the location at the request of the administration, which cited concern that exposing the facility would undermine operations against an al-Qaeda affiliate regarded as the network’s most potent threat to the United States, as well as potentially damage counterterrorism collaboration with Saudi Arabia.”

However, Miller reported, with Craig Whitlock, in the Washington Post in September 2011, that, “The CIA is building a secret airstrip in the Arabian Peninsula so it can deploy armed drones over Yemen.” Other media were providing similar reports in 2011 including the Times (UK):

“The CIA has set up a network of secret drone bases in Arab states in a major intensification of its campaign against al-Qaeda militants in Yemen. Sources in the Gulf say that the agency is now massed along Yemen’s borders, launching daily missions with unmanned Predator aircraft from bases in Saudi Arabia, Oman, Djibouti and the United Arab Emirates.”

The current controversy is centered on the Obama Administration’s targeting of Americans using armed drones, especially in light of the leaked Justice Department memo. The case in question is the 2011 drone attack in Yemen that killed Anwar Awlaki, a US citizen who became a key Al Qaeda leader. That attack was the first lethal use of a Saudi-based American drone according to US officials cited by The New York Times.

A Legacy of Engagement

Apart from the U.S. domestic controversy, the report of Saudi cooperation with US counter terrorism efforts is consistent with the long history of collaboration between the partners in the areas of defense and security. It stretches back to the earliest days of the relationship and forms a key element of Riyadh-Washington ties. Defense cooperation in the earlier days of the relationship were built on understandings such as the Truman pledge of 1950, that was carried forward by subsequent administrations, noted Ambassador Parker Hart, in his book “Saudi Arabia and the United States: Birth of a Security Partnership”:

“Faisal and Kennedy had but one encounter, on October 5, 1962. They never again met face-to-face. Nonetheless, the indelible impression each made upon the other was positive… …Kennedy reaffirmed the Truman pledge of 1950 that any threat to the independence and integrity of Saudi Arabia would be a matter of deep and immediate concern to the US government, which would take measures to counter such a threat.”

Defense and security cooperation continued in many spheres including the U.S. commitment to military assistance – arms sales, logistics support, and training – across the board in ground, naval and air forces. These included creation of the US Military Training Mission to work with Saudi armed forces and the Office of the Program Manager to work with the Saudi Arabian National Guard. In more recent years the U.S. has supported creation of the OPM-FSF, the Facilities Security Force, a 35,000-man force to provide additional protection to internal infrastructure in the Kingdom.

There was, of course, no greater example of the cooperation, coordination and commitment between the United States and Saudi Arabia than the deployment of a half million American soldiers, sailors, airmen and marines to the Kingdom in 1990 as part of the Operation Desert Shield coalition, deterring Saddam Hussein from extending his invasion of Kuwait into the Eastern Province, and the subsequent fighting alongside one another in Operation Desert Storm to reverse Iraqi aggression. In the aftermath of the Gulf war Saudi Arabia hosted an American air wing in Dhahran and joint task force headquarters near Riyadh to enforce UN resolutions in the Iraqi “No-Fly Zone” and check further Iraqi moves. In 1996 the U.S. air elements were relocated to Prince Sultan Airbase at Al Kharj where they remained until the invasion and occupation of Iraq in 2003 ended the mission requirement for operational U.S. air units in the Kingdom.

The military to military engagement and cooperation was summed up by Dr. Anthony Cordesman, Arleigh Burke Chair in Strategy at the Center for Strategic and International Studies, in an exclusive interview with SUSRIS in 2004 (“Why Reforge the U.S. and Saudi Relationship? An Interview with Anthony Cordesman”):

“We do need to recognize that the U.S. troop presence in Saudi Arabia, which was essentially dominated by air forces, with a limited presence of Patriot surface-to-air missiles, was a source of serious debate and to some extent instability within Saudi Arabia. It was one of the cardinal arguments made by extremists.

“It is a fact that the United States did not ever reach an agreement to have bases in Saudi Arabia and went into Saudi Arabia basically to defend it and to liberate Kuwait. But, we have to bear in mind the fact that when the Iraq War occurred, Saudi Arabia did provide a great deal of cooperation with the United States. It allowed U.S. Special Forces units to operate out of Arar. While U.S. troops and their units were no longer operating actively in the country they still flew other kinds of support missions extensively during the Iraq War. The command and control for some of these that the U.S. created outside Riyadh were used to a great degree. There was airborne refueling and overflight rights. Basically, while Saudi Arabia did not allow the U.S. to use its bases formally, it cooperated virtually in every other way.

“Now, today, the United States has no combat forces in Saudi Arabia, but it still plays a vital advisory role. Saudi Arabia uses U.S. military equipment. A lot of that equipment is still in delivery or is still being absorbed by Saudi forces. Saudi Arabia would find much of that equipment impossible to use if it could not make use of U.S. military advice. It needs the kind of expertise that the U.S. can provide to improve its training standards, to improve its readiness and to move its forces forward to become the kind of forces that can actively defend the Kingdom. It also has good reason to see the U.S. presence in Bahrain, Kuwait, Qatar, and Oman as a basic shield between Saudi Arabia and Iran, which seems to be acquiring nuclear weapons and as a way of protecting the Kingdom if Iraq does not move forward towards a more stable and more friendly state.

“These are realities where the Kingdom benefits from the U.S. role, and the U.S. obviously benefits from the stability of Saudi Arabia and the knowledge that in an emergency the cooperation we saw in the Iraq War would probably be repeated again.

“But, it doesn’t mean that the United States has to have an active military presence in Saudi Arabia in essentially peacetime or that we need to go back to the kind of relationships we had immediately after the Gulf War. Saddam Hussein’s Iraq was one of the largest military powers in the developing world. Iraqi military forces, despite all that happened in the Gulf War, totalled hundreds of thousands of men, and they still had very large armored forces and a very large number of combat aircraft. The fact that threat is gone has helped, but for all the reasons I’ve outlined earlier, it’s scarcely eliminated every threat that calls for U.S. and Saudi cooperation.”

The secrecy surrounding the drone basing arrangement points to the obvious sensitivity of intelligence and counter terrorism work but also the penchant for Riyadh to avoid the limelight in taking credit for support. In the case of intelligence cooperation, “The Kingdom has been cooperating with the United States for decades,” according to Prince Turki Al Faisal, former Director of Saudi Intelligence in an exclusive SUSRIS interview in 2010. US-Saudi collaboration over activities in Yemen is not a new feature of the relationship as evidenced by the reference he made without getting too specific:

“Yemen, which is in the news lately, was a perfect example. Back at the time South Yemen was a Marxist regime under the guidance of the Soviets it was doing harm in North Yemen. In those days there was the exchange of information on both sides that helped in certain instances prevent or overcome or challenge some of the difficulties that were on both sides, whether it was Saudi interests that were being affected, or American interests.

The need to bring counterterrorism cooperation to bear in the case of Yemen may be due in part to the successes both the United States and Saudi Arabia have had in their individual battles against Al Qaeda. The U.S. Operation Enduring Freedom, the post-9/11 war on terrorism, was successful in dislodging and disrupting Al Qaeda in Afghanistan and elsewhere in Southwest Asia. The Saudi counterterrorism program launched in response to Al Qaeda’s campaign in the Kingdom that began in 2003 has also been successful in quashing the threat inside the borders. The result was that Al Qaeda regrouped in an unstable Yemen and has since constituted a threat to Saudi Arabia and to the United States. In May 2012 U.S. Assistant Secretary of State for Near Eastern Affairs Jeffrey Feltman told a Congressional committee, “…bringing political stability to Yemen is critical in the fight against Al Qaeda in the Arabian Peninsula (AQAP). Last year’s political crisis allowed AQAP to seize territory in southern Yemen, attract new recruits, and expand its presence. We will continue to provide security and counterterrorism support to combat the common threat of violent extremism…”

In 2009 Al Qaeda in the Arabian Peninsula, which remained the backbone of militant threats against the Kingdom, launched an assassination attempt against Prince Mohammed bin Nayef, then a senior official in the Interior Ministry. He was named Interior Minister in November 2012. In 2011 the Saudi Embassy in Washington summarized counterterrorism cooperation between the U.S. and the Kingdom up to that point:

Saudi Arabia and the U.S. have established two Joint Task Forces—one to combat terrorists, another to combat terror financing. Experts from both governments work side-by-side, sharing real-time information about terror networks.

The Saudi government has increased the size, training and professionalism of its security forces, which are now seasoned by direct experience in Saudi Arabia. Saudi security forces have trained alongside American counterterrorism forces in the U.S.

This experience and training has led to the arrest and conviction of hundreds of wanted terrorists and the destruction of most of the known terrorist cells in the Kingdom.

The Saudi-U.S. Strategic Dialogue, a counterterrorism working group created following September 11, 2001, continues to help ensure the governments’ efforts and resources are aligned.

This year, Custodian of the Two Holy Mosques King Abdullah bin Abdulaziz Al-Saud met with U.S. Assistant to the President for Homeland Security and Counterterrorism John Brennan while President Obama met with the Assistant Minister of Interior for Security Affairs Prince Mohammad bin Nayef bin Abdulaziz. These visits are part of ongoing consultations and exchange of views between the two countries.

In October 2010, Saudi intelligence provided key information to American officials that foiled an attempted terrorist plot involving bombs heading to the United States that originated in Yemen. The bombs were found and defused before reaching their targets.

To that list is added the successful interdiction by Saudi intelligence assets of an attack against the U.S. launched from Al Qaeda in Yemen last year. In that case an improved version of the infamous “underwear bomb” was to be used against a U.S. bound aircraft, but the attack was thwarted by a Saudi-born double agent. The earlier effort, the unsuccessful 2009 Christmas Day “underwear bomb” attack by Nigerian citizen Umar Farouk Abdulmutallab, is believed to have been aided by AQAP’s Anwar Awlaki, the first target of a Saudi-based American drone strike.

The recent news reports that American remotely operated aircraft are operating against Al Qaeda targets in Yemen should come as no surprise to those who have followed the close collaboration between the United States and Saudi Arabia over the course of the historic relationship. The revelations may be uncomfortable to those who seek to keep these sensitive operations under wraps but the disclosure underscores the importance of the defense and security cooperation measures between Washington and Riyadh.

### AT: Yemen/Pakistan Blowback

#### No public backlash in Pakistan or Yemen---just as many people love them as hate them

Max Boot 13, the Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, 2/6/13, “Obama Drone Memo is a Careful, Responsible Document,” http://www.commentarymagazine.com/2013/02/06/obama-drone-memo-is-a-careful-responsible-document/

Drone strikes are by no means risk free, the biggest risk being that by killing innocent civilians they will cause a backlash and thereby create more enemies for the U.S. than they eliminate. There is no doubt that some of these strikes have killed the wrong people–as the New York Times account highlights in one incident in Yemen. There is also little doubt, moreover, that drone strikes are no substitute for a comprehensive counterinsurgency and state-building policy designed to permanently safeguard vulnerable countries such as Pakistan, Yemen, Somalia, Libya, and Mali from the incursions of radical jihadists. But drone strikes have been effective in disrupting al-Qaeda operations and they have been conducted with less collateral damage and more precision than in the past.

It is hard to assess what impact they have had on public opinion in countries such as Yemen and Pakistan, but there is at least as much evidence that these strikes are applauded by locals who are terrorized by al-Qaeda thugs as there is evidence that the strikes are reviled for killing fellow clansmen. As the Times notes: “Although most Yemenis are reluctant to admit it publicly, there does appear to be widespread support for the American drone strikes that hit substantial Qaeda figures like Mr. Shihri, a Saudi and the affiliate’s deputy leader, who died in January of wounds received in a drone strike late last year.”

### Intel Coop I/E

#### EU cooperation on terrorism intel high and inevitable – in their self interest

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of its drive to bolster its counterterrorism capabilities, the EU has also made promoting law enforcement and intelligence cooperation with the United States a top priority. Washington has largely welcomed these efforts, recognizing that they may help root out terrorist cells both in Europe and elsewhere, and prevent future attacks against the United States or its interests abroad. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Contacts between U.S. and EU officials on police, judicial, and border control policy matters have increased substantially since 2001. A number of new U.S.-EU agreements have also been reached; these include information-sharing arrangements between the United States and EU police and judicial bodies, two new U.S.-EU treaties on extradition and mutual legal assistance, and accords on container security and airline passenger data. In addition, the United States and the EU have been working together to curb terrorist financing and to strengthen transport security.

#### US anti-terror intel is fine on its own – outstrips everybody else

Barton Gellman and Greg Miller, 8-29-2013, “Top secret ‘black budget’ reveals US spy agencies’ spending,” LA Daily News, http://www.dailynews.com/government-and-politics/20130829/top-secret-black-budget-reveals-us-spy-agencies-spending

“The United States has made a considerable investment in the Intelligence Community since the terror attacks of 9/11, a time which includes wars in Iraq and Afghanistan, the Arab Spring, the proliferation of weapons of mass destruction technology, and asymmetric threats in such areas as cyber-warfare,” Director of National Intelligence James Clapper said in response to inquiries from The Post. “Our budgets are classified as they could provide insight for foreign intelligence services to discern our top national priorities, capabilities and sources and methods that allow us to obtain information to counter threats,” he said. Among the notable revelations in the budget summary: Spending by the CIA has surged past that of every other spy agency, with $14.7 billion in requested funding for 2013. The figure vastly exceeds outside estimates and is nearly 50 percent above that of the National Security Agency, which conducts eavesdropping operations and has long been considered the behemoth of the community. The CIA and NSA have launched aggressive new efforts to hack into foreign computer networks to steal information or sabotage enemy systems, embracing what the budget refers to as “offensive cyber operations.” The NSA planned to investigate at least 4,000 possible insider threats in 2013, cases in which the agency suspected sensitive information may have been compromised by one of its own. The budget documents show that the U.S. intelligence community has sought to strengthen its ability to detect what it calls “anomalous behavior” by personnel with access to highly classified material. U.S. intelligence officials take an active interest in foes as well as friends. Pakistan is described in detail as an “intractable target,” and counterintelligence operations “are strategically focused against [the] priority targets of China, Russia, Iran, Cuba and Israel.” In words, deeds and dollars, intelligence agencies remain fixed on terrorism as the gravest threat to national security, which is listed first among five “mission objectives.” Counterterrorism programs employ one in four members of the intelligence workforce and account for one-third of all spending. The governments of Iran, China and Russia are difficult to penetrate, but North Korea’s may be the most opaque. There are five “critical” gaps in U.S. intelligence about Pyongyang’s nuclear and missile programs, and analysts know virtually nothing about the intentions of North Korean leader Kim Jong Un. Formally known as the Congressional Budget Justification for the National Intelligence Program, the “Top Secret” blueprint represents spending levels proposed to the House and Senate intelligence committees in February 2012. Congress may have made changes before the fiscal year began on Oct 1. Clapper is expected to release the actual total spending figure after the fiscal year ends on Sept. 30. The document describes a constellation of spy agencies that track millions of individual surveillance targets and carry out operations that include hundreds of lethal strikes. They are organized around five priorities: combating terrorism, stopping the spread of nuclear and other unconventional weapons, warning U.S. leaders about critical events overseas, defending against foreign espionage and conducting cyber operations. In an introduction to the summary, Clapper said the threats now facing the United States “virtually defy rank-ordering.” He warned of “hard choices” as the intelligence community — sometimes referred to as the “IC” — seeks to rein in spending after a decade of often double-digit budget increases. This year’s budget proposal envisions that spending will remain roughly level through 2017 and amounts to a case against substantial cuts. “Never before has the IC been called upon to master such complexity and so many issues in such a resource-constrained environment,” Clapper wrote. The summary provides a detailed look at how the U.S. intelligence community has been reconfigured by the massive infusion of resources that followed the Sept. 11 attacks. The United States has spent more than $500 billion on intelligence during that period, an outlay that U.S. officials say has succeeded in its main objective: preventing another catastrophic terrorist attack in the United States. The result is an espionage empire with resources and reach beyond those of any adversary, sustained even now by spending that rivals or exceeds the levels reached at the height of the Cold War.

### AT: Snowden

#### Security reforms solve the impact

Phil Stewart 7/18/13, Reuters, “U.S. overhauling intelligence access to try to prevent another Snowden,” http://articles.chicagotribune.com/2013-07-18/news/sns-rt-us-usa-security-snowden-intelligence-20130718\_1\_edward-snowden-guardian-two-man-rule

The United States is overhauling procedures to tighten access to top-secret intelligence in a bid to prevent another mega-leak like the one carried out by former spy agency contractor Edward Snowden, senior U.S. officials said on Thursday.¶ The National Security Agency, which Snowden worked for as a Hawaii-based contractor, said it would lead the effort to isolate intelligence and implement a "two-man rule" for downloading - similar to procedures used to safeguard nuclear weapons.¶ "When are we taking countermeasures? ... The answer is now," Deputy Defense Secretary Ashton Carter told the Aspen Security Forum in Colorado.¶ NSA Director General Keith Alexander told the forum the two-man rule would apply to system administrators like Snowden and anyone with access to sensitive computer server rooms.¶ "You limit the numbers of people who can write to removable media," Alexander said. "Instead of allowing all systems administrators (to do it), you drop it down to a few and use a two-person rule."¶ "We'll close and lock server rooms so that it takes two people to get in there."¶ Carter partly blamed the security breach on the emphasis placed on intelligence-sharing after the wake of the September 11, 2001, attacks, which eventually allowed someone like Snowden to access so many documents at once.¶ "We normally compartmentalize information for a very good reason, so one person can't compromise a lot," Carter said. "Loading everything onto one server ... it's something we can't do. Because it creates too much information in one place."

### XT Turns Intel

#### A damages remedy for targeted killings would collapse U.S. relations with every country where we conduct TKs---turns their intel sharing internal links

Stuart F. Delery 12, Principal Deputy Assistant Attorney General, Civil Division, 12/14/12, Defendants’ Motion to Dismiss, NASSER AL-AULAQI, as personal representative of the estate of ANWAR AL-AULAQI, et al., Plaintiffs, v. LEON E. PANETTA, et al., in their individual capacities, Defendants, No. 1:12-cv-01192 (RMC), <http://www.lawfareblog.com/wp-content/uploads/2012/12/MTD-AAA.pdf>

#### It’s impossible to litigate a case over drone policy without disclosing highly sensitive military and intelligence data---implicates allies as well

Richard D. Rosen 11, Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law. Colonel, U.S. Army (retired), 2011, “PART III: ARTICLE: DRONES AND THE U.S. COURTS,” William Mitchell Law Review, 37 Wm. Mitchell L. Rev. 5280

Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case,96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets,97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing protected secrets.98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation’s military tactics and strategy as well as its delicate relations with friendly nations.99 As such, lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed.

## Bivens Adv

### Demo---Inev 2NC

#### Democratization inevitable \* absent US promotion

Mandelbaum 7 – professor of US foreign policy, Johns Hopkins U (Michael, Sep/Oct, “Democracy Without America,” Foreign Affairs, AG)

Yet the failure of Washington's democracy promotion has not meant the failure of democracy itself. To the contrary, in the last quarter of the twentieth century this form of government enjoyed a remarkable rise. Once confined to a handful of wealthy countries, it became, in a short period of time, the most popular political system in the world. In 1900, only ten countries were democracies; by midcentury, the number had increased to 30, and 25 years later the count remained the same. By 2005, fully 119 of the world's 190 countries had become democracies. [continues] The desire for a democratic political system does not by itself create the capacity for establishing one. The key to establishing a working democracy, and in particular the institutions of liberty, has been the free-market economy. The institutions, skills, and values needed to operate a free-market economy are those that, in the political sphere, constitute democracy. [continues] Whether, when, and how China will become a democracy are all questions to which only the history of the twenty-first century can supply the answers. Nonetheless, two predictions may be hazarded with some confidence. One is that if and when democracy does come to China--as well as to the Arab world and Russia--it will not be because of the deliberate and direct efforts at democracy promotion by the United States. The other is that pressure for democratic governance will grow in the twenty-first century whatever the United States does or does not do. It will grow wherever nondemocratic governments adopt the free-market system of economic organization. Such regimes will adopt this system as part of their own efforts to promote economic growth, a goal that governments all over the world will be pursuing for as far into the future as the eye can see.

### No Impact Democracy

#### Democratic peace is wrong --- it only applies to full, mature democracies which will not occur in the Middle East --- on balance, it causes war

Baliga 11—prof of managerial economics and decision sciences at Kellog School of Business, NU. PhD from Harvard—AND—Tomas Sjöström—chaired prof of economics at Rutgers—AND—David O. Lucca—economist with the Federal Reserve Board (Sandeep, Domestic Political Survival and International Conflict: Is Democracy Good for Peace?, The Review of Economic Studies, July 2011, 78;3)

The idea that democracy promotes peace has a long history. Thomas Paine argued that monarchs go to war to enrich themselves, but a more democratic system of government would lead to lasting peace: “What inducement has the farmer, while following the plough, to lay aside his peaceful pursuit, and go to war with the farmer of another country?” (Paine, 1985 p. 169). Immanuel Kant agreed that if “the consent of the subjects is required to determine whether there shall be war or not, nothing is more natural than that they should weigh the matter well, before undertaking such a bad business” (Kant, 1795, 1903, p. 122). More recently, the democratic peace hypothesis has influenced the “neoconservative” view of international relations (Kaplan and Kristol, 2003). U.S. policy makers of different political persuasions have invoked it in support of a policy to “seek and support the growth of democratic movements and institutions in every nation and culture.”1 But some anecdotal observations seem to support a more “realist” viewpoint. For example, after the breakup of Yugoslavia, democratic reforms were followed by war, not peace. When given a chance in the legislative elections of 2006, the Palestinians voted for Hamas, which did not have a particularly peaceful platform. Such anecdotes suggest that democratization does not always promote peace. Even fully democratic countries such as the U.S. sometimes turn aggressive: under perceived threats to the homeland, the democratically elected President George W. Bush declared war on Iraq.

We develop a simple game-theoretic model of conflict based on Baliga and Sjöström (2004). Each leader can behave aggressively or peacefully. A leader's true propensity to be aggressive, his “type”, is his private information. Since actions are strategic complements, the fear that the other leader might be an aggressive type can trigger aggression, creating a fear spiral we call “Schelling's dilemma” (see Schelling, 1960; Jervis, 1976, Jervis, 1978; Kydd, 1997). Unlike Baliga and Sjöström (2004), we assume a leader may be removed from power. Whether a leader can stay in power depends on the preferences of his citizens, the political system, and the outcome of the interaction between the two countries. The political system interacts with Schelling's dilemma to create a non-monotonic relationship between democracy and peace.

Like the leaders, citizens have different types. By hypothesis, the median type prefers to live in peace. This imposes a “dovish bias” on a dyad of two full democracies (whose leaders can be replaced by their median voters). Thus, a dyadic democratic peace is likely to obtain. However, when facing a country that is not fully democratic, the median voter may support aggression out of fear and may replace a leader who is not aggressive enough. (For example, Neville Chamberlain had to resign after appeasing Hitler.) This gives rise to a “hawkish bias”. Thus, in a fully democratic country, a dovish bias is replaced by a hawkish bias when the environment becomes more hostile. In contrast, a dictator is not responsive to the preferences of his citizens, so there is neither a hawkish nor a dovish bias. Accordingly, a dyad of two dictators is less peaceful than a fully democratic dyad, but a dictator responds less aggressively than a democratically elected leader to increased threats from abroad.

In the model, the leader of a limited democracy risks losing power if hawks in his population turn against him. For instance, the German leaders during World War I believed signing a peace agreement would lead to their demise (Asprey, 1991, pp. 486–487, 491). Conversely, the support of the hawkish minority trumps the opposition of more peaceful citizens. Thus, a limited democracy experiences a hawkish bias similar to a full democracy under threat from abroad but never a dovish bias. On balance, this makes limited democracies more aggressive than any other regime type. In a full democracy, if the citizens feel safe, they want a dovish leader, but if they feel threatened, they want a hawkish leader. In dictatorships and limited democracies, the citizens are not powerful enough to overthrow a hawkish leader, but the leader of a limited democracy risks losing power by appearing too dovish. This generates a non-monotonic relationship between democracy and peace.

Our empirical analysis reassesses the link between democracy and peace using a flexible semiparametric functional form, where fixed effects account for unobserved heterogeneity across country dyads. We use Polity IV data to classify regimes as dictatorships, limited democracies or full democracies. Following the literature on the democratic peace hypothesis, we define a conflict as a militarized dispute in the Correlates of War data set. The data, which span over the period 1816–2000, contain many military disputes between limited democracies. In the nineteenth century, Britain had a Parliament, but even after the Great Reform Act of 1832, only about 200,000 people were allowed to vote. Those who owned property in multiple constituencies could vote multiple times.2 Hence, Britain is classified as a limited democracy for 58 years and becomes a full democracy only after 1879. France, Italy, Spain, and Germany are also limited democracies at key points in the nineteenth and early twentieth centuries. These countries, together with Russia and the Ottoman Empire, were involved in many militarized disputes in Europe and throughout the world. For much of the nineteenth century, Britain and Russia had many skirmishes and outright wars in the “Great Game” for domination of Central Asia (Hopkirk, 1990). France is also involved in many disputes and is a limited democracy during the Belgian War of Independence and the Franco-Prussian War. Germany is a limited democracy at the start of the First World War.

Over the full sample, the data strongly support a dyadic democratic peace hypothesis: dyads consisting of two full democracies are more peaceful than all other pairs of regime types. This is consistent with previous empirical studies (Babst, 1972, Levy, 1988, , maozrussett, Russett and Oneal, 2001). Over the same period, limited democracies were the most aggressive regime type. In particular, dyads consisting of two limited democracies are more likely to experience militarized disputes than any other dyads, including “mixed” dyads where the two countries have different regime types. These results are robust to changing the definitions of the three categories (using the Polity scores) and to alternative specifications of our empirical model. The effects are quantitatively significant. Parameter estimates of a linear probability model specification, suggest that the likelihood that a dyad engages in a militarized dispute falls roughly 35% if the dyad changes from a pair of limited democracies to a pair of dictatorships. We also find that if some country j faces an opponent which changes from a full democracy to another regime type, the estimated equilibrium probability of conflict increases most dramatically when country j is a full democracy. This suggests that as the environment becomes more hostile, democracies respond more aggressively than other regime types, which is also consistent with our theoretical model.

A more nuanced picture emerges when we split the data into subsamples. Before World War II, the data strongly suggest that limited democracies were the most conflict prone. It is harder to draw conclusions for the post World War II period, when very few countries are classified as limited democracies, and full democracies have very stable Polity scores. The Cold War was a special period where great power wars became almost unthinkable due to the existence of large nuclear arsenals (Gaddis, 2005). Did the weakening and demise of the Soviet Union bring a return to the pre-1945 patterns? Although the time period is arguably short, in the post-1984 period, it does seem that dyads of limited democracies are again the most prone to conflict.

It is commonly argued that a process of democratization, e.g. in the Middle East, will lead to peace (Bush, 2003). But both theory and data suggest that the relationship between democracy and peace may be complex and non-monotonic. Replacing a dictatorship with a limited democracy may actually increase the risk of militarized disputes. Even if a dictatorship is replaced by a full democracy, this may not reduce the risk of militarized disputes if the region is dominated by hostile non-democratic countries. In the data, only dyads consisting of two full democracies are peaceful. Democratic countries such as Israel and India, with hostile neighbours, do not enjoy a low level of conflict.

## CMR Adv

### 2NC Latin America

#### Ignore generic tipping point cards – prolif can only be judged on a country to country basis

Einhorn 4—Special Advisor for Nonproliferation and Arms Control, Dept. of State. Held numerous arms control positions in the US Arms Control and Disarmament Agency—AND—Kurt Campbell—Assistant Secretary of State for East Asian and Pacific Affairs. PhD, IR, Oxford (Robert, The nuclear tipping point, 32-33)

In theory, these and other possible factors could apply to a wide range of countries in different regions of the world. But nuclear proliferation does not occur in theory. It occurs in individual countries, in specific international and domestic circumstances, and with particular persons and organizations making discrete decisions. Without reference to individual cases, it is impossible to make confident predictions about which trends or developments might bring the world to a proliferation "tipping point." Factors assumed in the abstract to be influential in future nuclear choices may turn out to have little or no impact in specific countries. In multilateral nonproliferation debates, for example, the assertion is frequently made that progress by Russia and the United States in reducing their nuclear arsenals—in accordance with their obligations under article 6 of the Nuclear Non-Proliferation Treaty (NPT)—will reduce the likelihood of non-nuclear weapons states deciding to obtain nuclear weapons of their own. But looking at the states that acquired nuclear weapons since the NPT was signed (India, Israel, Pakistan) or states that have actively sought them (Iraq, Iran, North Korea), it is hard to make the argument that any of them were influenced by the levels of U.S. or Soviet or Russian nuclear forces.

#### Prolif will be slow

Tepperman 9 Deputy Editor at Newsweek. Frmr Deputy Managing Editor, Foreign Affairs. LLM, i-law, NYU. MA, jurisprudence, Oxford. (Jonathan, Why Obama Should Learn to Love the Bomb, http://jonathantepperman.com/Welcome\_files/nukes\_Final.pdf)

The risk of an arms race—with, say, other Persian Gulf states rushing to build a bomb after Iran got one—is a bit harder to dispel. Once again, however, history is instructive. "In 64 years, the most nuclear-weapons states we've ever had is 12," says Waltz. "Now with North Korea we're at nine. That's not proliferation; that's spread at glacial pace." Nuclear weapons are so controversial and expensive that only countries that deem them absolutely critical to their survival go through the extreme trouble of acquiring them. That's why South Africa, Ukraine, Belarus, and Kazakhstan voluntarily gave theirs up in the early '90s, and why other countries like Brazil and Argentina dropped nascent programs. This doesn't guarantee that one or more of Iran's neighbors—Egypt or Saudi Arabia, say—might not still go for the bomb if Iran manages to build one. But the risks of a rapid spread are low, especially given Secretary of State Hillary Clinton's recent suggestion that the United States would extend a nuclear umbrella over the region, as Washington has over South Korea and Japan, if Iran does complete a bomb. If one or two Gulf states nonetheless decided to pursue their own weapon, that still might not be so disastrous, given the way that bombs tend to mellow behavior

## Counterplan

### AT: Perm Do Both

#### The counterplan aloneis key to effective drone operations---the permutation sends the signal that the rest of the government sides with critics of drones over the executive---that delegitimizes drones and collapses the program

Kenneth Anderson 10, Professor of International Law at American University, 3/8/10, “Predators Over Pakistan,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>

Obama deserves support and praise for this program from across the political spectrum. More than that, though, the drone strikes need an aggressive defense against increasingly vocal critics who are moving to create around drone warfare a narrative of American wickedness and cowardice and of CIA perfidy.

Here the administration has dropped the ball. It has so far failed to provide a robust affirmation of the propositions that underwrite Predator drone warfare. Namely:

n Targeted killings of terrorists, including by Predators and even when the targets are American citizens, are a lawful practice;

n Use of force is justified against terrorists anywhere they set up safe havens, including in states that cannot or will not prevent them;

n These operations may be covert—and they are as justifiable when the CIA is tasked to carry them out secretly as when the military does so in open armed conflict.

n All of the above fall within the traditional American legal view of “self-defense” in international law, and “vital national security interests” in U.S. domestic law.

There are good reasons for Republicans and centrist Democrats to make common cause in defending these propositions. On the one hand, they should want to aggressively protect the administration against its external critics—the domestic and international left—who are eager to prosecute Americans for their actions in the war on terror. They should also want to make clear that in defending drone strikes, they are defending the American (and not just the Obama) legal and strategic position. Moreover, it will be the American view of domestic and international law for future administrations, Democratic and Republican.

At the same time, congressional Republicans and centrist Democrats need to put Obama’s senior legal officials on the record and invite them to defend their own administration, defend it to the full extent that the Obama administration’s actions require. Which is to say, Congress needs to hear publicly from senior administration lawyers and officials who might be personally less-than-enthused about targeted killings of terrorists and not eager to endorse them publicly, or to do so only with hedged and narrow legal rationales from which they can later walk away.

Consider, for instance, the diffidence of Harold Koh, the legal adviser of the Department of State. In an informal public discussion with his predecessor, John Bellinger, aired on C-SPAN on February 17, he was asked about drones and targeted killings and declined to say that the practice was lawful. (Granted, it was in an unscripted setting, which cannot be taken as anyone’s last word and on which it would be unfair to place too much weight.) All he said was that if he concluded that it was unlawful, he would, if he thought it appropriate, resign his position. He added that he remained at his post. The statement falls far short of the defense one might hope for from such a high-ranking administration lawyer. More than a year into the new administration, that ought surely to strike the general counsels of the CIA, the Pentagon, the Director of National Intelligence, the NSC, and other agencies directly conducting these activities as somewhat less than reassuring.

In fact, the administration’s top lawyers should offer a public legal defense of its policies, and congressional Republicans and Democrats should insist on such a defense. This is partly to protect the full use-of-force tools of national security for future administrations, by affirming the traditional U.S. view of their legality. But it is also to protect and reassure the personnel of the CIA, NSC, and intelligence and military agencies who carry out these policies that they are not just effective but lawful policies of the U.S. government and will be publicly defended as such by their superiors.

Even as the Obama administration increasingly relies on Predator strikes for its counterterrorism strategy, the international legal basis of drone warfare (more precisely, its perceived international legal legitimacy) is eroding from under the administration’s feet—largely through the U.S. government’s inattention and unwillingness to defend its legal grounds, and require its own senior lawyers to step up and defend it as a matter of law, legal policy, and legal diplomacy. On the one hand, the president takes credit for the policy—as frankly he should—as taking the fight to the enemy. His vice president positively beams with pride over the administration’s flock of Predator goslings. On the other hand, the Obama administration appears remarkably sanguine about the campaign gearing up in the “international law community” aimed at undermining the legal basis of targeted killing as well as its broad political legitimacy, and ultimately at stigmatizing the use of Predators as both illegal and a coward’s weapon.

Stigmatizing the technology and the practice of targeted killing is only half of it, though. The other half is to undermine the idea that the CIA may use force and has the authority to act covertly under orders from the president and disclosure to Congress, as long provided in U.S. law. The aim is to create a legal and political perception that, under international law, all uses of force must be overt—either as law enforcement or as armed conflict conducted by uniformed military.

The Obama administration is complacent about this emerging “international soft law” campaign. But Obama’s opponents in this country, for their part, likewise underestimate and ignore the threat such a campaign presents to national security. That’s apparently because many on the right find it hard to imagine that mere congeries of NGOs, academics, activists, U.N. officials, and their allies could ever overcome “hard” American national security interests, particularly when covered by the magic of the Obama administration. Both liberal and conservative national security hands, looking at the long history of accepted lawfulness of targeted killings under American law, think, “Come on, there’s obvious sense to this, legal and political. These arguments in domestic and international law have long been settled, at least as far as the U.S. government is concerned.” But if there’s a sense to it, there’s a sensibility as well, one that goes to the overall political and legal “legitimacy” of the practice within a vague, diaphanous, but quite real thing called “global public opinion,” the which is woven and spun by the interlocking international “soft law” community and global media.

It’s a mistake to remain oblivious to either the sense or the sensibility. Outside of government, the oblivious include hard-realist conservatives. Inside government, some important political-legal actors are struggling impressively both to overcome bureaucratic inertia and get in front of this issue, and to overcome factions within government unpersuaded by, if not overtly opposed to, this program—particularly as conducted by the CIA. Those actors deserve political support from congressional Republicans and Democrats. Because obliviousness to the sensibility of lawfulness and legitimacy—well, we should all know better by now. Does anyone still believe that the international legal-media-academic-NGO-international organization-global opinion complex cannot set terms of debate over targeted killing or covert action? Or that it cannot overcome “hard” American security interests? Or that this is merely another fringe advocacy campaign of no real consequence, whether in the United States, or abroad in Europe, or at the United Nations?

The Obama administration assumes that it uniquely sets the terms of legal legitimacy and has the final word on political sensibility. This is not so—certainly not on this issue. The international soft-law campaign looks to the long-term if necessary, and will seek the political death of targeted killings, Predator drones, and their progeny, and even perhaps to CIA covert action, by a hundred thousand tiny paper cuts. The campaign has already moved to the media. Starting with Jane Mayer’s narrative of Predator drone targeted killing in the New Yorker last October, and followed by many imitators, the ideological framework of the story has shifted. In the space of a year—Obama’s year, no less—it has moved from Candidate Obama’s brave articulation of a bold new strategy for attacking terrorists to the NGOs’ preferred narrative of a cowardly, secretive American CIA dealing collateral damage from the skies. Here’s the thumbnail version of drone warfare, as portrayed in the media.

#### Only a united front of Congress and the Executive defending the legality of the current program both legitimizes it and preserves flexibility to use drones effectively

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

THOUGH THE CRITICS ARE WRONG TO CLAIM THAT drone warfare itself is neither effective nor ethical, they are not wrong to inquire about process and policy concerns. Drone warfare and the development of tools for using force in discrete and focused ways are inviting novel questions of law, ethics, and policy. The list of matters that need legislative and administrative reform in order to put drone warfare and targeted killing on an institutionally stable footing is a long one.

As "associated forces" of al-Qaeda evolve and fragment into groups only notionally connected to the al-Qaeda of 9/11, the 2001 Authorization for Use of Military Force (AUMF) looks increasingly threadbare. At some point, whether by the increasingly tenuous connection of new groups to the AUMF or by the appearance of some wholly new terrorist threat unrelated in any way to 9/11 or al-Qaeda or jihadis, the president will have to act either under his own constitutional authority or obtain a new congressional authorization.

It is also the case that the definition of "covert action" itself needs to be revised to take into account operations that now span a range from truly secret to unacknowledged to plausibly deniable to only preposterously deniable. Congress and the president must address the fundamental question of which policies, processes, means, methods, and operations must remain secret and which ought to be revealed for public discussion.

There is little indication that either the Congress or the president has any appetite for addressing many, if any, of the serious questions. Instead there is grandstanding by Republicans and Democrats alike, grandiloquent speeches on the Constitution, and precious little attention paid to how citizens who have taken up armed conflict and terrorism against the United States should actually be uncovered and dealt with. That's apart from the propensity of Congress to go AWOL on its oversight responsibilities and punt to a bunch of judges so it doesn't have to take any blame for killing an innocent American or allowing an American terrorist in Yemen to direct the killing of innocent Americans.

Without a hardheaded effort on the part of Congress and the executive branch to make drone policy, the efforts to discredit drones will continue. The current wide public support in the United States today should not mask the ways in which public perception and sentiment can be shifted, here and abroad. The campaign of delegitimation is modeled on the one against Guantanamo Bay during the George W. Bush administration; the British campaigning organization Reprieve tweets that it will make drones the Obama administration's Guantanamo. Then as now, administration officials did not, or were unforgivably slow to, believe that a mere civil-society campaign could force a reset of their policies. They miscalculated then and, as former Bush administration officials John Bellinger and Jack Goldsmith have repeatedly warned, they might well be miscalculating now.

U.S. counterterrorism policy overall needs to be embedded in policies, processes, and laws that get beyond mere executive-branch discretion and bear the stamp of the two political branches coming together in tools available in a stable way across presidential administrations of both parties. We are not there now. While the critics are not wrong to call for reform of drone-warfare processes, many of them see these merely as the first step to ending drone warfare altogether. They are advocating procedural reforms not to give it a permanent and steady framework for the long run, but effectively to outlaw the practice.

Republicans should not be enablers in this effort. They should not mimic the disgraceful behavior of Democrats during the Bush-era war on terror. They should be moving -- especially in Congress -- to offer firm institutional and political support to drone warfare as a legitimate, effective, legal, ethical, and necessary tool of counterterrorism. Republicans in Congress should stand with the president on the main issue of drone warfare, to shore up the foundations of its legitimacy. They should do this not only because it is the right thing to do, but as a practical matter -- to preserve this key element of 21st-century defense for future presidents, among whom there will surely be a Republican or two.

#### The CP alone is key to send a signal that the U.S. won’t negotiate the particulars of its targeted killing policy with the international soft-law community---the plan means targeted killing will die a death of a thousand legal cuts---independent disad to the plan

Kenneth Anderson 10, Professor of International Law at American University, 3/8/10, “Predators Over Pakistan,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>

So the legal basis for targeted killing, Predator drone strikes, and covert action involving the CIA is not really the “combatancy” standard under armed conflict into which we have mistakenly subsided. The United States today needs to reassert and reaffirm something it has never given up—but also not reiterated for a generation—the traditional standard of self-defense. As customary law doctrine, it is not (as some might reasonably fear) utterly discretionary, empty, and standardless. On the contrary, while self-defense does not invoke the technical rules of armed conflict, it does have to conform to the usual, fundamental customary law requirements of necessity and proportionality. Note, too, that insofar as the U.S. military carries out any such attacks, they already adhere to international laws of war and their standards, irrespective of whether the operation is part of an armed conflict in a legal sense.

Whether necessity or proportionality, however, the legal standard for the CIA cannot be lower than the equivalent standard in armed conflict for launching an attack upon a lawful target (and might under many circumstances be higher). But proportionality with respect to collateral damage always raises a special problem. It is customarily stated that anticipated harms, including innocent deaths, must not be “excessive” in relation to the anticipated benefits (to paraphrase from the laws of war). It should never be lower and in some instances possibly higher.

Beyond that, however, one cannot go—if for no other reason than that the international legal standards on proportionality are not more specific. Human rights groups sometimes talk as if there were some decreed standard of proportionality. One to one? Two to one? One to two? Fifty to one? One to fifty? Sometimes they sound as though they have a special moral faculty to spot “disproportionality.” But in fact there is no fixed legal standard that goes beyond this obligation on the part of commanders. The law requires a good faith effort to weigh anticipated benefits against anticipated harms. It provides no mathematical formulas, and it is disingenuous, though common, to suggest to credulous journalists and the public that it is more definitive than it is.

For that reason—quite apart from operational security—the CIA has to resist getting into a pissing match with the soft-law community over collateral damage numbers. The best nonofficial, non-CIA-leaked estimates are found at the blog Long War Journal, which keeps a running count based on a wide range of public reporting. Long War Journal’s tabulations suggest far lower collateral damage rates than the global press seems to believe. Leaks by government officials to journalists on a couple of occasions have expressed the same view—in even stronger terms. (When I have asked reporters about this, they appear to take the view that the more “conservative” way to report civilian casualty figures is to err on the high side, if necessary through that weaselly journalistic locution, “as high as.”) Perhaps some mechanism could be worked out for overtly informing the press about the aggregate collateral damage from the now obviously overt targeted killings campaign in Afghanistan and Pakistan. But the U.S. government can’t fall into the losing game of arguing with the press and human rights groups over proportionality. The standards and mechanisms for review should be tailored as closely as possible to military standards of review, and left at that.

Making clear that the U.S. government is operating under the legal standard of self-defense would not quiet critics who believe it is all just murder, anyway. But it would provide a public, principled legal position by which this administration and future administrations could defend themselves against the charge of lawlessness. Congress has an important legitimating role to play in this—to show that the two political branches of government have policies in place that they regard as lawful and defensible, to occupy a ground of lawful national security that would otherwise invite inappropriate judicial entry, and to offer a check on covert actions that sometimes achieve momentum within the executive but, seen by congressional outsiders, raise commonsense questions.

The U.S. government should, moreover, defend what its officers in fact believe to be the case—that targeted killing from drone platforms is not merely a question of hard-edged military necessity, but is also a humanitarian step forward in technology. The president believes that and so does the vice president, and they are correct. These technologies are lessening, not increasing, civilian damage, are being applied in ways (because it is killing that is, indeed, targeted) that lessen collateral damage from what it would otherwise be in traditional war. The U.S. government should react with outrage to the charge, implied or express, of American cowardice or some abstract increased propensity to violence on account of drone strikes, and assert its humanitarian moral ground.

For that matter, hostile journalists ought to be pressed to explain why drone attacks are significantly different from missiles fired from aircraft or offshore naval vessels​—save for the vastly greater ability to monitor the circumstances of firing through sensor technologies. Senior officials believe that drone warfare allows the United States to take far greater measure and care with collateral damage than it can using either conventional war or attack teams on the ground. The U.S. government should say so, rather than simply falling back on narrow arguments of military necessity, operational convenience, and force protection, while ceding the moral high ground to the international soft-law community.

But in making its case, the United States government has to be clear that it is reaffirming self-defense as its legal basis, not simply combatancy and not simply armed conflict. Congress—Republicans and Democrats—should endeavor to get the senior legal officials of the Obama administration to say so, on the public record. This will be important down the road for U.S. officials not protected by the aura of the Nobel Peace laureate now in the Oval Office.

The administration itself might consider that a narrow justification of drone strikes under combatancy with respect to al Qaeda and the Taliban, rather than a broader legal basis in self-defense, is most likely to work for it under one circumstance—a one-term presidency. Indeed, the silence of the administration’s senior international lawyers, and in particular their failure to defend the practice on a basis broad enough to encompass the circumstances under which it might be used in the next seven years, rather than the next three, might be taken as their implied view of the administration’s life expectancy.

The U.S. government ought to consider that, over time, terrorist groups the United States will believe itself compelled to attack will not always be al Qaeda. They may also be found in places beyond Yemen and Somalia, without obvious connection to the existing theaters of armed conflict in Iraq and South Asia. Unless the United States moves to self-defense as its fundamental legal basis for using force against terrorists, it will find itself pushed to revive the discredited “global” war on terror.

Finally, future administrations, long beyond the Obama administration, may one day have to confront nonstate enemies that are not al Qaeda, have no relation whatever to 9/11, and are not jihadists but espouse some other violent cause against the United States. Future presidents will also have to respond with force, sometimes covert force, to such threats. The Obama administration has an obligation to itself and its successors to preserve their legal powers of national security. The United States must use these legal powers or lose them.

### AT: Links to DA

#### Doesn’t link to warfighting disad

#### Doesn’t release classified info---only discloses LEGAL RATIONALE, the plan discloses the DETAILS of the mission

#### Disclosing the procedures used to select targets obviously doesn’t require divulging classified info or intelligence practices

Cheri Kramer 11, J.D., Santa Clara University School of Law, 1/1/11, “The Legality of Targeted Drone Attacks as U.S. Policy,” Santa Clara Journal of International Law, http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1105&context=scujil

Asking the administration to go public with more details on the procedures used to ensure compliance in targeted killings does not necessarily jeopardize national security. Unlike the petitioner's complaints in Muhamed v. Jeppesen Dataplan, the act of going public with procedures does not require the public revelation of state secrets.125 In Jeppesen, the plaintiffs sought to bring claims under the Alien Tort Claims Act against Jeppesen Dataplan, a U.S. corporation, for liability in assisting the CIA in its extraordinary rendition program. 126 The nature of the claims would have required that facts of the extraordinary rendition program be produced as evidence to the court, and publicly discussed at trial.127 The United States moved to intervene, claiming the state secrets doctrine; its motion was granted by the district court and the case was dismissed.128 On appeal, the Ninth Circuit affirmed the dismissal because "there is no feasible way to litigate Jeppesen's alleged liability without creating an unjustifiable risk of divulging state secrets."129 The court emphasized that, while the state secret doctrine should only be invoked in rare situations, it was appropriate here."s0 Although much evidence would be available publicly, evidence privileged under the state secret doctrine was intimately linked to unprivileged evidence and therefore the discussion of the unprivileged (i.e., public) information would compromise the privileged information.131

Unlike Muhamed v. Jeppesen Dataplan, when it comes to targeted killing as policy, factual details of targets and attacks are not necessary. However, procedural standards are critical, for the reasons discussed above: clarifying adherence to appropriate international law, limiting executive power, maintaining the moral and political high ground, and increasing the rule of law. The distinction between the disclosure of facts and the disclosure of procedures is essential. By requiring only the disclosure of procedures, the issues which led to the dismissal of jeppesen are avoided. State secrets are not compromised to the extent that the procedures should comply with what is publicly known already-the requirements of IHL for determining legitimate targets. Of course, if the administration determines that the public dissemination of the procedures would, in fact, compromise an important state secret, then the administration should say so publicly and honestly, as the government asserted in Jeppesen Dataplan.132 However, since the administration publicly proclaims its adherence to IHL,133 this situation does not seem likely.

#### No leaks of classified info or intel methods

Jack Goldsmith 11, the Henry L. Shattuck Professor at Harvard Law School, 10/3/11, “Release the al-Aulaqi OLC opinion, Or Its Reasoning,” http://www.lawfareblog.com/2011/10/release-the-al-aulaqi-olc-opinion-or-its-reasoning/

The best argument against disclosure is that it would reveal classified information or, relatedly, acknowledge a covert action. This concern is often a legitimate bar to publishing secret executive branch legal opinions. But the administration has (in unattributed statements) acknowledged and touted the U.S. role in the al-Aulaqi killing, and even President Obama said that the killing was in part “a tribute to our intelligence community.” I understand the reasons the government needs to preserve official deniability for a covert action, but I think that a legal analysis of the U.S. ability to target and kill enemy combatants (including U.S. citizens) outside Afghanistan can be disclosed without revealing means or methods of intelligence-gathering or jeopardizing technical covertness. The public legal explanation need not say anything about the means of fire (e.g. drones or something else), or particular countries, or which agencies of the U.S. government are involved, or the intelligence basis for the attacks. (Whether the administration should release more information about the intelligence supporting al-Aulaqi’s operational role is a separate issue that raises separate classified information concerns.) We know the government can provide a public legal analysis of this sort because presidential counterterrorism advisor John Brennan and State Department Legal Advisor Harold Koh have given such legal explanations in speeches, albeit in limited and conclusory terms. These speeches show that there is no bar in principle to a public disclosure of a more robust legal analysis of targeted killings like al-Aulaqi’s. So too do the administration’s many leaks of legal conclusions (and operational details) about the al-Aulaqi killing.

#### CONCEDED oversight link---review interferes with exec flex---causes second-guessing and deters quick CT action---that’s Chesney---no new answers

#### Reforms to targeted killing practices should be internal executive policy changes---imposing constraints destroys executive flexibility

Timothy C. Ladouceur 12, Lieutenant Colonel, United States Army, 5/1/12, “Traditional Military Operations: A Legitimate Policy Alternative to Covert Action,” <http://nsfp.web.unc.edu/files/2012/09/Ladouceur_Traditional-Military-Operations_A-Legitimate-Policy-Alternative-to-Covert-Action.pdf>

Covert action and traditional military activities are two paths for the legitimate use of force by the United States. For the President to employ the full span of capabilities available to him there must be a clear understanding of the unique nature of each option. The CIA has, for decades, employed covert activities internationally to further U.S. interests, with the goal of avoiding the stigma of U.S. sponsorship. Likewise, the DOD has been employed to further U.S. interests abroad, having refined its precision targeting capability to a level never before available to an American President, both inside and outside of the designated areas of armed conflict. It is, therefore, critical that national-security decision-makers properly employ these tools under the appropriate conditions to align with national policy in the defense of the nation. Misapplication of these tools, however, carries with it consequences that may equally degrade U.S. standing in the international community. No change or addition to domestic or international law is necessary or recommended: this is a policy issue. To refine the law would be to further constrain national-security decision making in the face of future, and unforeseen threats.

### AT: Countries Don’t Trust

#### Set the solvency threshold so low---cross-x with Muslim cooperation for example, any attempt at transparency would be sufficient

#### Disclosing target criteria builds diplomatic credibility, enacts domestic accountability, and doesn’t link to the terror disad

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

Related to defending the process, and using performance data is the possibility that the U.S. government could publish the targeting criteria it follows. That criteria need not be comprehensive, but it could be sufficiently detailed as to give outside observers an idea about who the individuals singled out for killing are and what they are alleged to have done to merit their killing. As Bobby Chesney has noted, "Congress could specify a statutory standard which the executive branch could then bring to bear in light of the latest intelligence, with frequent reporting to Congress as to the results of its determinations."521 What might the published standards entail? First, Congress could clarify the meaning of associated forces, described in Part I and II. In the alternative, it could do away with the associated forces criteria altogether, and instead name each organization against which force is being authorized,522 such an approach would be similar to the one followed by the Office of Foreign Assets Control when it designates financial supporters of terrorism for sanctions.523¶ The challenge with such a reporting and designation strategy is that it doesn’t fit neatly into the network based targeting strategy and current practices outlined in Parts I-III. If the U.S. is seeking to disrupt networks, then how can there be reporting that explains the networked based targeting techniques without revealing all of the links and nodes that have been identified by analysts? Furthermore, for side payment targets, the diplomatic secrecy challenges identified in Part I remain --- there simply may be no way the U.S. can publicly reveal that it is targeting networks that are attacking allied governments. These problems are less apparent when identifying the broad networks the U.S. believes are directly attacking American interests, however publication of actual names of targets will be nearly impossible (at least ex ante) under current targeting practices.¶ As was discussed above, the U.S. government and outside observers may simply be using different benchmarks to measure success. Some observers are looking to short term gains from a killing while others look to the long term consequences of the targeted killing policy. Should all of these metrics and criteria be revealed? Hardly. However, the U.S. should articulate what strategic level goals it is hoping to achieve through its targeted killing program. Those goals certainly include disrupting specified networks. Articulating those goals, and the specific networks the U.S. is targeting may place the U.S. on better diplomatic footing, and would certainly engender mechanisms of domestic political accountability.

#### Strongly err neg---their authors don’t understand how thorough and effective inter-executive mechanisms are---adding transparency’s clearly sufficient

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

To date scholars have lacked a thorough understanding of the U.S. government’s targeted killing practices. As such, their commentary is oftentimes premised on easily describable issues, and fails to grapple with the multiple levels of intergovernmental accountability present in current practice. When dealing with the theoretical and normative issues associated with targeted killings, scholars have failed to specify what they mean when they aver that targeted killings are unaccountable. Both trends have impeded legal theory, and constrained scholarly discourse on a matter of public import.

This article is a necessary corrective to the public and scholarly debate. It has presented the complex web of bureaucratic, legal, professional, and political accountability mechanisms that exert influence over the targeted killing process. It has demonstrated that many of the critiques of targeted killings rest upon poorly conceived understandings of the process, unclear definitions, and unsubstantiated speculation. The article’s reform recommendations, grounded in a deep understanding of the actual process, reflect an assumption that transparency, performance criteria, and politically grounded independent review can enhance the already robust accountability mechanisms embedded in current practice.